

VIRTUE POLITICS

by

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## DEDICATION

To my late father, Gordon Brian Rogers, and the father figures—both real and archetypal—who followed him.

## TABLE OF CONTENTS

<b>List of Tables .....</b>	<b>7</b>
<b>Abstract.....</b>	<b>8</b>
<b>Introduction.....</b>	<b>9</b>
0.1 Virtue Ethics and Political Philosophy: Ancient and Modern Perspectives .....	9
0.2 Virtue Politics .....	15
0.3 Overview .....	19
<b>Chapter One: Political Institutions and Living Well.....</b>	<b>23</b>
1.1 The Authority of Political Institutions.....	24
1.2 Virtue Ethics and Political Authority .....	30
1.3 The Problem of Disagreement .....	38
1.4 The Problem of Choice/Agency .....	42
1.5 Conclusion .....	47
<b>Chapter Two: Living Well in the Polis .....</b>	<b>49</b>
2.1 The Good of Social Cooperation .....	51
2.2 Happiness and Well-Being .....	58
2.3 Living Well .....	65
2.4 The Thin Conception of Living Well .....	71
2.5 The Right and The Good .....	75
2.6 Conclusion .....	78
<b>Chapter Three: The Role of the Polis in Living Well.....</b>	<b>80</b>
3.1 Can Political Institutions Have a Role in Living Well? .....	82
3.2 Living Well as an End .....	85
3.3 Aristotelian Accounts .....	88
3.4 The Constraining Role: Rights as Institutional Constraints .....	98
3.5 The Formative Role: Balancing Social Institutions .....	109
3.6 Conclusion .....	114
<b>Chapter Four: The Virtue of Justice and the Limits of Political Institutions.....</b>	<b>115</b>
4.1 Justice as an Individual Virtue .....	118
4.2 Justice as an Institutional Virtue .....	123
4.3 The Fairness Conception .....	130
4.4 The Lawfulness Conception .....	135
4.5 Reconciling Lawfulness and Fairness .....	142
4.6 Conclusion .....	147
<b>Chapter Five: The Common Good and the Aim of Political Institutions.....</b>	<b>148</b>
5.1 Living Well and Sociality .....	150
5.2 The Problem of Integration .....	154
5.3 Justice and Friendship .....	158
5.4 The Common Good as Political Friendship .....	164
5.5 Freedom, Social Ontology, and the Political Order .....	168
5.6 Conclusion .....	173
<b>Conclusion .....</b>	<b>175</b>
6.1 A Restatement .....	175
6.2 Applications .....	177
6.3 Future Work .....	183
<b>Bibliography .....</b>	<b>185</b>

## LIST OF TABLES

Table 1 - The Structure of Rights .....	103
Table 2 - Individual and Institutional Justice.....	122
Table 3 - Conceptions of Justice.....	139
Table 4 - Taylor's Types of Goods.....	163
Table 5 - Social Ontology and Political Orders .....	170

## ABSTRACT

Rosalind Hursthouse, Mark LeBar, Martha Nussbaum, and other contemporary philosophers have brought virtue ethics into conversation with political philosophy. These philosophers agree with Aristotle that the function of political authority is to enable persons to live well. But we still lack an account of how the virtues, as characteristics of persons, relate to political authority as a property of institutions. I argue that the authority of political institutions depends on performing the function of enabling persons to live well, while the virtues require, but also limit, the authority of political institutions. According to the account I develop, living well consists in the exercise of practical wisdom within a socially embedded institutional context. Political institutions enable living well by means of institutionally defined rights such as property rights that protect the exercise of practical wisdom, and they promote its development through the institutions of civil society such as the family. I also argue that political authority is limited by the individual virtue of justice, understood as balancing conformity to the existing social norms and laws of a community with their necessary updating through ideals of virtue. Ultimately, I conclude that political authority properly functions to promote an indirect conception of the common good, according to which persons relate to each other virtuously through their shared institutions.

## Introduction

### 0.1 Virtue Ethics and Political Philosophy: Ancient and Modern Perspectives

In this dissertation, I provide an account of political institutions and the virtues. In doing so, I intend to bring ancient ethical insights about virtue and human flourishing (henceforth “living well”) to bear on the fundamental issue of political philosophy: the justification of political authority. I will argue that the authority of political institutions depends on performing the function of enabling persons to live well together in a community, while the virtues require, but also limit the authority of political institutions.

It is reasonable to ask why we need an account of political institutions and the virtues. After a long hiatus, virtue ethics received renewed interest in moral philosophy in the latter half of the 20<sup>th</sup> century and continues to gain momentum in present philosophy work.<sup>1</sup> Consequently, the idea of the good life and its deep connection to virtue—central to ancient ethical thought—has come to be taken seriously as a framework for thinking about modern ethical questions.<sup>2</sup> In roughly the same time span, however, political philosophy, due to the towering influence of John Rawls, has pushed questions about the good life to the periphery, instead focusing increasingly on what justice requires in a

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<sup>1</sup> For most recent work see e.g. *The Cambridge Companion to Virtue Ethics*, ed. Daniel C. Russell (Cambridge: Cambridge University Press, 2013).

<sup>2</sup> See Julia Annas, *Intelligent Virtue* (Oxford: Oxford University Press, 2011). See also Daniel C. Russell, *Happiness for Humans* (Oxford: Oxford University Press, 2012), Mark LeBar, *The Value of Living Well* (Oxford: Oxford University Press, 2013), and Neera K. Badwhar, *Well-Being: Happiness in a Worthwhile Life* (Oxford: Oxford University Press, 2014). It deserves mention that the above authors are deeply influenced by the ancient Greek tradition of eudaimonism. I will also follow that tradition drawing primarily on Aristotle and the Stoics, in addition to the above mentioned contemporary theorists.

society characterized by diverse conceptions of the good.<sup>3</sup> Despite this divergence, I believe these two intellectual traditions have something to say to each other. In this Chapter, I explain the benefits of this dialogue, introduce the main ideas of my account, and give an overview of the Chapter contents.

Broadly speaking, virtue ethics concerns itself with states of character, the virtues, and their relationship to how we should live. Virtue ethicists are in the business of explaining how a deeper understanding of the virtues familiar to us in ordinary life give us reasons to live better and more ethical lives. More specifically, I am interested in the ancient eudaimonist tradition of virtue ethics that holds the virtues are at least necessary, if not sufficient, to living a good (and so ethical) life. This is the *eudaimon* (happy or flourishing) life. I have two reasons for this narrower focus. First, eudaimonist virtue ethics seems to capture the concern for bettering human lives that ideally we want politics to serve.<sup>4</sup> Second, eudaimonist virtue ethics puts practical reasoning center stage. This allows us to integrate political institutions into our deliberations as tools for making our lives better in the ways illuminated by virtue ethics.<sup>5</sup>

But we cannot make the shift from ethics to politics so seamlessly. As Daniel C. Russell observes, “[i]t is no small thing to shift from ethics to politics [...] in part because the things being appraised—institutions instead of actions—are so different, but also

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<sup>3</sup> John Rawls, *A Theory of Justice*, revised ed. (Cambridge, MA: Harvard University Press, 1999 [1971]).

<sup>4</sup> I explore this connection in section 2.1 below.

<sup>5</sup> As Daniel C. Russell puts it, institutions are “tools of preventative problem-solving,” and so something practical wisdom must contend with. See his “What virtue ethics can learn from utilitarianism,” in *The Cambridge Companion to Utilitarianism*, eds. Eggleston and Miller (Cambridge: Cambridge University Press, 2014), p. 268.

because the state is by its nature coercive.”<sup>6</sup> A major task, then, is to understand the relationship between ethics and politics. That task underlies a challenge for my account to overcome, one that questions the wisdom of tackling modern political problems from an ancient ethical perspective. For instance, according to Gerald Gaus, “[a]ncient ethics was teleological, a science of ends; it concerned what a person properly desires or what a proper, virtuous person *desires*, or finds attractive. In contrast, modern ethics concerns what we must do – what we are *required to do* even if we are not attracted by it.”<sup>7</sup>

The distinction between ethics as a set of imperatives and ethics as a set of attractive ideals is meant to ground the claim that modern ethics is primarily concerned with the special domain of *moral* obligation. The modern idea of a moral obligation assumes that an agent engaged in practical reasoning responds to two distinct kinds of reasons: a) those relating to morality or the good of others, and b) those relating to her own good. But eudaimonism rejects this sharp division between my good and the good of others. The eudaimonist challenge is not so much to show that the good of others is in my interest narrowly construed, but rather to show to what extent the good of others plays a role in my own good.<sup>8</sup>

While eudaimonism may not be able to provide an account of moral obligation, as a special category of reasons, we should not conclude that the familiar idea of moral obligation has no place. As G.E.M. Anscombe pointed out, the idea of human flourishing,

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<sup>6</sup> Daniel C. Russell, “Virtue Ethics and Political Philosophy,” in *The Routledge Companion to Social and Political Philosophy*, eds. Gaus and D’Agostino (London: Routledge, 2013), p. 364.

<sup>7</sup> Gerald Gaus, *The Order of Public Reason* (Cambridge: Cambridge University Press, 2011), p. 7 (emphasis added).

<sup>8</sup> Julia Annas, *The Morality of Happiness* (New York: Oxford University Press, 1993), pp. 223-226.

i.e. what human beings need in order to live well, can give rise to an obligation based in need.<sup>9</sup> That is, when we say that you ought not to steal, for example, we might appeal to the abstract idea of “moral” obligation, but we can also appeal to the idea that stealing is the kind of behaviour that is generally destructive to the social conditions human beings need in order to live well together. And this instructs us to behave in certain ways, given that we want and need to live well with other people.<sup>10</sup>

Obligations grounded in need depend on the premise that we desire to live well, and moreover, that this desire comes with a set of conditions that tell us how to act. Here we confront the Gaus objection directly. For Gaus, part of what it means to justify political institutions is to justify the authority of what he calls social morality, understood as “the set of social-moral rules that require or prohibit action, and so ground moral imperatives that we direct to each other to engage in, or refrain from, certain lines of conduct.”<sup>11</sup> According to Gaus’ understanding “[m]uch of what we call ‘ethics’ – *including visions of the good life and conceptions of virtue and vice* – lies outside social morality so understood.”<sup>12</sup>

Gaus is right insofar as we recognize that social morality serves a function, namely, making it possible for there to be visions of the good life and different conceptions of the virtues in the first place. That point is fundamental to my account that locates the function of political institutions in enabling persons to live well. We should

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<sup>9</sup> G.E.M. Anscombe, “Modern Moral Philosophy” in *Ethics, Religion, and Politics* (Oxford: Blackwell, 1981). p. 29.

<sup>10</sup> This is a hypothetical imperative. But notice that the hypothetical character is not exactly optional; we may not *want* to live with other people, but we must in order to pursue anything else we may desire.

<sup>11</sup> Gaus, *The Order of Public Reason*, p. 7.

<sup>12</sup> *Ibid.* (emphasis added).

add, however, i) that rules do not exhaust the content of social morality, and ii) the virtues are not independent from rules. When we direct imperatives to others we often refer to rules (e.g. “always tell the truth”), but we also sometimes implore them to be better people (e.g. “be honest”) where implicit in the virtue resides the rule to tell the truth. In other words, we appeal to the evaluative framework of the virtues as a basis for the rule-based imperatives. Indeed, the language of the virtues allows for rules of the following sort, namely, “do the just thing” or “do not be cruel”.<sup>13</sup> The virtues are themselves a source of imperatives.

I take this to suggest that the necessity of social morality includes the regulative role of social norms involving notions of character expressing, but not exhausted by rules. As I will argue, social morality cannot function well unless supported by an evaluative framework based on a shared understanding of what is good for us as human beings. Thus, I reject Gaus’ claim that “[s]een against this background, neo-Aristotelian virtue ethics is a rejection of modernity rather than a solution to its problems.”<sup>14</sup> At any rate, this dissertation might be read as a response to that claim.

I am claiming, in effect, that virtue ethics can speak the language of political philosophy. But it remains to be shown that these two camps have something worth saying to each other. First, from the virtue ethics perspective, I intend to show that the virtues cannot be understood apart from an understanding of the critical role institutions play in our lives. Virtue ethicists have contributed much in the way of understanding what a virtue is, developing conceptions of particular virtues, and showing the

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<sup>13</sup> Rosalind Hursthouse refers to these as “v-rules” in her *On Virtue Ethics* (New York: Oxford University Press, 1999), p. 37.

<sup>14</sup> Gaus, *The Order of Public Reason*, p. 8.

relationship between virtue and right action. But for the most part, virtue ethicists have paid less attention to the institutions within which we develop and exercise virtue, especially when it comes to politics.<sup>15</sup> For instance, what role do good institutions have in the actions of the virtuous person, given that we always act in an institutional context? What kind of institutions induce virtuous action? To answer such questions, rather than inserting the virtues into ongoing discussions about justice, I propose we would do better to start with the basic question of why the virtues require a political order.<sup>16</sup>

I also believe that virtue ethics can contribute meaningfully to political philosophy. For instance, in connecting the virtues of character to the authority of institutions, virtue ethics offers an underlying account of moral psychology that is often absent from discussions of political authority. *Authority*, after all, is a partially psychological notion. Authority, in some sense, must be seen to be legitimate in order to be legitimate. If the reasons we have for recognizing the authority of political institutions are also reasons for living well, this provides an account of political institutions that is grounded in our moral experience, rather than an abstract theory. Having answered this question, we will then have a deeper understanding of the moral foundations of a political order.

In sum, I hope to fill what Hursthouse called “[a]n obvious gap” in her seminal treatment of virtue ethics, namely, “the topic of justice, both as a personal virtue and as

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<sup>15</sup> For a notable exception see Onora O’Neill, *Towards Justice and Virtue* (Cambridge: Cambridge University Press, 1996).

<sup>16</sup> See Russell, “Virtue Ethics and Political Philosophy,” p. 373. Michael Slote’s empathy-based sentimentalism is a good representative of the alternative route. See Michael Slote, *The Ethics of Care and Empathy* (London: Routledge, 2007) and *Moral Sentimentalism* (Oxford: Oxford University Press, 2010).

the central topic in political philosophy.”<sup>17</sup> Contrary to many contemporary political theorists, however, I will not begin by defending a conception of justice. Instead, I will show how justice emerges as a defining virtue of well-functioning political institutions, but one that cannot be understood without first understanding how political institutions function to enable us to live well.

## 0.2 Virtue Politics

The authority of political institutions depends on performing the function of enabling persons to live well in a community, while the virtues require, but also limit the authority of political institutions. That thesis is nested in a reciprocal account of the relationship between individuals and institutions. This reciprocal account combines the virtue ethics perspective on individual actions with the political philosophy’s focus on institutions. First, persons have obligations to act well within their role as members of a political community’s institutions. Political obligation requires not passive obedience, but active engagement with one’s obligation in accordance with the virtues. Second, we evaluate political institutions in terms of how well they perform the function of enabling persons to live well.

As I understand it, living well consists in active engagement with the materials and circumstances of one’s life. A good life is one that is directed by practical wisdom generally, meaning that it is guided by the knowledge and emotional soundness that constitutes a life that has a purpose.<sup>18</sup> This active engagement with a purpose, performed

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<sup>17</sup> Hursthouse, *On Virtue Ethics*, p. 5.

<sup>18</sup> Daniel C. Russell, *Happiness for Humans*, p. 6.

with excellence, is what I mean by virtue. A virtuous life is not an ideal of the good life, say of the contemplative philosopher, ascetic monk, or pastoral farmer; the virtuous life is the way in which you live the life that you already have, virtuously. For, as Aristotle reminds us, by the time we begin to think ethically, we already have a life with a set of commitments, clearly defined social relationships, and limitations that constrain our choices in these circumstances. To live well is to exercise practical wisdom within these socially embedded circumstances, thereby constructing a life that is excellent for oneself.

Political institutions perform the function of enabling persons to live well in this sense. We need political institutions to secure the framework within which we develop and exercise practical wisdom. I explain this role in two parts. First, there is the *constraining role*. Political institutions constrain individual actions that make it possible for each person to exercise practical wisdom in response to the practical problem of how to live. Second, there is the *formative role*. Practical wisdom does not exist in a vacuum, but requires habitual development, and this takes place in the social institutions of civil society for which political institutions have the responsibility to maintain.

The individual and institutional perspectives provide a framework for thinking about the virtues as directing the aim of political authority. My account focuses on two political virtues: justice and friendship. Justice articulates the limits on political institutions in performing the constraining role. Political institutions are limited by justice understood as what is lawful, that is, what the community upholds as a matter of legal and social norm. But justice also depends on the judgment of the just person who follows the norms of the community, while remaining sensitive to ideals of fairness that update the norms.

Meanwhile, persons, who act through institutions, are guided by a virtue that sets the proper aim of the community. In this connection, I believe persons should be guided by a conception of the common good according to which persons relate to each other on terms of political friendship. Political friendship consists in the shared institutions, practices, and beliefs of a bounded political society. In this way, persons can pursue diverse ends while being committed to the beliefs, practices, and institutions that make such ends possible. I understand the common good as an elaboration of the formative role, where persons gain, through their institutional ties and affiliations, an understanding of their own good in relation to the good of others.

The authority of political institutions depends on performing the function of enabling persons to live well, while the virtues require, but also limit the authority of political institutions. This thesis is best understood in terms of the individual and institutional perspectives. We live well within institutions when we exercise practical wisdom within our socially embedded circumstances. But we also need political institutions to perform a constraining role, grounded in justice, supplemented with the formative role, shaped by the common good. Political institutions function to enable us to live well by providing the constraints within which we exercise practical wisdom, which is developed within the formative institutions of civil society.

Before proceeding, some comments on method deserve mention. Since Rawls, political philosophers have tended to follow the method of reflective equilibrium. In evaluating a theory, we work from both ends, as it were, developing the theory, then checking it against our considered judgments or intuitions, and vice versa. Thus, if a theory issues a claim that is counterintuitive, we might decide to revise the theory. Or a

considered judgment can be reevaluated in light of a sufficiently compelling theory. Rawls himself traces the method of reflective equilibrium back to Aristotle.<sup>19</sup> Presumably this is because Aristotle often begins with the *endoxa* or reputable opinions of his time, subjecting them to critical scrutiny while allowing them weight in his theoretical discussions. But Aristotle avoids thoroughly undermining our most considered judgments. He does not seem to have agreed with Bertrand Russell that “the point of philosophy is to start with something so simple as not to seem worth stating, and to end with something so paradoxical that no one will believe it.”<sup>20</sup>

Despite its alleged Aristotelian pedigree, I do not follow the method of reflective equilibrium. Rather than presenting a *theory* that can be revised or rejected in light of intuitions and counter-examples, I follow Julia Annas in adopting a holistic *account* whereby virtue and living well are central, but not the foundation in the modern sense of grounding the theory.<sup>21</sup> This should already be clear, as I have proposed to understand virtue in terms of institutions such that virtue could not be *foundational* in a sense separable from an institutional context. For this reason, my account of virtue and political institutions should be evaluated holistically. Each part plays an important though potentially separable and/or replaceable role depending on what we want the *account* to be able to functionally *account for*.

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<sup>19</sup> Rawls, *A Theory of Justice*, p. 45, fn 26.

<sup>20</sup> Bertrand Russell, “The Philosophy of Logical Atomism,” in *Logic and Knowledge*, ed. R.C. Marsh (London: Allen & Unwin, 1956), p. 193.

<sup>21</sup> Annas, *Intelligent Virtue*, Ch. 1.

The holistic method is nicely illustrated by David Schmidtz's idea that theories are maps.<sup>22</sup> Maps help us understand geographical space by representing terrain in such a way that enables us to do different things depending on our purposes. More generally, of course, maps are *tools*. We use tools in order to do things, but each tool is only capable of a limited number of uses. There is no master tool that does everything. A theory of the endlessly complex phenomena of politics must, then, be nothing more than another tool that functions to serve our ends. We use a theory to increase our understanding, but this is ultimately dependent on our purposes, and unless we are philosophers, our purposes are usually quite distant from philosophical theorizing.

### 0.3 Overview

The structure of this work can be broken into two halves. In the first half, I consider the *moral justification* of political institutions by responding to two problems for understanding living well and the role of political institutions in living well. In the second half, I use the framework developed in the first half to consider the *limits and aim* of political authority in terms of the virtues of justice and friendship.

To begin with, it is sometimes thought that the problem of political authority is a distinctively modern problem that does not find a place in any of the ancient debates.<sup>23</sup> While there is some truth to this claim, in Chapter One, I describe the problem of political authority in such a way as to gain traction on a virtue ethical account. That problem is

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<sup>22</sup> David Schmidtz, *Elements of Justice* (Cambridge: Cambridge University Press, 2006), p. 21.

<sup>23</sup> Charles Larmore, *The Morals of Modernity* (Cambridge: Cambridge University Press, 1996). But see also Andre Rosler, *Political Authority and Obligation in Aristotle* (New York: Oxford University Press, 2005).

roughly how to justify the coercive nature of political obligation with the nature of virtue as a function of choice. The Chapter also explains the sense in which virtue is socially embedded in institutions. Lastly, I introduce and explore the depth of the problems of disagreement and choice/agency, setting up Chapters Two and Three.

Now, one might think that eudaimonist virtue ethics is not capable of accommodating the diversity characteristic of modern societies. For virtue ethics makes claims about the good and such claims are too controversial to justify a political order in a diverse society because they violate each person's equal claim to determine the good for themselves.<sup>24</sup> This is what I call the problem of disagreement. Chapter Two responds by exploring in more detail the idea of living well, its relationship to institutions, and whether there is a sense of living well that is suitable as the function of political institutions. I argue in the affirmative that there is a thin sense of living well, focusing on practical wisdom exercised in different circumstances, that accommodates disagreement and justifies political institutions.

Next, there is the issue of whether the virtues can make sense of something like modern claims about individual rights that protect the importance individual choice and agency in living well. For rights are universal claims that are often defined in opposition to particular claims about the good that involve the virtues. This is what I call the problem of choice/agency. I treat the question of the relationship between the right and the good—another Rawlsian artifact—in Chapter Two. Roughly speaking, I claim that the right and the good are best understood not in terms of a priority relation, but rather as

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<sup>24</sup> Something like this idea is suggested by Ronald Dworkin's theory of equality of resources. See his *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000).

irreducibly interconnected aspects of virtue. The right is the constraining aspect, while the good is the directing aspect. This informs Chapter Three's discussion about the role of political institutions, one of which I claim, requires the protection of rights as institutional (not individual) claims, functionally justified in terms of living well. This is the constraining role of political institutions. The remainder of the Chapter describes the formative role as a balancing of social authorities in civil society.

Chapter Four considers the limits of political institutions. I show that this issue is usefully approached by considering the relationship between the virtues of individual and institutional justice. This too is thought to be an obstacle to a virtue ethical account of political institutions, since virtue ethics treats justice as a virtue of persons, not institutions. Chapter Four distinguishes two conceptions of the virtue of justice: justice as lawfulness and justice as fairness. The lawfulness conception of justice, I argue, is superior because it limits political institutions in a way that explains their relationship to the individual virtue of justice.

A final challenge is that whatever virtue ethics can tell us about a justified political order, because eudaimonism is grounded in a pre-modern view of society, the political order that results cannot be anything except collectivistic or communitarian.<sup>25</sup> The issue here, which I take on in Chapter Five, is the relationship between the individual good and the social good. Is there a common good that political institutions aim at? And if so, is this a conception of the common good that does not subordinate the individual to the group? In response to these questions, I argue for an indirect conception of the

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<sup>25</sup> Some virtue ethicists, of course, embrace this result. See Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame, IN: University of Notre Dame Press, 1984).

common good. The common good is neither a good above and beyond the good of individuals that we all aim at, nor is it just the aggregate of all the individual goods. Rather, the common good is the virtuous way in which persons pursue the individual good in community with other people. I call this conception of the common good political friendship.

The concluding Chapter restates the thesis and considers its scope and limitations. I also apply my account to some influential debates in political philosophy to show the advantages of thinking outside of the Rawlsian ideal theory paradigm. Lastly, I consider opportunities for future research from within a virtue politics perspective.

## Chapter One: Political Institutions and Living Well

Political institutions fundamentally shape our lives by claiming the authority to alter our moral obligations. One way to justify that authority would be to ask what it is for. An initially plausible answer: political authority is for helping us live better. But what does it mean to live better? Moreover, what would it mean for political authority to help us live better? And even if political authority makes our lives better, what are its limits? Virtue ethics responds to the first question by claiming that we live better—live well—by living virtuously. But the virtues are usually discussed at the individual ethical level, and virtue ethicists have been less expansive on the topic of how the virtues relate to institutions, as a matter of politics.

My thesis is that the authority of political institutions depends on performing the function of enabling persons to live well in a community, while the virtues require, but also limit the authority of political institutions. Political institutions have a role in living well because political society is necessary for developing the virtues. But living well also limits political authority in what the virtues require of persons who cooperate in political institutions.

The aim of this Chapter is to introduce the conceptual framework for this thesis and describe two problems for my account to consider. First, how should living well be understood?<sup>1</sup> If political authority is justified in terms of living well, we face a problem

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<sup>1</sup> There is an ongoing debate about the relationship between well-being and happiness that bears on how plausible the eudaimonist conception of living well is as a candidate for a general theory of well-being. I set that debate aside here in order to focus on living well on its own terms and its plausibility for thinking about political authority. For more see Dan Haybron, “On Being Happy or Unhappy,” *Philosophy and Phenomenological*

raised by what Rawls calls the fact of reasonable pluralism: persons—irreconcilably yet reasonably—disagree about and differ in how they live well.<sup>2</sup> Call that *the problem of disagreement*. Second, the fact of reasonable pluralism results from modern political institutions that allow persons to choose for themselves how to live well. Thus, we should ask what *role* political institutions have in living well. Call that *the problem of choice/agency*.

I begin by describing the problem of political authority (1.1). Then, turning to virtue ethics, I consider the problem of political authority from a virtue ethics perspective (1.2). I argue that the socially embedded nature of the virtues means that living well is an ideal through which persons perform their political obligations. The remainder of the Chapter (1.3-1.4) considers two problems for understanding the role of institutions in living well, focusing on the problem of disagreement and the problem of choice/agency.

### 1.1 The Authority of Political Institutions

Political authority is the power (or right) to issue and enforce commands through law over all persons in a bounded political society.<sup>3</sup> In doing so, political institutions a) claim a moral power that is b) comprehensive, and c) coercively enforced. As such, nearly everyone today lives under some political authority or another. How do political

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*Research*, Vol. LXXI, No. 2 (September 2005), pp. 287-317. For a defense of the eudaimonist account of well-being see Neera K. Badwar's *Well-Being: Happiness in a Worthwhile Life*.

<sup>2</sup> John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

<sup>3</sup> This is sometimes put in terms of "the right to rule." See Thomas Christiano, "The Authority of Democracy," *The Journal of Political Philosophy*, Vol. 12, No. 3 (2004), pp. 277-280.

institutions have this power?<sup>4</sup> And how can that power take the place of a person's own moral judgment?

A moral power, in Hohfeld's sense, is such that one can unilaterally (or in concert) alter or create anew the moral obligations of others.<sup>5</sup> For example, I might allow Jack to borrow my car on weekends, transforming his prior duty to refrain from using my car into a limited usage-right. A moral power often depends on a claim about ownership, as in the car example, but can also depend on a claim about moral standing, about who has the standing to issue moral obligations. Moreover, the scope of the moral power wielded by political institutions applies comprehensively to everyone within a political state's territory. And this comprehensive moral power is backed by the threat of coercive force. While all institutions make demands on us, if an institution is voluntary, we can leave if the institution ceases to serve our purposes. But political institutions seldom offer the opportunity of exit. While they do offer the opportunity to emigrate, we cannot escape the political system altogether.

These features of political authority are significant on a virtue ethics account. We should ask: what reasons do we have for the authority of institutions from the perspective of the virtues? The question is significant because the comprehensive and coercive nature of political institutions seems to be in tension with virtue as a function of choice. As Aristotle reminds us, "actions done in accordance with virtues are done [...] from rational

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<sup>4</sup> By political institutions I have in mind the primary instruments of government, e.g. the courts, police force, military, legislative and executive branches, etc. The term roughly overlaps what Rawls calls "the basic structure of society." There are difficulties in determining just what institutions are included in Rawls's idea of the basic structure, but the idea is clear enough for my purposes.

<sup>5</sup> Wesley Hohfeld, *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1919).

choice. [*prohairesis*]"<sup>6</sup> For Aristotle, we become virtuous by performing virtuous actions, which are voluntary in the sense that they originate in the agent, free from external forces.<sup>7</sup> Virtue results from deliberation about the best means to achieve the good for oneself and others. And since rational choice is voluntary and terminates in action, virtue and vice concern actions within our power. We aim at the good in performing voluntary actions that are the result of rational choice.

Can we pursue virtue, which requires choice, while also being subject to the demands of political authority, which is coercive? For Aristotle, actions that are the result of coercion are what he calls "mixed," which are "things done through fear of greater evils."<sup>8</sup> Actions performed out of political obligation are voluntary in the sense that they originate in the agent and are choice-worthy given the alternatives. But "without qualification," Aristotle notes, these kinds of actions "are presumably involuntary, since no one would choose any of them in itself."<sup>9</sup> Political obligation is a matter of necessity, not choice.<sup>10</sup> This may be a problem if the function of political institutions is to enable us to live well. For there it is not clear how one can both pursue virtue and follow the coercive directives of a political authority, directives which may threaten or undermine virtue.

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<sup>6</sup> Aristotle, *Nicomachean Ethics*, trans. Roger Crisp (Cambridge: Cambridge University Press, 2000), II.4, 1105a. (hereafter *NE*).

<sup>7</sup> *Ibid.*, III.1-5.

<sup>8</sup> *Ibid.*, III.1, 1110a.

<sup>9</sup> *Ibid.*

<sup>10</sup> Aristotle, of course, had no trouble with the coercive aspect of political obligation. For Aristotle, "there is no oppressiveness in law's prescribing what is good." (*NE*, X.9, 1180a)

Discussion of the difficulty of pursuing virtue within institutions goes back to the ancient Greeks, who worried about whether institutions were simply a matter of *nomos* (law or custom) or whether they had some basis in *physis* (nature).<sup>11</sup> What the ancient philosophers grasped, but did not fully articulate, is that institutions form the background morality that is a precondition for pursuing the virtues. This background morality is what P.F. Strawson calls “social morality”:

The fundamental idea is that of a socially sanctioned demand made on an individual in virtue merely of his membership of the society in question, or in virtue of a particular position which he occupies within it or a particular relation in which he stands to other members of it.<sup>12</sup>

Strawson’s insight was that social morality, as a set of demands arising from institutions, practices and relationships, is distinct from, and is a necessary condition for the existence of a moral code.<sup>13</sup> A moral code is a conception of the virtues, consisting in beliefs about what is ultimately valuable in human life, what gives life its purpose, and how a person should live. It follows that social morality may be separate from any particular moral code, although they sometimes coincide (e.g. Sharia Law) or contain elements of several distinct moral codes (e.g. pluralistic Western democracies).

Social morality is a prerequisite for the structure, predictability, and mutual expectations that make the pursuit of the virtues within society possible. One thing we need to be able to do, for instance, is trust one another. Institutions facilitate trust by

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<sup>11</sup> See A.W.H. Adkins, *Moral Values and Political Behaviour in Ancient Greece* (New York: Norton, 1976).

<sup>12</sup> P.F. Strawson, “Social Morality and the Individual Ideal,” *Journal of the Royal Institute of Philosophy*, Vol. 36, No. 136 (January 1961), pp. 6-7.

<sup>13</sup> Strawson uses the term “ethical ideal.”

coordinating actions in such a way that persons can rely on one another, and so that if there is conflict, mechanisms exist to restore the social order. In this way, participating in institutions is a way of “binding ourselves to the mast,” as a way of taking certain courses of action off the table, so that we can more efficiently cooperate for particular ends.<sup>14</sup>

The demands of social morality should be understood as role-duties.<sup>15</sup> Role-duties are determined by the constitutive rules and expectations of an institution, practice, or relationship. For example, if I participate in the practice of promising, I determine whether I should keep my word not on a case-by-case basis, but on whether I have made a promise as constituted by the practice of promising.<sup>16</sup> Role-duties are reciprocal in the sense that they prescribe obligations for each participant in the institution according to their role. Fatherhood, for example, prescribes obligations of a father to his children, e.g. to clothe, feed, and keep them safe, and in turn, children have a duty to obey in conjunction with a set of expectations, given what children need from fathers. We can make similar claims about relationships between teachers and students, employers and employees, and so on.

An institution functions well when its participants perform their obligations to serve the function of the institution (e.g. for the family: the proper raising of children). Here we should distinguish between internal and external questions.<sup>17</sup> An internal

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<sup>14</sup> The Homeric metaphor is used by Michael C. Munger and Kevin M. Munger in *Choosing in Groups: Analytic Politics Revisited* (Cambridge: Cambridge University Press, 2015).

<sup>15</sup> Michael O. Hardimon explores the idea of role-duties in some detail in “Role Obligations,” *The Journal of Philosophy*, Vol. 91, No. 7 (July 1994), pp. 333-363.

<sup>16</sup> This was Rawls’s insight from his “Two Concepts of Rules,” in *Collected Papers*, ed. Samuel Freeman (Cambridge, MA: Harvard University Press, 1999).

<sup>17</sup> I borrow the internal/external question distinction from Rudolf Carnap’s classic “Empiricism, Semantics, and Ontology,” in *Philosophy of Mathematics*, eds. Paul

question asks what an institution consists in or requires. In contrast, an external question asks whether an institution should be revised, created, or abolished. Internal questions refer to the constitutive rules of an institution. For example, if we want to know how an American President gets elected, we learn that it requires 270 Electoral College votes. But an external question asks whether perhaps Americans should abolish the Electoral College as an institution for selecting the President and go with the popular vote or some other electoral mechanism. To answer an external question, we refer to functions, e.g. the Electoral College might be defended on grounds that it better fulfills the function of a constitutional representative democracy.

A significant feature of my account is that it doesn't ignore the claims of the "intermediate" institutions of civil society, that is, the institutions existing *between* the individual and political state, e.g. family, labour unions, religious organizations, markets, etc.<sup>18</sup> For someone like Rousseau, these are potentially oppressive entities that constrain the natural (i.e. pre-social) freedom of human beings.<sup>19</sup> This individualist conception of society was influential in the social contract tradition through to John Stuart Mill who warned against a "social tyranny" that leaves "fewer means of escape, penetrating much

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Benacerraf and Hilary Putnam (Englewood Cliffs, NJ: Prentice Hall, Inc., 1964), pp. 233-248.

<sup>18</sup> I borrow the term "intermediate institution" from sociologist Robert Nisbet's classic *The Quest for Community* (Wilmington, DE: Intercollegiate Studies Institute, 2014 [1953]).

<sup>19</sup> Rousseau notably ignores these institutions in his characterization of the problem of social order: "[t]he problem is to find *a form of association* which will defend and protect *with the whole common force* the person and goods of each associate, and in which *each*, while uniting himself with all, *may still obey himself alone*, and remain as free as before." Rousseau, *The Social Contract* (Penguin Classics, 1968), p. 159 (emphasis added).

more deeply [than political tyranny] into the details of life, and enslaving the soul itself.”<sup>20</sup>

The social tyranny Mill warned about is a worthy concern, but it would be a mistake to leave out the intermediate institutions in our understanding of political authority. Like political institutions, these institutions generate role-duties. While not originating in choice, as contractual obligations, and not held together by coercion<sup>21</sup>, as political obligations, these duties are nonetheless genuine sources of moral obligation.<sup>22</sup> Properly understood, then, the problem of political authority is how to justify the claim of political institutions to a coercively enforced and comprehensive moral power, given the claims of individual freedom and choice that exist *within* the associative ties of intermediate institutions that bind persons together in society.

## 1.2 Virtue Ethics and Political Authority

The previous section distinguished between social morality, as a set of institutional demands, and a moral code, as a set of beliefs about how one should live. How are these two types of morality related? How does the social morality of institutions relate to the individual morality of moral codes? Virtue ethicists follow Aristotle in claiming that ethics is about action, not merely knowledge.<sup>23</sup> For this reason, moral thinking always takes place in the context of your life and how you might live it better.

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<sup>20</sup> Mill, *On Liberty* (Oxford: Oxford University Press, 1991), pp. 8-9.

<sup>21</sup> They are, however, held together by social sanctions, which can be just as powerful as coercion.

<sup>22</sup> For an eloquent account of non-contractual obligations see Roger Scruton, *The Soul of the World* (Princeton, NJ: Princeton University Press, 2014), pp. 89-95.

<sup>23</sup> Aristotle, *NE*, I.3, 1095a.

This is the basis for a *critical* morality. Aristotle, for instance, recognizes that by the time a mature person comes to think about morality, she already has a life with a set of commitments, a character that has been at least partially formed, and a community in which she belongs.<sup>24</sup> In these circumstances, persons go through a process of moral development. Proper moral development consists not in the reevaluation or rejection of your existing commitments, but rather in reorienting yourself with respect to the life you are already living.

This critical morality recognizes the fact that we are *socially embedded*.<sup>25</sup> Moral obligations are embedded in the social morality of institutions, relationships, and practices of everyday life. What I ought to do and how I should live cannot be divorced from my role as a citizen, parent, friend, employee, and so on. Following the Stoic Panaetius, Cicero explains our social embeddedness in terms of four *personae* or roles that we take on.<sup>26</sup> The first is the role we share in virtue of being a human being with the capacity for reason. The second refers to each person's peculiar gifts, talents, psychological dispositions, and other natural contingencies. The third consists in the circumstances we face, the family and society we are born into, and other social contingencies. Lastly, there are roles we take on as the result of individual choices, such as what career to pursue or whom to marry. According to Cicero, then, we live well

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<sup>24</sup> I follow here Julia Annas, "Virtue and Duty: Negotiating Between Different Ethical Traditions," *Journal of Value Inquiry*, Vol. 49 (2015), pp. 605-618.

<sup>25</sup> The idea of social embeddedness is frequently employed in the social sciences. See John Davis, "The Conception of the Socially Embedded Individual," in *The Elgar Companion to Social Economics*, eds. Davis and Dolfisma (Cheltenham, UK: Edward Elgar Publishing, 2008), pp. 92-105).

<sup>26</sup> Cicero, *On Duties*, trans. Walter Miller, *Loeb Classical Library* (Cambridge, MA: Harvard University Press, 1997), Book One, sections 107-117.

within our socially embedded perspective when we apply i) practical reason to adapt ii) our own peculiar nature to iii) our social circumstances and iv) individual choices.<sup>27</sup>

In this way, eudaimonism identifies the virtues as the constituent characteristics of the *eudaimon* or happy life, a life that is lived *well*. I live better by trying to become more just, prudent, temperate, courageous, and so on. For example, an employee can reject as unjust the pressure to uphold sexist business practices. A young person can prudently reprioritize saving for retirement. The habit of eating unhealthy food can be overcome by temperance, and a person requires a great deal of courage to improve in these ways. Eudaimonism conceives of virtue in a manner similar to the way a skill develops. My life serves as the material on which I exercise the skill of living, i.e. living in accordance with the virtues, the human excellences, and I do the best I can in accordance with the virtues, given the materials available.<sup>28</sup>

The function of political institutions is to enable the notion of the human good or happiness, understood not as mere pleasure or enjoyment, but as a flourishing life that is lived well. Happiness is what persons aim at when, reflecting on their existing lives, they realize that their life can go in one direction or another, and that they can choose to pursue happiness in a particular direction and so live well. The next Chapter examines more closely living well and how living well relates to political institutions. The significant point for this Chapter is that living well takes place given the fact that we are socially embedded. This idea integrates living well into the account of institutions offered in the previous section. Social institutions and practices define social morality, which

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<sup>27</sup> I defend this conception of living well in the next Chapter.

<sup>28</sup> This idea is explored and developed extensively in Annas, *Intelligent Virtue*.

provides a space for ethical life to take place, as realized in each person's effort to live well. In doing so, social institutions specify different role-duties, generating obligations and rules that individuals have and follow as members of the society, or as occupying particular positions or offices within the society. This means that social morality is both necessary to living well and a constitutive part of living well because the virtuous person always lives well within the socially embedded context of social morality: her existing social obligations and relationships. In other words, the authority of social morality is socially embedded in everyday customs and practices.

Since roles determine the duties and obligations of social morality, political obligation will be a role-duty that persons have in virtue of their membership in a political community. An objection to this implication is that political obligation can sometimes require persons to do things that are vicious. Indeed, the whole problem of political obligation, on a virtue ethics account, hinges on this possibility. Virtue is a function of choice, but political institutions can coerce us into doing things that are vicious.

This objection is especially relevant to the problem of political authority. For, in addition to the role-duties one has in virtue of being a father, a friend, a co-worker, and so on, each person belongs to a political community, and one requirement of being a member of a political community is political obligation. But if the perspective of being socially embedded subsumes political obligation, then the question of whether I am morally obligated to obey political institutions is a non-starter. On this view, one's citizenship and the existing laws of one's state wholly determine political obligation.

There is no special moral question of political authority. But given the analysis of the previous section, the status quo conclusion should not be accepted so easily.

The issue is that the perspective of being socially embedded within a set of social institutions does not seem to allow a critical perspective, a perspective from which we critically assess our obligations and duties. This is a problem, not just for political obligation, but the idea of role-duties generally and their status as part of social morality. What it means to be a father, for example, differs from one society to the next, yet we do believe that there is a way to “get it right” when it comes to being a *good* father. This is partly by observing social and cultural norms, which are always in some state of flux. But it’s also by aspiring to the relevant fatherly virtues, a source of ideals untethered to particular social contexts, but implicitly understood by members of a moral community.

The Stoics offer a striking way to think about the relationship between virtue and socially embedded obligations. Seneca writes, “We should try to comprehend two commonwealths: one great and truly common to all [...] and another in which we are included by accident of birth, which may be that of the Athenians or of the Carthaginians or any other city which does not reach out to include all men but only specific ones.”<sup>29</sup> The former commonwealth serves as an object of contemplation, of a universal ideal like virtue, which is grounded in our humanity, while the latter commonwealth consists in action related to public life, which is grounded in accidental features of our circumstances such as our citizenship.

Seneca’s own view is that because no existing commonwealths live up to the ideal of the sage (i.e. the ideally virtuous person), the sage will serve the greater

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<sup>29</sup> Seneca, *On Leisure*, trans. Timothy Chandler *Colloquy 23* (2012), p. 218.

commonwealth by retreating to leisure (*otio*).<sup>30</sup> Seneca compares participating in politics to embarking on a voyage in a worn-out ship during bad weather, so that even “before he has experienced any bad weather,” the sage should “remain in safety and commit himself continuously to liberal studies [*boni artes*] and spend his leisure freely, a cultivator of the virtues, which can be practiced even by those farthest from public life.”<sup>31</sup> Seneca’s view illustrates the challenge of reconciling virtue and political obligation. The fundamental issue is that the two commonwealths make conflicting demands. The sage cannot simultaneously serve a corrupt actual commonwealth and serve the great commonwealth’s ideal of virtue.

Seneca’s argument is limited in several ways. First, it doesn’t follow that, because there are no commonwealths worthy of the sage, it is permissible for non-sages not to participate in their less-than-great commonwealths. The Stoics were well-known for the view that the sage is as rare as the Phoenix, yet we do not find them recommending general political abstention. Seneca also seems to have been focused on the narrow sense of political obligation as participating in political society by holding public office. He notes, for instance, that Stoic figures Cleanthes, Chrysippus and Zeno were never “employed in the commonwealth.”<sup>32</sup> But these men were also not exiles or fringe figures in their own societies, even if they were Stoics. Lastly, the counsel that Seneca does recommend, namely, to spend one’s leisure benefitting others by improving one’s

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<sup>30</sup> It should be mentioned that the ancient Roman conception of leisure is not our idea of relaxation or repose, but more like the idea of having time free from one’s obligations to pursue intrinsically worthwhile activities. For more see J.P. Toner, *Leisure and Ancient Rome* (Cambridge, Polity Press, 1995).

<sup>31</sup> *Ibid.*, p. 217.

<sup>32</sup> *Ibid.*, p. 220.

character, is recognized as “a public service [*negotium*].”<sup>33</sup> This suggests a more modest form of political participation, one where participation in public life is not limited by one’s abilities, circumstances, or station.

This humble idea suggests a way to combine Seneca’s two commonwealths. Annas identifies Seneca’s metaphorical “great commonwealth” with what she calls the “universal perspective,” that is, the potential for a critical morality we all share in virtue of being human.<sup>34</sup> Through this universal perspective, we can critically assess our obligations and duties from our socially embedded perspective in the lesser commonwealth. The idea is that there are universal traits we share in virtue of our humanity—the virtues—that we pursue from our socially embedded perspectives as citizens, parents, friends, and so on.<sup>35</sup> We live well, not by abandoning our existing duties and obligations in pursuit of leisure, as Seneca recommends, but rather by living the life that we already have in a virtuous way.

The universal perspective is the source of an ideal through which we exercise the virtues in the socially embedded context of our particular relationships and obligations. Just as a father performs duties to his son *as* a father with the paternal virtues, a citizen performs her political duties in accordance with an ideal of good citizenship. In terms of the skill analogy, my political community and relationships serve as the material that virtue works on. Or put another way, my moral ideal does not permit me to ignore or discard the duties of social morality. For, the duties of social morality make it possible

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<sup>33</sup> Ibid.

<sup>34</sup> Julia Annas, “My Station and Its Duties: Ideals and the Social Embeddedness of Virtue” *Meeting of the Aristotelian Society* (January, 2002).

<sup>35</sup> Martha Nussbaum, “Non-Relative Virtues: An Aristotelian Approach,” *Midwest Studies in Philosophy XIII* (1988), pp. 32-53.

for me to pursue my ideal. Likewise, social morality cannot require that I entirely abandon an ideal, since this is how I virtuously perform the role-duties of social morality.

As Annas explains, this account of frames the following picture of morality:

[M]orality, though rooted in the social and family life you have, cannot be exhausted by it; neither the virtuous nor the vicious person can fully identify themselves with the social roles that generate demands on them. You cannot help being aware that your community is imperfect and that morality demands more of us than fulfilling the duties of various social roles.<sup>36</sup>

On this view of morality, then, individual obligations originate from the socially embedded perspective (Seneca's lower commonwealth), but morality requires that we perform our obligations virtuously from the universal perspective (Seneca's great commonwealth). Politically speaking, this means that a citizen cannot disregard political obligation in her conception of living well, since political obligation is a duty she has in virtue of her membership in a political community. But the content of this duty is shaped from the universal perspective, by a conception of living well.

Political obligation is thus partly determined from the socially embedded perspective, the perspective of your family, relationships, political affiliation and social circumstances. That is what it means to think about political authority without abstracting away from the intermediate institutions, relationships, and practices in which we are socially embedded. Our socially embedded obligations are part of living well.

This is the individual side of political obligation. But this is only half of the picture. Recall that role-duties consist of reciprocal obligations. As a member of a

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<sup>36</sup> Annas, "My Station and Its Duties," p. 122.

particular political community, I am obligated to act in certain ways, and in return others, acting through the medium of the community's political institutions, treat me accordingly. More specifically, political institutions treat citizens in ways that enable them to live well together; this is the function of political authority. Meanwhile, at the individual level, persons perform their political obligations in accordance with a conception of living well.

Taking stock, political authority requires justification because political institutions claim to alter our moral obligations comprehensively and coercively. There is a tension here since the idea of virtue typically requires choice. That tension can be mitigated, however, by understanding political institutions as part of a social morality that makes virtue possible. Political institutions, as a part of social morality, enable us to live well by coordinating joint activities that are constitutive of living well. Lastly, this functional justification of political authority yields a reciprocal account consisting in a) political institutions that enable persons to live well, and b) persons who perform their political obligations virtuously. I turn now to two problems for understanding the role of political institutions in living well.

### 1.3 The Problem of Disagreement

Beginning with how living well should be understood, one general feature of virtue ethics approaches to political authority is that they are perfectionist, in the sense that they appeal to a conception of the human good. Following one kind of perfectionism, we could begin by putting forward a conception of living well, e.g. that human goodness consists in fulfilling human potential or excellence in culture, arts, and so on. The role of

political institutions would then be to promote and enable citizens to realize this conception of living well. But not all perfectionists require the stronger claim—legal moralism—that political institutions are justified in *prohibiting* practices or ways of life inconsistent with a particular conception of the good. Martha Nussbaum, for instance, while emphasizing the critical role of practical wisdom in living well, does not claim that political institutions would be justified in imposing practically wise choices on an otherwise unwilling or ignorant public.<sup>37</sup>

Some forms of perfectionism face a serious problem. One fact that modern theories of political authority are supposed to account for is reasonable disagreement. Since Rawls's later work, liberal theorists have sought to account for what Rawls called reasonable pluralism, "the fact that a plurality of conflicting reasonable comprehensive doctrines, religious, philosophical, and moral is the normal result of [a] culture of free institutions."<sup>38</sup> The problem for perfectionist accounts of political authority is the thought that we could reach a consensus, in a modern society, on a particular conception of living well for the purposes of evaluating the ends of political institutions.

We might think Rawls's idea of reasonable pluralism only poses a problem assuming certain premises about liberalism and the dim prospects of a perfectionist theory of the good. But disagreement is also an issue for the virtue ethical account that I

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<sup>37</sup> Martha Nussbaum, "Perfectionist Liberalism and Political Liberalism" *Philosophy & Public Affairs* 39, no. 1 (2011), pp. 3-45. While some form of perfectionism is arguably compatible with this thought, Nussbaum claims that reasonable disagreement about the good makes political liberalism—because of its neutrality about the good—more plausible than perfectionist liberalism. I examine and critically assess Nussbaum's capabilities approach in Chapter Three.

<sup>38</sup> John Rawls, "The Idea of Public Reason Revisited," in *Collected Papers*, ed. Freeman (Cambridge, MA: Harvard University Press, 1999), pp. 765-766).

defend. For even on the assumption that living well requires the virtues, because people face different circumstances and make different choices, it is possible for virtue to be realized in very different ways of life and value systems, all of which are ripe grounds for disagreement.

Consider the model of virtue introduced earlier. Virtue finds its place in the socially embedded context of a person's life. The life of a rural farmer, for instance, comes with a set of social expectations and values that differ drastically from the life of an urban business executive. Yet both can be virtuous and live well in a shared society if they develop the virtues appropriate to their circumstances, performing their obligations in accordance with the virtues from a universal perspective. But it is not difficult to see immediately the danger posed by political institutions that take on the role of determining whether citizens ought to live a rural or an urban life. Living well requires choice. An ethical ideal promoted politically is too particular and idiosyncratic to apply to persons who must choose for themselves how to live well. For political society is a place where *different* kinds of people come together in order to fulfill their various purposes, some of which are inevitably opposed or in conflict. Political society is not, as Aristotle criticized Plato's *Republic*, a place where we should expect to find complete unity.<sup>39</sup>

We should distinguish, then, between the idea of living well as a virtuous life and different lives of virtue that equally virtuous persons might choose, given their values and circumstances. Central to this distinction is the place of practical wisdom [*phronesis*] in living well. The practically wise person, according to Aristotle, is able to "deliberate

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<sup>39</sup> Aristotle, *Politics*, trans C.D. Reeve (Indianapolis, IN: Hackett Publishing, 1998), Book II.

finely about what is good and beneficial for himself, not in particular respects, such as what conduces to health or strength, but about what conduces to living well as a whole.”<sup>40</sup> Further, the practically wise person is so due to rational choice [*prohairesis*], not as a result of fortune, external constraint, or social pressure. This shows the error of interpreting Aristotle’s conception of happiness as narrowly concerned with the values of his own time and social position, much less idiosyncratic perfectionist values having to do with arts and culture. The practically wise person lives well because she chooses well, but nothing follows from this about how she lives or what she does.

Support for this idea can be found in Aristotle’s discussion in the *Politics*. Aristotle claims that the best constitution is “the system under which *anybody whatsoever* would be best off and would live blessedly.”<sup>41</sup> Whether Aristotle meant this literally, the thought suggests that the best constitution should allow for different ways of life and be suited to persons who disagree about how to live well. For Aristotle points out that even if we agree that the life of virtue is best, this leaves open the question of which *way of life* is most desirable for an individual, e.g. the life of politics or the life of contemplation. Each way of life can be virtuous in its own way. Yet to the degree that this question is uncertain, it will be uncertain what the best life is for the organization of the best state.

Aristotle was more optimistic that we could resolve the question of the best conception of happiness and the most desirable way of life. But given the importance of practical wisdom in living well, disagreement about the most desirable way of life is probably a feature of political institutions that enable citizens to live well, rather than an

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<sup>40</sup> Aristotle, *NE* VI.5.

<sup>41</sup> *Politics*, 1324a23 (emphasis added).

obstacle for them to overcome by eliminating disagreement. This means that living well must be compatible with disagreement about the best way of life and the differences in circumstance that give rise to that disagreement. The perfectionist idea that begins with a conception of living well and derives political prescriptions cannot serve as the end through which virtuous persons cooperate in political institutions.

#### 1.4 The Problem of Choice/Agency

Disagreement is a problem for understanding the sense of living well that political institutions enable us to pursue. A related issue affects the nature of that role, even if disagreement can be accommodated. Consider Mark LeBar's "petty despot" case.<sup>42</sup> Imagine a despot who runs a small country in various illiberal ways, but then becomes convinced by a conception of living well that everyone in the society shares. Further, he believes that political institutions ought to promote this conception by means of liberal reform. He carries out these reforms and claims to genuinely endorse them. The result is a more liberal state at the level of policy. Individuals enjoy wide latitude to make decisions and conduct their lives how they see fit. But they still live at the whim of the despot. They are still living under an unjustified authority.<sup>43</sup> The petty despot lacks a legitimate political relationship to the citizens.

LeBar's example raises the question of the role we conceive for political institutions in living well. For even if we accommodate disagreement, there is a question

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<sup>42</sup> Mark LeBar, "Virtue and Politics," in *Cambridge Companion to Virtue Ethics*, p. 278.

<sup>43</sup> In terms of Philip Pettit's republican conception of freedom, the citizens in the petty despot case might be free, but they are not free from domination. See Philip Pettit, *Republicanism: A Theory of Freedom and Government* (New York: Oxford University Press, 1999).

about the proper relationship between political institutions and citizens. The reciprocal nature of political authority, I have argued, requires thinking about both sides of that equation. The petty despot might aim at the good of his citizens, but the citizens do not have a stake or a say in their pursuit of living well, and that matters since living well is something that we choose.

Think of political society as a game. The question is whether, as one of the rules of the game, political institutions get to decide *how* individual citizens should live well. That can be answered in the affirmative, but LeBar's example suggests that there is something morally significant about the relationship of how persons relate to each other through political institutions. Practically wise persons claim a degree of authority over their choices in how to live well, even if political institutions have a role in enabling them to live well.

I have claimed that citizens have political obligations in virtue of their membership in a political society. This is the socially embedded perspective. But political obligation is realized from the universal perspective, through the virtues as a conception of living well. Given the persistence of disagreement resulting from practical wisdom exercised differently, we cannot expect virtuous persons to converge on the same conception of living well. This means that political institutions that promote a single path to living well, will lack authority over a pluralistic citizenry. For if political obligation is premised on political institutions having a role in living well, political institutions cannot also determine how persons should live well, since these are choices persons must make for themselves.

The foregoing suggests that the role of political institutions in enabling citizens to live well must be indirect. Rather than directly promoting a particular conception of living well by means of laws, we might understand political institutions as indirectly enabling citizens to live well by means of a system of public education, for example. LeBar expresses skepticism about this proposal precisely because of the problem of disagreement: “Education in particular, being so central to any plausible form of human flourishing will inevitably be a subject of deep disagreement, and the coercive imposition of an alien conception of flourishing on the lives of those one cares about will be deeply resented.”<sup>44</sup> LeBar worries that disagreement about living well will trickle down to deep differences about education policy, yet he also acknowledges the central place of education in any plausible conception of living well.

What should we make of these claims? Disagreement, we have seen, is the inevitable result of persons making different choices in circumstances unique to their situation. Plainly, then, if educational policies regulate citizens’ ways of life, prescribing the same values for all, LeBar is right that a system of public education will clash with the choices of persons exercising practical wisdom. But the development of practical wisdom itself requires education. For this reason, Aristotle argues that while one species of practical wisdom is “knowledge of what is in one’s own interests, [...] one’s own good will presumably not exist without household management and a political system.”<sup>45</sup> In other words, persons learn how to become practically wise, in part, by taking part in the socially embedded context of a household and as a member of a political society that

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<sup>44</sup> LeBar, “Virtue and Politics,” p. 281.

<sup>45</sup> *NE* 1142a.

includes a regulative role for education. This is why Aristotle observes that young persons can become skilled in mathematics, but do not seem to become practically wise.

The relationship between practical wisdom, disagreement, and educational policy produces a tension that further informs the challenge of understanding the role of political institutions in living well. On the one hand, to become virtuous, persons must have a degree of practical wisdom and exercise rational choice; they must arrive at and endorse living well from the inside, free from coercion. But on other hand, given that the development of practical wisdom requires education, political institutions that exert no influence on persons to develop practical wisdom are difficult to conceive as having any meaningful role in living well. This is a problem, for, as Aristotle argued, if a true political community aims at the good of its members, a community characterized by too deep of a disagreement about the good, however reasonable, might not even be a political community in the relevant normative sense.<sup>46</sup> So while we should be mindful of the place of disagreement in a justified political order, we should also think about its limits.

Aristotle's focus on a comprehensive system of public education stems from his skepticism that persuasion alone is strong enough to make people good. To be amenable to argument and teaching, persons must be habituated to feel pleasure and pain at the appropriate objects.<sup>47</sup> But those without the right upbringing respond only to punishment, setting the stage for a comprehensive system of laws even for "when they are grown up" and "generally for the whole of life."<sup>48</sup> This undoubtedly strikes a modern person as heavy-handed. Aristotle's pessimism about persuasion is tempered by an unwarranted

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<sup>46</sup> Aristotle, *Politics* III.9. I address this issue in more detail in Chapter Five.

<sup>47</sup> *NE* II.3.

<sup>48</sup> *Ibid.*, 1180a.

optimism about the effectiveness of laws in making us good and the capacity of persons to acquire knowledge of this species of legislation. His own statements about the place of choice in becoming virtuous also seem at odds with this idea.

Even if there is a role for political institutions to make us good by enabling us to live well, the persistence of disagreement, even among virtuous persons, points toward a less direct and active role for political institutions in living well, a role that respects the value of persons reaching different conclusions about living well. The important point to consider is this relationship between citizens who disagree about living well. For example, Aristotle considers whether the idea that happiness consists in virtuous activity means that one should try to become “the master of the world,” ignoring all of one’s personal relationships and responsibilities, so that power can be manifested in “the greatest number and the noblest kind of actions.”<sup>49</sup> But Aristotle swiftly rejects the idea on the grounds that it would require vicious action such that “one who transgresses cannot afterwards achieve anything sufficient to rectify the lapse from virtue that he had already committed.”<sup>50</sup> Respect for the virtues, therefore, must take priority in the relationships between practically wise citizens who may disagree about *how* to live but nonetheless must live *together*.

Disagreement even among virtuous persons poses a challenge to understanding the sense of living well that political institutions function to enable. Likewise, the moral significance of disagreement, namely that it stems from different choices made by practically wise persons, poses a challenge for how we understand the role of political

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<sup>49</sup> *Politics*, 1325b.

<sup>50</sup> *Ibid.*

institutions in living well. For, some kinds of actions taken by political institutions might undermine the extent to which persons exercise practical wisdom in fashioning their own conceptions of living well. Thus, we must try to understand the appropriate relationship between persons and political institutions. How should virtuous persons interact with one another through political institutions?

### 1.5 Conclusion

We have examined two questions about the claim that the authority of political institutions depends on performing the function of enabling persons to live well: i) how should living well be understood? And ii) what kind of role do political institutions have in living well? With respect to i), the issue of disagreement suggests that living well ought not to be understood as privileging one particular conception of living well over another. Disagreement is significant because it is the unavoidable result of virtuous persons reaching different conclusions about living well. With respect to ii), the problem of choice raises the question of the proper relationship between political institutions and citizens. Because of the reciprocal nature of role-duties, political institutions that take on too direct a role in living well put themselves at odds with citizens whom they are meant to serve. The role of political institutions in living well must be less direct and encompassing.

We can sharpen this idea by considering a claim made by Rosalind Hursthouse about the relationship between political institutions and individual citizens. Echoing Aristotle, Hursthouse claims that “[i]f a just law, determining a right, cannot as things stand, be implemented in a particular society, *without necessitating that some members of*

*the society act wickedly or wrongly*, then it cannot, as things stand, be implemented.”<sup>51</sup> In other words, the laws of properly functioning political institutions cannot enable citizens to live well, as an end, by means of laws that require individual citizens to act viciously.

Hursthouse’s claim suggests a way forward.<sup>52</sup> The problem of political authority, on a virtue ethical account, centers on how the socially embedded nature of the virtues shapes how we understand the regulation of social cooperation through political institutions. Put another way, we can ask: what do the virtues tell us about how persons ought to act through the medium of political institutions that enable them to live well together?

This Chapter has described the challenge for understanding the role of political institutions in terms of living well. Responding to the challenge requires a conception of living well that is compatible with disagreement. And because of the importance of choice, responding to the challenge requires an account of how individuals properly relate to each other through political institutions. The next two Chapters answer the challenge by introducing a thin conception of living well and an institutional account of rights justified functionally in terms of living well.

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<sup>51</sup> Rosalind Hursthouse, “After Hume’s Virtue” *Proceedings of the Aristotelian Society*, Vol. 91 (1991), p. 242 (emphasis added).

<sup>52</sup> I discuss Hursthouse’s Claim in more depth in Chapter Four.

## Chapter Two: Living Well in the Polis

This Chapter aims to explain the sense of living well that political institutions enable. For we disagree about living well and we take ourselves to live well in different ways. What's more, when we cooperate on the largest scale, through political institutions, we cooperate with dangerous and blunt tools. The first major challenge for my view, therefore, is to understand living well in such a way as to avoid a clash with reasonable pluralism, yet remain substantive enough to be significant.

I will claim that living well can be understood thinly as different ways of realizing the human function in accordance with practical wisdom. According to this conception, the virtues are formal excellences of human nature that derive content from being socially embedded for persons in a particular time and place. For instance, most agree that we need courage to live well. Yet different persons, time periods, and cultures have disagreed about the place of courage in living well, and in particular, the kind of courage that is relevant to living well. Disagreement may persist at this substantive level while broad consensus remains at the level of a set of durable yet essentially contested virtues. Political institutions enable us to live well in this sense, avoiding the problem of disagreement, or rather, seeing more clearly the problem disagreement poses for political institutions: disagreement about living well requires a shared framework for thinking about how we might live well with others whose views inevitably differ from our own. Political institutions are the framework within which we pursue the virtues.

Prefatory to responding to the problem of disagreement is the question of how living well relates to institutions. Political institutions are an advanced form of social

cooperation, but it isn't obvious why we cooperate at this level and what kind of benefits cooperation secures. We cooperate for many reasons including the obvious one: to avoid the Hobbesian nightmare. Hence, part of the rationale for cooperation is instrumental. Hobbes and his heirs in the social contract tradition illuminate this aspect of society. But theirs is not the whole story. We cooperate not solely to gain benefits unavailable in the state of nature. We also cooperate for its own sake, because we are social beings (i.e. political animals) who prefer to live in the company of others. We do not seek the goods of social cooperation for *their* own sake; we seek them for their place in the *human* good. Cooperation (and sociality broadly), which makes these benefits possible, is constitutive of the human good.

I begin with a brief tour of some prominent ideas about social cooperation in the history of philosophy (2.1). This discussion illustrates the importance of thinking about social cooperation as a constitutive part of living well. Next, I explain the difference between happiness and well-being and their connection to living well and social cooperation. (2.2). This prompts an analysis of the unified eudaimonist conception of happiness and well-being as human flourishing or living well (2.3). I argue that while of great importance to how we understand issues of political disagreement, because of this disagreement, determining the best conception of living well (or happiness) is ancillary for the purposes of politics. The remainder of the Chapter explains the thin conception of living well that serves well enough for politics because it is compatible with disagreement about living well (2.4). A brief coda addresses the Rawlsian claim that the right is prior to the good (2.5).

## 2.1 The Good of Social Cooperation

Conceptions of social cooperation have a rich philosophical history going back to Plato. In *The Republic*, Plato examines the nature of the just person, whether, for instance, being just to others, and being virtuous generally, is necessary for a person's happiness. But the conversation quickly turns to the justice of the state [*polis*], to politics, since apparently, justice is easier to discern in the larger entity by first reading the "large letters."<sup>1</sup> Given the complexity of social interaction that happens at the level of the state, this proposal is surprising. It seems, rather, that focusing at the micro level, on individuals, would yield a more manageable number of considerations for an inquiry into justice. Perhaps to simplify matters, Socrates and company agree to begin with "the origin [or coming into being] of a state."<sup>2</sup> This way justice might be observed first coming into being at the earliest stage of social development, where it might be seen out in the open, rather than hiding in the nooks and crannies of the fully developed state.

Without the usual Socratic exchange of failed proposals, the originating principle of the city [*polis*] is promptly agreed upon: because we cannot individually meet our needs—we are not self-sufficient beings—we must cooperate. The city (or state) is an advanced form of social cooperation based on necessity. An irony of Plato's discussion is that his interlocutors *create* a state by proposing particular needs to be met, whereas the actual development of human association very likely proceeded by the *discovery* of such needs. One advantage of the artificial device, however, is that we are forced to reflect on what needs really are necessary for the state to meet as a unique form of human

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<sup>1</sup> Plato, *The Republic in Complete Works*, ed. John M. Cooper (Indianapolis, IN: Hackett Publishing, 1997), 368e.

<sup>2</sup> *Ibid.*, 369a.

association. This gets us closer to answering the question of what kinds of benefits social cooperation produces.

After covering basics like food and shelter, Plato describes the division of labour approaching completion with the introduction of a market for merchants and wage earners. Socrates asks, “Has our city, then, Adeimantus, reached its full growth and is it complete?”<sup>3</sup> Since everyone admits that justice is *still* not readily discernable, the conversation moves to consider the way of life that the state’s inhabitants will enjoy. They will “build themselves houses [...] provide meal from their barley and flour from their wheat,” “[serving] noble cakes and loaves [...] reclined on rustic beds,” and will “feast with their children.”<sup>4</sup> Glaucon then interrupts: “No relishes [*opson*] apparently [...] for the men you describe as feasting.”<sup>5</sup> Socrates obliges to include more delicacies, but Glaucon remains skeptical asking whether we should expect anything less for a city of pigs [*huon polis*].<sup>6</sup>

Glaucon’s seemingly flippant remark is important because it raises the question of the kinds of needs suited to human beings, the fulfillment of which social cooperation secures. After all, many non-human animals live in association with one another. But human beings seem to do so in a categorically different way.

Once the more comfortable (i.e. not strictly necessary) kinds of needs are introduced into the city, Socrates notices that the conversation has shifted to consider not the origin of the city *per se*, but the origin of the *luxurious* city. While Socrates and

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<sup>3</sup> Ibid., 371e.

<sup>4</sup> Ibid., 372b.

<sup>5</sup> Ibid., 372c.

<sup>6</sup> Ibid., 372d.

company accept this outcome since it may help in their search for justice, once luxury goods are introduced into the city, the interlocutors are led to conclude that war is the inevitable outcome.

The state is expanded accordingly to include a fighting force—itsself a consequence of specialization driven by the division of labour—but the danger remains. Social cooperation gets going in order to meet our needs, but at its more advanced stages, cooperation leads to the introduction of goods that are not strictly necessary for social existence. Now citizens must defend their material goods from external threats. They must also beware of internal divisions, since luxuries are the kinds of goods that fellow citizens compete over.<sup>7</sup> Taken to its extreme, this leads to civil strife [*stasis*], threatening to undermine the very foundations of social cooperation. Thus, social cooperation may be a double-edged sword. We cooperate to meet our needs, but competition over scarce goods tends to lead to strife. What kind of needs, then, is social cooperation for? Presumably, human needs. But, giving Glaucon his due, what distinguishes a city fit for pigs from a city fit for human beings?

Answering this question requires that we reflect further on human nature. Over two thousand years later, Adam Smith echoes Plato's early account of the benefits of social cooperation, citing the division of labour as the principal cause of the wealth of nations.<sup>8</sup> Smith's real contribution, however, was his account of the reason *why* we divide labour. We divide labour, according to Smith, not just in order to meet our needs with a view to that "general opulence," but because of "a certain propensity in human nature

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<sup>7</sup> Aristotle, *NE* 1169a20-21.

<sup>8</sup> Adam Smith, *The Wealth of Nations* (Indianapolis, IN: Liberty Fund, 1982), Book 1, Ch. 1.

which has in view no such extensive utility; the propensity to truck, barter, and exchange one thing for another.”<sup>9</sup> We divide labour not just because it is massively productive. Indeed, on Smith’s account we do not even realize its true productive powers. Dividing labour just is what we do as human beings. It’s a part of human nature.

Smith writes glowingly in praise of the division of labour. Smith even explains the “difference of *natural* talents in different men,” once thought to be gifts of nature, in terms of the various purposes we put ourselves to because of different circumstances of “habit, custom, and education.”<sup>10</sup> But rather than lament this state of affairs as unfair, Smith praises the beneficial effects of our differences. Because of our disposition to exchange, difference gives rise to specialization, which unlike non-human animals, “contribute[s] to the better accommodation and conveniency of the species.”<sup>11</sup>

This, then, is a way in which the city of human beings is not the city of pigs. Cooperating for mutual advantage, even when not foreseen or intended by any individual person, gives us a social existence that is radically different from any other species. But does Glaucon still have a point? He seems to have been interested not so much in how our material circumstances differ from pigs, but how our way of life is distinctly manifested in our “higher” desires and needs. Producing lots of stuff, even if it’s new, interesting, and useful is not really the point. Put another way, we can ask a question from Smith’s other great book, namely, “what are the advantages which we propose by that great purpose of human life which we call bettering our condition?”<sup>12</sup>

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<sup>9</sup> Ibid., Book 1, Ch. 2.

<sup>10</sup> Ibid. (emphasis added).

<sup>11</sup> Ibid., p. 29.

<sup>12</sup> Adam Smith, *The Theory of Moral Sentiments* (Indianapolis, IN: Liberty Fund, 1982), p. 50.

Smith thought that when bettering our condition fixates on the accumulation of material goods and status, we do so to be thought well of by others, even if we don't deserve it. On Smith's sober view of things, cooperation for mutual advantage can be subverted, where we cooperate only to get ahead of others. While this unstable mix of cooperation and competition redounds great benefits to all via Smith's famous invisible hand, these benefits don't seem like distinctly *human* benefits. They appeal to our appetitive and desiring faculties, but not our reasoning or moral faculties. Consequently, people come to be valued not so much for who they are and what they contribute to the lives of others, but for what they *have* and what they can do for *me*. This is human, to be sure, but all too human. Bentham may have thought it fitting to be a satisfied member of the city of pigs, playing pushpin all day (or worse). But Mill was wise to remind us that it is better to be Socrates composing poetry, even on the dawn of his execution in one of most advanced human cities of his time.<sup>13</sup>

The idea of a distinctly human good brings us to Aristotle, who also discusses the origins of human association in *The Politics*. Aristotle focuses less on the division of labour as such and more on the development of the polis out of earlier forms of human association (e.g. the male/female sex-pairing, the household, village, etc.), defining the polis as “the complete association, from several villages [...] which at once reaches the limit of total self-sufficiency.”<sup>14</sup> Aristotle is also more explicit about the purpose of social cooperation than Socrates in *The Republic*: while the polis comes into existence for the sake of our material needs or life merely [*tou zen heneken*], social cooperation, of which

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<sup>13</sup> Socrates was said to have been composing poetry in preparation for his death in Plato's *Phaedo*, 60d.

<sup>14</sup> *Politics*, 1252b28.

the polis is an advanced form, “exists for the sake of the good life [*ousa tou eu zen*].”<sup>15</sup> Therefore, whatever we can say about the good life should tell us something about how social cooperation betters our condition as human beings.

Consider the point another way. Plato warns about the inherent dangers of cooperation leading to the accumulation of and competition over material goods, resulting in either internal strife or external warfare. Aristotle’s point that cooperation is for the sake of the good life suggests that we should understand ourselves to be cooperating in order to use the benefits of social cooperation *well*. Because when we don’t use the benefits of cooperation well, we fight and lose *all* the benefits of cooperation.

This shows that social cooperation is an essential part of living well. Smith teaches that cooperation and exchange are part of our nature. And Aristotle’s familiar claim that a human being is a political animal [*politikon zoon*] illustrates how cooperation is integral to political society. Because of the ambiguity in the Greek *politikon*, this claim could be interpreted as both a) human beings are political beings, and b) human beings are social beings.<sup>16</sup> The former claim explains why we organize ourselves into political states, whereas the latter claim cements the idea that it is part of our good to cooperate as the kind of beings for whom sociality is natural.

Aristotle’s explanation of why human beings are suited for cooperation fits well with Smith’s account of human nature. Aristotle traces our ability to cooperate to our

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<sup>15</sup> Ibid., 1252b29. Aristotle uses the expression “for the sake of” to talk about functions. I will also occasionally use this expression to mean that the function of political institutions is to enable persons to live well, thus “political institutions are for the sake of living well.”

<sup>16</sup> I reconsider this ambiguity in section 5.1.

capacity for speech. Speech allows us to communicate pleasures and pains, benefits and burdens, justice and injustice.<sup>17</sup> Samuel Fleischacker has argued that Smith’s account of exchange can also be understood in terms of our ability to speak. For instance, Smith writes, “Nobody ever saw a dog make a fair and deliberate exchange of one bone for another with another dog.”<sup>18</sup> Smith’s point, according to Fleischacker, is:

Without contracts, without discussion, self-interested animals kill each other; with discussion, they can cooperate instead. Only animals that talk can realize how exchange can be a win-win game and can construct a framework—of justice and contract—within which they can rely on each others’ fair play.<sup>19</sup>

Smith’s “*propensity to truck, barter, and exchange*” naturally extends to include Aristotle’s “*impulse [horme] towards this kind of association [polis],*” which “exists by nature in all men.”<sup>20</sup> When we cooperate, therefore, one story we can tell is that we are acting to further our mutual (material) needs. That’s Plato’s contribution from *The Republic*. But the other half of the story, brought out by Smith and Aristotle, is that we also cooperate to meet our social needs, as part of the good life. Cooperation satisfies our nature as social beings.

In this way, social cooperation, because rooted in human nature, becomes a *constitutive* part of the human good. The function of social cooperation is to enable us to live well, and by extension, political institutions, as the most advanced form of social cooperation, also exist to enable us to live well. The next step is to tackle the problem of

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<sup>17</sup> Ibid., 1253a10.

<sup>18</sup> Smith, *Wealth of Nations*, p. 27.

<sup>19</sup> Samuel Fleischacker, *On Adam Smith’s Wealth of Nations: A Philosophical Companion* (Princeton, NJ: Princeton University Press, 2004), p. 92.

<sup>20</sup> *Politics*, 1253a29 (emphasis added).

disagreement by inquiring more closely into the sense of living well that political institutions are for the sake of. Prior to this, however, it is necessary to discuss the familiar and philosophical notions of happiness and well-being and how they relate to the eudaimonist conception of living well. As we will see, it is important to include the role of social cooperation in the human good.

## 2.2 Happiness and Well-Being

Recent philosophical work has explored the nature of happiness and well-being.<sup>21</sup> Philosophers often think of well-being as a life that is *good for* the person who lives it, whereas happiness is a positive psychological state, what it's like for the person living their life, which may or may not line up with well-being. "Happiness," of course is also the usual English translation of Aristotle's more complex notion of *eudaimonia*. But Aristotle's notion also encompasses ideas we tend to associate with well-being (hence the "flourishing" translation).

Start with some distinctions. When we talk about happiness and well-being, it often isn't clear what concept is being used. There are at least three possibilities. We might be interested in happiness at a particular moment, as is popular with experimental psychologists and economists. Or we might be interested in happiness over a particular span of someone's life, e.g. your high school years. Lastly, we often talk about the

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<sup>21</sup> See e.g. James Griffin, *Well-Being: Its Meaning, Measurement, and Moral Importance* (Oxford: Oxford University Press, 1984), L.W. Sumner, *Welfare, Happiness, and Ethics* (Oxford: Oxford University Press, 1996), Dan Haybron, *The Pursuit of Unhappiness* (Oxford: Oxford University Press, 2008), Fred Feldman, *What Is This Thing Called Happiness?* (Oxford: Oxford University Press, 2010).

happiness of a life as a whole. When Wittgenstein said with his last words, “Tell them I’ve had a wonderful life,” he was referring to this concept of happiness.<sup>22</sup>

Views of happiness as a positive psychological state, say defined as pleasure, tend to cluster around the momentary concept, even though they could theoretically be scaled up to encompass a happy life of pleasures.<sup>23</sup> Views of well-being, in contrast, are often associated with the concept of a happy life as a whole. How we define the *content* of happiness also makes a difference. For one might argue that the content of happiness as a positive psychological state defined in terms of pleasure is satisfactory as an account of what it’s like to feel happy in a moment, yet admit that well-being over an entire life is a rather more complex idea, not reducible to pleasure.

We also care about activities, goals, beliefs, and accomplishments, which can be judged externally, i.e. from without the first-person perspective. This suggests a distinction between subjective and objective accounts of well-being. Is it possible to be mistaken about whether your life is going well? If not, you have a subjective account of well-being. Objective theories, in contrast, often propose grounds on which someone might wrongly think they are living a good life, for example, if they are deceived by the perceived faithfulness of a spouse. In contrast, whether a life feels good, as a person who feels happy, seems less controversially like a subjective matter. We tend to be good judges of whether we feel good, rightly or wrongly.

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<sup>22</sup> Ray Monk, *Ludwig Wittgenstein: The Duty of Genius* (London: Penguin Books, 1991), p. 579. We recognize this even while it seems unlikely that Wittgenstein had a balance of positive psychological states in his life.

<sup>23</sup> This is Fred Feldman’s view in *What is This Thing Called Happiness?*

Happiness understood in terms of a positive psychological state is important. But for the purposes of evaluating political institutions, well-being seems like the more important concept. Laws and policies tend to be directed toward citizens living better lives, not simply helping them feel better from one moment to the next. This is not to say that good feelings are unimportant or unrelated to well-being. But they do seem to take a backseat at the level of institutions. This seems to be one reason why Rawls insisted on talking about the basic structure of society as primary, namely, “because its effects are so profound and present from the start [and they] affect men’s *initial chances in life*.”<sup>24</sup> Our initial chances in life are about much more than opportunities for pleasure.

Nevertheless, utilitarians think about these profound and present effects in terms of maximizing utility. Benthamite utilitarians adopt the momentary concept of happiness, defining it as pleasure and the absence of pain.<sup>25</sup> Because of the subjective nature of this conception of happiness, utilitarians have also tended to identify happiness with well-being: what it feels like to be happy over a long period of time just is the same thing as living a good life.<sup>26</sup>

The utilitarian conception of well-being pairs well with instrumental views of social cooperation. Economically-minded followers of Smith, for instance, draw the conclusion that even while that “great opulence” to which the division of labour gives rise is not intended by any human intelligence, nevertheless we should understand ourselves as cooperating in order to secure a larger pie of benefits such that aggregate

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<sup>24</sup> Rawls, *Theory of Justice*, p. 7 (emphasis added).

<sup>25</sup> Desire and preference satisfaction views are also common.

<sup>26</sup> Although sometimes the view is qualified with more objective conditions such that the desires must be rational desires or that preferences be informed.

well-being improves. And utilitarians claim it is the task of political institutions to promote this aim:

By the principle of utility is meant that principle which approves or disapproves of every action whatsoever according to the tendency it appears to have to augment or diminish the happiness of the party whose interest is in question [...] I say [this] of every action whatsoever, and therefore not only of every action of a private individual, but of every measure of *government*.<sup>27</sup>

Utilitarians, then, understand all constraints on social cooperation in terms of their utility maximizing properties. The core utilitarian idea, as Rawls noticed, is to extend the principle of choice that is rational for an individual to society as a whole.<sup>28</sup>

Rawls also argued persuasively that the problem with utilitarianism is that persons, because they are conceived in terms of an aggregate, are not given special status in terms of rights to protect against the excesses of utility-maximization. Thus, Rawls's summation that "[u]tilitarianism does not take seriously the distinction between persons."<sup>29</sup> The significance of this point for our purposes is that the utilitarian instrumental view of social cooperation does not do justice to the good of social cooperation, which is justified in terms of the good of each person. This is reflected in the subjective utilitarian account of well-being: if I don't think cooperating with other people contributes anything to my good, then it doesn't; I value others as means to my own utility maximization, not ends in themselves. Cooperating solely for the purpose of the

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<sup>27</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Oxford: Clarendon Press, 1907 [1789]), Ch. 1, ii.

<sup>28</sup> Rawls, *Theory of Justice*, pp. 23-24.

<sup>29</sup> Ibid.

benefits of cooperation would thus seem to sanction undermining some of the bases of cooperation in order to secure greater benefits for all, while sacrificing the few.

Rawls's proposed alternative to utilitarianism begins with the idea that we cooperate to secure *severally* the benefits of collective action. The point is for *each* person to do better by cooperating reciprocally, and this cannot happen if we sacrifice the interests of some in service of greater utility. This is why, for Rawls, we are not indifferent as to how the benefits of cooperation are shared. Cooperation involves an identity and conflict of interests. Cooperation is conditional on reciprocity and a sense of fairness. In other words, we care about the outcomes produced by cooperation, and we are not unconditional cooperators. Hence, for Rawls, the function of social cooperation is to produce mutual benefits, and the role of justice is to make sure those benefits are secured and distributed fairly, so that cooperation doesn't deteriorate or break down entirely. We cooperate because we want to live better, and we won't cooperate (and hence won't live better) without treating each other fairly.

Rawls's instrumental view of social cooperation, tempered by fairness, has been widely influential, giving birth to several decades worth of reflection on what justice requires. Rawls improved on the purely instrumental and aggregative view of social cooperation so dominant among utilitarians of his time. Rawls's justice as fairness requires that the distribution of the benefits of social cooperation must pass the test of justice. In this sense, Rawls understood the concept of the right as *prior* to the concept of the good. Persons develop their conceptions of the good, taking full advantage of the fruits of cooperation. But they must do so consistent with the principles of justice. We then evaluate political institutions according to what justice requires.

Because of the priority he assigns to justice, Rawls is not very expansive on questions of happiness or well-being. To the extent that they are discussed, they are found in Part III of *Theory*, where Rawls tries to show that justice and the good are congruent, securing stability. The emphasis here is on well-being understood as the “execution of a rational plan of life,” where a rational plan of life is understood to be consistent with his two principles of justice.<sup>30</sup> But in his later work, Rawls went on to repudiate Part III of *Theory* on the grounds that his account of the good was too controversial to support a political conception of justice.<sup>31</sup> Instead, Rawls turned his focus to the idea that a political conception could be freestanding of any deep commitments to ideas of the good, deriving support from an overlapping consensus of reasonable comprehensive doctrines.

Rawls’s shift from the “rational plan of life” idea to the idea of “reasonable” comprehensive doctrines nonetheless retains the feature that the well-being of citizens in a well-ordered society must be consistent with the principles of justice (not necessarily his own this time). There are no objective constraints on what counts as a reasonable conception of the good, provided the principles of justice are accepted. Thus, Rawls could remain committed to his position from *Theory* on the peculiar person for whom counting blades of grass counts as a rational plan of life (or reasonable comprehensive doctrine). That is, his (Rawls’s) definition of the good life “forces us to admit that the good for this man is indeed counting blades of grass.”<sup>32</sup>

The implausibility of this conclusion prompts reflection on Rawls’s view of social cooperation. In *Theory*, prior to Rawls’s worked out “full” theory of the good, Rawls

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<sup>30</sup> Rawls, *A Theory of Justice*, Part III.

<sup>31</sup> See the introduction to *Political Liberalism*.

<sup>32</sup> Rawls, *A Theory of Justice*, p. 379.

operates with a “thin” theory, defined by the social-primary goods, that is intended to secure an agreement in the original position on principles of justice. Here Rawls is clear that parties in the original position are “rational and mutually disinterested,” and rational “in the narrow sense, standard in economic theory, of taking the most effective means to given ends.”<sup>33</sup> They also “each prefer a larger to a lesser share.”<sup>34</sup> Later this thin conception of the good is expanded upon, but at the stage of principle selection, represented by the choice situation of the original position, controversial ideas about the good are left out.

The foregoing suggests that Rawls effectively holds the same instrumental view of social cooperation as the utilitarians he criticized. The difference is that the choice situation represented by the original position is tempered with constraints reflecting our (Rawls’s?) intuitive ideas of fairness.<sup>35</sup> Thus, whatever principles come out of the original position will be fair, even if they are the result of mutually disinterested parties who only desire to rationally maximize primary goods. Rawls’s underlying view of well-being, then, is partially subjective, while the selection of primary goods draws on so-called objective goods that a *rational person* would want whatever else they want.

Rawls’s view of social cooperation improved on the utilitarian view by emphasizing the extent to which individual persons are the locus of the benefits for which we cooperate. However, Rawls does not seem to have taken seriously enough the nature

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<sup>33</sup> Ibid., p. 25.

<sup>34</sup> Ibid.

<sup>35</sup> Rawls is sometimes criticized as “building in” a conception of fairness into his design of the choice situation represented by the original position. To the extent that ideas of fairness cannot be separated from the kinds of rules and expectations that make cooperation possible in the first place, this criticism would seem to be on the mark.

of the benefits for which we cooperate: the value of cooperation itself. And this is important because to the extent that “a more or less self-sufficient association of persons” exists, they will have *already* cooperated, following certain rules of conduct, for the sake of the kind of life the association makes possible.<sup>36</sup> The association itself has value because it is the source of whatever values are possible within its domain.<sup>37</sup> Whatever the merit of Rawls’s principles, then, they don’t seem to recognize the role of existing rules in securing the benefits of social cooperation. Rawls takes the distinction between persons *too* seriously.

What we need, then, is a view of the ends of social cooperation that does not reverse the order of importance. We cooperate in order to secure benefits, but distinctly *human* benefits. Neither Glaucon’s city of pigs, nor Rawls’s city of principle-following-grass-counters will do.

### 2.3 Living Well

Social cooperation is about ends, and how we achieve our ends is the domain of practical reasoning. Compare Aristotle’s claim that the polis is for the sake of living well with the opening line of *The Nicomachean Ethics*: “Every skill and every inquiry, and similarly every action and rational choice is thought to aim at some good; and so the good has been aptly described as that at which everything aims.”<sup>38</sup> So for the polis to be for the sake of living well means that the polis aims at the good, and the good is the thing at

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<sup>36</sup> *Ibid.*, p. 4.

<sup>37</sup> I expand on this idea in section 5.3.

<sup>38</sup> *NE*, 1094a.

which all our individual activities and goals aim at. The good is the final end of practical reasoning.

The idea of a final end sounds abstract and lofty, something that requires deduction and entails a grand plan of life to be carried out in the minutest detail, but Aristotle simply takes himself to be describing the ordinary way in which we conceive of our lives on reflection.<sup>39</sup> I wake up in the morning and make coffee. I spend the morning reading or writing, and play music in the afternoon. Then I eat dinner with my wife, and I get up and do it all over again (with variations!) the next day. The question is whether I do these things for a purpose, as part of a life I conceive for myself, or whether they are an unconnected stream of activities and thoughts flowing through my existence without a stopping point.

Aristotle's idea is that I do each of these things "for the sake of" something else, and that if we follow the chain to its logical conclusion, we will eventually arrive at a final end, the thing that structures practical reasoning. The next stage in the eudaimonist account of practical reasoning is that we identify the final end with living well or happiness. "There is pretty general agreement," Aristotle observes, "[the final end] is happiness [*eudaimonia*], say both ordinary and cultured people; and they identify happiness with living well or doing well."<sup>40</sup> The idea is that happiness is the only thing that makes sense as bringing an end to practical reasoning. It makes sense to ask why somebody might want to become President of the United States; it doesn't make sense to ask why somebody is interested in living a happy life. Happiness, in this sense, is both

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<sup>39</sup> Annas, *The Morality of Happiness*, pp. 27-34

<sup>40</sup> *NE*, 1095a18.

the idea of a life that is good for the person living it and a life that is experienced as good from the inside. *Eudaimonia* encompasses both the modern concept of happiness as a positive psychological state and the concept of well-being, a life that goes well for the person who lives it.

Although Aristotle cites broad agreement on happiness as the final end of practical reasoning, he points out that people “disagree about substantive conceptions of happiness, the masses giving an account which differs from that of the philosophers.”<sup>41</sup> Some say that happiness is the same as pleasure; others wealth; still others say it’s honour. There is agreement about happiness as a placeholder for the concept of living well, happiness as the final end, but disagreement about the content of what happiness consists in as the substance of living well. We, therefore, distinguish between the *concept* of happiness as a good life as a whole, from different *conceptions* of happiness that specify the content of happiness.<sup>42</sup>

How are we to make headway on moving from the formal concept of happiness to a conception of what happiness consists in? For happiness must both be a) something that can be the end of practical reasoning *and* b) plausible as a recognizably good human life for the person living it.<sup>43</sup> Call the former the theoretical pull and the latter the intuitive pull. One way to proceed, as Aristotle does, is to judge the latter in terms of the former. For instance, many people think that a happy life is one in which you make as much

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<sup>41</sup> *NE*, 1095a.

<sup>42</sup> The distinction here is the same one that John Rawls makes between the concept of justice and different *conceptions* of justice. See his *A Theory of Justice*, p. 5.

<sup>43</sup> This way of evaluating conceptions of happiness is identified by Russell in “Virtue Ethics, Happiness, and the Good Life,” in *The Cambridge Companion to Virtue Ethics*, p. 14-15.

money as possible. Certainly, we recognize the wealthy life as a nice life, one full of opportunity, comfort, social standing, and power. However, money, because it's an instrumental good, cannot serve as the end of practical reasoning. It cannot bring an end to deliberation. We try to obtain money not for its own sake, but because of the kinds of opportunities and material comfort it affords. Happiness, then, seems to be something that is good for its own sake.

This process can be continued. Some, having consumed too much reality television, think that being famous is a happy life, or more modestly, to be thought well of by others. Smith recognized the importance of the approval of others in human motivation. But Smith also thought it posed a danger to the integrity of our moral sentiments.<sup>44</sup> And he was onto something, for happiness, as structured by practical reasoning, seems like the kind of thing that should not depend on the opinions or sentiments of others, especially since, as Smith observed, others often value and admire us for our material wealth, not our character. To the extent that we admire people properly, we do so because of what they do and who they are, rather than what they have. So, according to the theoretical pull, happiness ought to be something reasonably within our control and not dependent upon the volatile sentiments of others.

Aristotle goes through several more so-called "formal constraints" on happiness into which we need not fully enter.<sup>45</sup> One is just the point made in this Chapter, namely,

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<sup>44</sup> Smith, *The Theory of Moral Sentiments*, I.3.iii.

<sup>45</sup> The formal conditions include the *control thesis*, that happiness is something that belongs to a person and cannot be taken away easily, the *activity thesis*, that happiness consists in *doing* things, the *completeness thesis*, that happiness includes everything that might be considered a good, the *self-sufficiency thesis*, that happiness is sufficient and does not require the addition of further goods, and the *unimpeded thesis*, that happiness is lasting and uninterrupted.

that happiness should be something distinctly human. Aristotle's own view is that happiness consists in a life of virtuous activity with a sufficient level of external goods (e.g. wealth, health, opportunities, etc.). Virtue seems to do justice to the sense in which happiness is about what you do or the kind of person you are. The virtuous person acts well for its own sake. Such is the theoretical pull of virtue. But unlike the Stoics, who argued that virtue is sufficient for happiness, Aristotle feels the intuitive pull that a life lacking important external goods, such as health and wealth, is seriously deficient in some respect. We have a hard time admitting that this kind of life really is *good for* the person living it. And the thought of falling below a certain level of material comfort or status (usually that of our peer-group) fills us with dread.

Despite Aristotle's accommodation of our intuitions about happiness, there is internal instability to Aristotle's position.<sup>46</sup> The issue is that the formal constraints on happiness tend to pull against our intuitive beliefs about happiness. First, the claim that happiness requires some degree of external goods—so often subject to the vagaries of fortune—seems to be in tension with the idea that happiness is something within our control and not easily taken from us. Admittedly, this constraint is easier to satisfy when the level of external goods required is low, but even in destitute circumstances, there seems to be a role for practical wisdom, and therefore a place for happiness. After all, human beings are known for making the best of very bad circumstances. We are adaptive and resilient beings.

Even if we allow external goods a role in happiness, specifying the appropriate level of external goods also faces a theoretical difficulty. For happiness is supposed to be

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<sup>46</sup> Annas, *The Morality of Happiness*, Ch. 18.

the *highest* good, and therefore anything gained above the minimum level of external goods (wherever it is) must be admitted not to increase one's happiness.<sup>47</sup> But this is highly implausible: if external goods make *any* difference for happiness, then presumably more is better than less. Yet the alternative of giving up on the role of external goods seems equally unpalatable. Aristotle's desire to do justice to our intuitive beliefs about happiness has a theoretical cost.

The foregoing suggests that a plausible conception of happiness must balance considerations of theoretical pull against considerations of intuitive pull. This is not the place to settle that debate, however. While the concept of happiness, as a good life as a whole, is plausibly what we are interested in when we talk about the role of political institutions in living well, it is far from obvious that political institutions can or should do very much about determining the best conception of happiness for the sake of public policy. For we disagree about living well and political institutions are unlikely to be effective or authoritative in resolving these disputes.

One reason for this is that different conceptions of happiness raise questions about the place of certain goods in human life, for example, the role of prosperity, friendship, or being a courageous person. These debates too are reflected in questions of public policy. Does a just society require a measure of material equality in some important respect? Is there a shared basis on which citizens of a society can unite in civic friendship?<sup>48</sup> Does a good society require a degree of moral excellence in its members, and if so what kind of

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<sup>47</sup> Cicero makes this quick argument against Antiochus's view that happiness, once attained, can nevertheless be increased on the way to something like perfect happiness. See Cicero, *On Moral Ends*, ed. Julia Annas (Cambridge: Cambridge University Press, 2001), 5.81.

<sup>48</sup> I argue in the affirmative in Chapter Five.

excellence? The relationship between conceptions of happiness and how we cooperate in political institutions is, therefore, endlessly complex. We would be wise to heed Aristotle's remark that "[i]t is not likely that either group [of views about happiness] is utterly mistaken, but rather that at least one component of their view is on the right track, perhaps even most of them."<sup>49</sup> What then is the sense in which political institutions can be said to have a role in living well? Is virtue hopelessly indeterminate and controversial as an element in the good life? Or is there a sense of virtue that politics can serve? The next section reprises the problem of disagreement and proposes a thin sense of living well that political institutions can serve.

#### 2.4 The Thin Conception of Living Well

One reason for expecting less of substantive conceptions of happiness when it comes to politics is Aristotle's old bit of counsel not to look for the same degree of precision in all domains of enquiry: "The spheres of what is noble [*kalon*] and what is just [...] admit of a good deal of diversity and variation, so that they seem to exist only by convention and not by nature."<sup>50</sup> Someone inquiring into politics "must consider the soul [*psyche*], and consider it with a view to understanding virtue," but "*just to the extent that is required by the inquiry.*"<sup>51</sup> That is to say, we must consider the character of human beings, what we are like, and that should tell us something about what it means to live well *as a human being*.

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<sup>49</sup> *NE*, 1.8.

<sup>50</sup> *NE*, 1.3.

<sup>51</sup> *Ibid.* (emphasis added).

Of course, as we (and Aristotle) have observed, what it means to live well as a human being is contested; views about it admit of a good deal of diversity and variation. Disagreement about living well is inevitable when people who live in different circumstances make different choices about their way of life and systems of value. This much is assured from the central place of practical wisdom in living well. In Chapter one, I took this to suggest that even if virtue is necessary for living well, institutions should not promote a particular conception of the virtues. And if promoting virtue in a strong perfectionist manner is not on the table, we must imagine political institutions tolerating not only the Aristotelian and Stoic conceptions of happiness, but also the Epicurean conception with its eschewal of virtue in place of pleasure as tranquility, and very well the folk conception of happiness Aristotle derides as “a life fit only for cattle.”<sup>52</sup>

So, one begins to wonder: can anything substantive be said on behalf of the view that living well requires the virtues? In fact, positive support for this view is to be found in an unsurprising place. Having developed the formal concept of happiness as the final end of practical reasoning, Aristotle notices that “saying that happiness is the chief good sounds rather platitudinous, and one might want its nature to be specified still more clearly.”<sup>53</sup> This is the entry point for Aristotle’s so-called function argument. Consonant with what I’ve argued in this Chapter, the thought is that the human good ought to have something to do with human nature, Aristotle’s *ergon* [function or characteristic activity].

Aristotle’s conclusion at this stage of the argument is that happiness is an “activity of the soul in accordance with virtue.”<sup>54</sup> It is noteworthy, however, that Aristotle

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<sup>52</sup> *NE*, 1095b.

<sup>53</sup> *Ibid.*, 1097b.

<sup>54</sup> *Ibid.*, 1098a

only claims that this is an “outline of the good.”<sup>55</sup> He has not yet specified his account of the moral and intellectual virtues, undertaken in the other books of the *Ethics*, or considered the role of external goods in happiness, undertaken in the remainder of Book One, or for that matter, reconsidered the highest good as consisting in theoretical contemplation in Book Ten.<sup>56</sup> Hence, the idea of virtue in the phrase “activity of the soul in accordance with virtue” can be understood as whatever excellences are definitive of human beings given a conception of human nature. The claim is not that *one particular way of life* is best for human beings, but rather that living well consists in living *a certain kind of life* in accordance with the virtues of that life.

This analysis reveals an intermediate stage in Aristotle’s argument for the place of virtue in living well, between the formal concept of happiness as the final end and his substantive conception of happiness as a life of virtuous activity with adequate external goods in a complete life. This intermediate stage locates happiness in the characteristic activity or function [ergon] of human beings, but leaves open its exact concretization. This allows for different conceptions of living well without collapsing either into skepticism about a) the role of happiness as the final end of practical reasoning, or b) the importance of virtue in living well according to a conception of the human function.<sup>57</sup>

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<sup>55</sup> Ibid.

<sup>56</sup> Of course, Aristotle probably didn’t write the books of the *Ethics* in the order we have. My point is simply that his preliminary point about happiness from Book One is distinct and logically separable from his considered view, if indeed we can even say that he has a definitive considered view.

<sup>57</sup> While the thin conception allows for different conceptions of living well, it is not merely formal, since particular conceptions must be evaluated in light of the formal conditions of the final end and facts about human nature.

I identify this intermediate stage in Aristotle's discussion of happiness with a thin conception of living well. Political institutions function to enable individuals to live well in this sense. But they do not promote a particular substantive conception of living well, a particular conception of the virtues. My view differs from the perfectionist idea that we begin with the true conception of living well, and then evaluate political institutions in accordance with how they promote the true conception of living well. My view also contrasts with the view that political institutions can be justified if they can somehow accommodate the shared elements of each person's subjective conception of the good. Rawls, in his later work, takes this approach with his idea of a political conception of justice, which serves as a convergence point for an overlapping consensus of reasonable conceptions of the good.<sup>58</sup>

The thin conception of living well is capacious enough to encompass different conceptions of living well. Because of this, it meets the first half of the challenge introduced in Chapter One, the problem of disagreement. The role of political institutions in living well is to enable various ways of realizing the function or characteristic activity [ergon] of human beings. This leaves persons free to formulate their own conceptions of living well, according to their own exercise of practical wisdom. While I adopt a similar strategy to Rawls in abstracting from the particulars of persons' conceptions of the good, I make no claim that the thin conception of living well is neutral or "freestanding" in the way Rawls does. The thin conception of living well is rooted in a view of human nature and related ideas in the eudaimonist tradition recounted above, especially the idea of social cooperation as a human good. In this way, the thin conception of living well

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<sup>58</sup> I criticize public reason liberalism in sections 4.3 and 4.4.

provides criteria for evaluating institutions without necessitating that institutions themselves take a position on whether a particular conception of living well is better or worse.

## 2.5 The Right and the Good

Before closing this Chapter, I want to comment on a way of thinking about political institutions and the good that I'd like to avoid. According to Rawls, when we theorize about political institutions, the right is prior to the good, meaning that we first work out principles of right, which then constrain reasonable conceptions of the good in the context of just political institutions. If Rawls is right, my proposal to justify political institutions gets things backwards. We should begin with a settled conception of justice and then see which institutions meet this standard. At any rate, much of political philosophy of the last forty years has followed Rawls.<sup>59</sup>

As Gary Watson has shown, Rawls's claim inherits a peculiar taxonomy of ethical theories.<sup>60</sup> Rawls recognized two broad categories of theories: i) those that define the right in terms of the good (e.g. classical utilitarianism) and ii) those that do not define the right in terms of the good (e.g. his own theory). This classifies views as either teleological because they aim at maximizing the good or deontological because they place constraints on the pursuit of the good. The classification is problematic for an Aristotelian view because while the good is clearly prior for Aristotle, he does not think

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<sup>59</sup> Nozick was prescient when he said, "Political philosophers now must either work within Rawls' theory or explain why not." See *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 183.

<sup>60</sup> Gary Watson, "On the Primacy of Character," in *Identity, Character and Morality*, eds. Flanagan and Rorty (Cambridge, MA: MIT Press, 1990), pp. 449-470.

of the good in terms of maximizing, nor is he interested in defining one concept in terms of another. Instead, he regards the two concepts as necessarily interrelated. Thus, Hursthouse writes:

Insofar as ‘the good’ is defined within Aristotelianism, it is ‘defined’ as ‘the object of right desire or wish’ or ‘that which the virtuous agent desires/wishes for’, which forges a conceptual link between *good* and *virtue* rather than encapsulating a reductive definition.<sup>61</sup>

A further clear difference is that Rawls understands the good subjectively, independently from considerations of justice, whereas my view understands the good as a good life as a whole, and to the extent that the good life requires treating others well, this idea carries with it implicit ideas about right action. Rawls is right that the human good must be consistent with justice, since justice is itself a virtue of persons, and living well requires the virtues. But this is to say no more than what I’ve argued in this Chapter, namely, that justice, as an ideal of social cooperation, depends on what is good for human beings who must cooperate in order to live well.

Rawls himself allows that the good is prior to the right in a certain sense. Rawls needed a basis on which parties in the original position would choose principles of justice and for this purpose he introduced the thin theory of the good. Rawls’s thin theory consists of the social primary goods, or the “things that every rational man is presumed to want [which] normally have a use whatever a person’s rational plan of life.”<sup>62</sup> Rawls used the thin theory to set aside the question of the good life, fully understood, by appealing to

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<sup>61</sup> Hursthouse, “After Hume’s Justice”, p. 241 (emphasis original).

<sup>62</sup> Rawls, *A Theory of Justice*, p. 54.

an apparently neutral metric on which to make interpersonal comparisons to determine distributive shares and choose principles of justice in the original position. Individuals only later develop full conceptions of the good consistent with Rawls's theory of justice as fairness. In this way, the right remains prior to the good fully understood.

Rawls's thin theory of the good provides a nice contrast to my thin conception of living well, particularly why the thin conception of living well isn't neutral or "freestanding." Ideas of the good, I contend, play more of a role in theorizing about justice than Rawls admits. For instance, in the preface to the revised edition of *Theory*, Rawls clarifies the ambiguity of whether the idea of social primary goods is to be understood in terms of citizens' preferences and desires or "as answering to their needs as citizens."<sup>63</sup> Significantly, he opts for the latter interpretation. What I don't think Rawls realized is that what individuals *need* as citizens depends on questions about human nature and the human good generally. For example, Rawls considered the social bases of self-respect the most important primary good, and this depends on a view about the good.<sup>64</sup> An institution like equal citizenship that allows us to develop self-respect will accord with human nature in a way that unequal citizenship clashes. We cannot, therefore, ignore questions of human nature when we think about political institutions, since arguably institutions develop as responses to the needs of human nature (as Smith recognized), not as independent constructions of reason (as Plato sometimes pretends).

On my view, then, the right and the good stand in relationship to one another insofar as both have to do with virtue, but neither is prior in any fundamental sense. The

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<sup>63</sup> Ibid., p. xiii.

<sup>64</sup> Ibid., p. 386.

right consists in the constraining aspect of virtue, while the good consists in the directing aspect.<sup>65</sup> This is not only acceptable; it's unavoidable. Rawls's worry was that making the good prior to the right, as the classical utilitarians did, would open the door to theories that allowed our intuitive ideas about justice to be sacrificed if they maximized the good, understood as maximizing utility. But eudaimonism doesn't face this objection. For maximizing is not the only way to respond to value. One can also respond to value by respecting it. As LeBar explains, "ends can constrain."<sup>66</sup> We will have occasion to explore this idea further in the next Chapter, but briefly: that I want to live well means there are certain constraints on my actions, as part of what it means to live well, that I come to recognize through moral development. Living well is both a goal I aim at and a set of constraints that require respect for certain values.

## 2.6 Conclusion

To close and reorient the discussion, I repeat an architectonic point. My account of the relationship between persons and institutions operates at three different levels. First, there is the individual person and her effort to live well in a particular society characterized by a set of institutions defined by certain rules and expectations that are part of membership in her society. Such a person, in turn, fills out her obligations in terms of her conception of living well. Second, there are political institutions, which are marked by their claim to comprehensively and coercively alter moral obligations. Third, there is the middle layer of social institutions (e.g. the family, churches, economic

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<sup>65</sup> As we will see in the next Chapter, these two aspects of virtue set the stage for understanding the constraining and formative role of political institutions.

<sup>66</sup> Mark LeBar, *The Value of Living Well*, Ch. 1.

markets, etc.) and relationships to particular people in various capacities (e.g. fathers, co-workers, friends, etc.).

A major obstacle to my thesis is that because people decide for themselves about living well, political institutions do not have a role in living well. There lacks a shared purpose through which persons both realize their duties as citizens and rule over other citizens by participating in political institutions. The next task, therefore, is to determine the nature of the role political institutions have in living well. This Chapter introduced a conception of living well that we can reasonably understand political institutions as being for the sake of. Living well understood as various ways of specifying the human function in accordance with practical wisdom is thin enough for political purposes, yet thick enough to do justice to the human good of social cooperation.

There is, however, more to clarifying the role of political institutions in living well. Because the basis on which we disagree is morally significant, as a matter of how persons relate to one another, we need to know more specifically what this *role* in living well amounts to. For even virtuous persons need terms on which to regulate their social interaction, and political institutions seem to implicate these terms. The next Chapter takes on this issue. I take as a starting point the insight from this Chapter that social cooperation is a kind of human good. The idea is that because social cooperation is part of living well, there might be certain constraints implicit in social cooperation, functionally related to living well, that regulate our interactions with one another and provide a way to understand the role of political institutions in living well.

### Chapter Three: The Role of the Polis in Living Well

The purpose of this Chapter is to understand the role of political institutions in living well. In what sense do political institutions “enable” us to live well? While living well is the end for which we cooperate, how are political institutions a means to that end? The challenge this time is whether the nature of political institutions can be reconciled with the nature of living well. To meet the challenge, I propose we think about, on the one hand, the constraints on cooperation required by living well as an end, and on the other hand, the social conditions necessary for persons to live well.

My idea, hinted at in the previous Chapter, is that because political institutions aim at living well, as an end, there are constraints, realized in institutions, as the means through which we regulate social cooperation. Living well also requires an appropriate social context where persons develop and exercise the judgment requisite for acquiring the virtues. The constraints required by living well allow persons to pursue virtue in a community with others, while the conditions necessary for living well enable persons to develop virtue in that community.

Following this pair of ideas, my thesis in this Chapter is that political institutions enable persons to live well by i) realizing rights as institutional constraints, and ii) maintaining the balance of intermediate institutional authorities. Rights are claims that persons have in virtue of their participation in the institutions of social cooperation aimed at living well.<sup>1</sup> Importantly, however, rights are the output of the problem of social

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<sup>1</sup> My view is similar to the one Fred Miller Jr. attributes to Aristotle in his *Nature Justice and Rights in Aristotle's Politics* (Oxford: Oxford University Press, 1995), Ch. 4.

cooperation, not an input. Instead of imagining hypothetical individuals coming together to assert their pre-institutional rights, as social contract theorists do, we should think of rights as claims that emerge when persons cooperate in a community for the sake of living well together. Rights protect the exercise of practical wisdom.

The second aspect to understanding the role of political institutions in living well concerns the social conditions necessary for living well. Practically wise persons require the fertile ground of the intermediate institutions, that is, those that exist between political institutions and the individual. These are the institutions in which we learn and develop the virtues. For we do not live well in a vacuum, but by participating as members of families, economies, educational institutions, and religious communities. Living well requires not mere choice, but choosing well, and choosing well requires an appropriate environment.

I begin with the problem of how to understand the role of political institutions in living well. (3.1) Next, I explain how living well requires both constraints and conditions for its realization as an end. (3.2) These two features, I claim, explain the role of political institutions in living well. I also consider some of Aristotle's ideas about the role of political institutions in living well and compare them with two very different Aristotelian accounts: Nussbaum, and Rasmussen and Den Uyl. (3.3) The first half of the Chapter arrives at two ways of understanding the role of political institutions in living well: i) the constraining role and ii) the formative role. In the second half, to understand the former role, I develop an institutional account of rights that is justified functionally in terms of living well. (3.4) To understand the latter, I explore the extent to which living well requires social conditions realized in the intermediate institutions of civil society. (3.5)

This establishes a second (albeit indirect) role for political institutions: to maintain a balance of institutional authorities. The conclusion (3.6) explains the sense in which this justification of political institutions can be extended to consider the limits and proper aim of political authority in terms of the virtues.

### 3.1 Can Political Institutions Have a Role in Living Well?

The laws of a legitimate political authority have the power to change our moral obligations. What reasons could we have for transferring this power to an institutional authority? Why should we not regard ourselves as morally free to determine our obligations for ourselves? The previous Chapter answered that question by proposing that institutions serve living well because we are social beings who cooperate in political institutions to pursue our mutual ends. We yield the moral power to determine our obligations unilaterally because there are things worth doing that require the cooperation of other people, including cooperating itself.

The complicating factor, I noted, is that we live well in different ways. What's more, to assume that there is a universal conception of living well that everyone could in principle subscribe to would undermine an important precondition of cooperation, namely, that we recognize that virtuous persons can disagree. For this reason, I have claimed that political institutions enable living well only in a general sense. Perhaps in a very homogeneous society, where persons are bound together by shared religious beliefs, for example, this is not the case. But Rawls's idea of reasonable pluralism has proven tractable for theorizing about political institutions in a modern context.

To accommodate reasonable pluralism, I proposed the thin conception of living well. Living well is understood as different ways of specifying the human function with practical wisdom, whereas a substantive conception of living well consists in a particular realization of the human function. People can disagree about substantive conceptions while nonetheless agreeing that they are pursuing the same kind of end. The thin conception has two features. First, the way in which we specify the human function is a function of practical wisdom. Second, the realization of practical wisdom is particular to each person's nature, circumstances, and choices. Taken together, the thin conception allows for different conceptions of living well according to each person's practical wisdom.

The thin conception of living well acknowledges that each person is a member of a political society that makes joint activity possible. This is the sense in which political institutions enable us to live well. But it is unclear what kind of role that could be. Minimally speaking, however, we might say that the *role* of political institutions should be compatible with the *nature* of living well as a function of practical wisdom, according to one's particular nature, circumstances, and choices. This is another way of saying that political institutions, as a means, shouldn't undermine their role in living well, as an end.

So we cooperate in political institutions in order to meet our needs. But political institutions, as a means, are a distinctive kind of cooperative enterprise. While all institutions have the power to alter our moral obligations—this is social morality—political institutions claim to do so in a way that is a) backed by coercive force and b) comprehensive, applying to everyone regardless of choice or affiliation. We can see this by thinking about voluntary clubs. All clubs function to satisfy some need or function.

For instance, neighborhood associations aim to maintain the appearance of residents' homes and keep the streets clean and safe. The benefits and burdens of such an association are basically obvious to anyone who takes part in one. But these benefits are contingent upon being a member of the association and nobody is forced to be a member of a neighborhood association. The rules of the neighborhood association naturally only apply to those people who live in the neighborhood, not to everyone willy nilly.

From the perspective of living well, voluntary associations further our ends so long as one has a say in whether to join and whether one can voluntarily exit. But political institutions offer neither of these options. It is unclear how to reconcile the role of political institutions in living well with their coercive and comprehensive nature. What reasons could we have, from the perspective of living well, for being subject to institutions that are coercive and comprehensive?

There are two issues having to do with the nature of living well. First, practical wisdom must be exercised according to each person's judgment. But political authority claims a moral power to alter and coercively enforce moral obligations regardless of individual judgments. So there is a question of how practical wisdom can be reconciled with the coercively enforced obligation to obey political authority. Second, I have claimed that living well is particularized to each person. Practical wisdom always operates within the context of a person's nature, circumstances, and choices. But the comprehensive nature of political institutions seems not to accommodate this aspect of living well. Political institutions issue laws that are general and universal, applying to all, which might elude the diverse ways in which individuals live well.

The question thus arises how political institutions, which are coercive and comprehensive, could have a role in living well, which must be chosen and particular to each person. How can political institutions have a role in living well while respecting the different choices persons make in living well? The answer, I suspect, will be found through a better understanding of living well as an end.

### 3.2 Living Well as an End

Living well gives us reasons for action, but it also constrains our actions. Living well gives us reasons for action in virtue of its attractiveness or desirable qualities; living well, as Aristotle claimed, is the only thing we seek for its own sake. This desirability, in turn, gives rise to a set of constraints that limit our actions insofar as we aim at living well. This is the sense in which virtue includes aspects of the right, as a constraint, and the good, as a directive. As I will show, this dual structure lays the groundwork for thinking about the role of political institutions in living well.

As I have observed, it is sometimes argued that virtue ethics cannot account for moral or deontological constraints because it takes the good as foundational rather than the right.<sup>2</sup> This is the basis of Sidgwick's distinction between "attractive" and "imperative" normative conceptions which laid the groundwork for Rawls's claim about the priority of the right. On Sidgwick's view, an attractive normative conception characterizes ancient ethical theories that begin with the good, whereas an imperative conception characterizes modern ethical theories that begin with the right.<sup>3</sup> As I argued in the last Chapter, the

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<sup>2</sup> See sections 0.1 and 2.5.

<sup>3</sup> Henry Sidgwick, *The Methods of Ethics*, 7<sup>th</sup> ed. (Indianapolis, IN: Hackett Publishing, 1981 [1874]), Bk. 1, Ch. 9.

distinction collapses once we understand the virtues as having two aspects: the right and the good. Virtue ethics rejects the claim that one concept can be reduced to the other. Instead, it unifies the structure of practical reasoning. A final end is both a source of attraction *toward* certain actions and of imperatives that *constrain* action. The former concerns the good; the latter concerns the right.

It is easy to see how living well is attractive as an end. But how do we derive constraints from living well? LeBar has argued that “ends [...] do constrain. For having a particular end E—an object of choice I have reason to act upon—constrains me from acting in ways that would compromise the achievement of that end.”<sup>4</sup> For instance, if I have resolved to lose weight, the choice of that end gives me reasons not to eat high caloric foods. It narrows my choices to actions that do not undermine the end I have chosen for myself. That is, making one choice always closes off any number of other choices that might compete with or undermine the end one has most reason to choose. As LeBar puts it, “[t]his constraining work is a reflection of the fact that no end can be pursued without *opportunity costs*.”<sup>5</sup> What we aim at always imposes constraints on our actions.

Since I have argued that living well consists in the exercise of practical wisdom within one’s socially embedded perspective, living well implies constraints on individual action so that persons can exercise practical wisdom. This is a consequence of the social nature of living well. Because virtue ethics does not separate prudential from moral reasoning, acting for the sake of living well generates moral constraints on the set of actions I may take in pursuit of that end. I cannot, for instance, use a person as a mere means to

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<sup>4</sup> LeBar, *The Value of Living Well*, p. 12.

<sup>5</sup> *Ibid.* (emphasis added).

my end, since that person has ends of their own, which I must respect as a person whose end requires living socially with others.

What about the sense in which living well gives us reasons for action? LeBar characterizes the attractive nature of ends thusly, “[i]t is easy to see how ends—as objects of actions we have reason to seek—can be attractive, if we think about the objects of action that are suggested to us by desire.”<sup>6</sup> Living well is attractive as an end because we want it for its own sake. Everyone pursues the good as an object of desire. But how do we know what to desire? To become practically wise, it is not sufficient that we pursue our brute desires. Rather, we must understand what we ought to desire, that is, what makes sense for us to desire, given who we are and the circumstances we inhabit. This is an end that mere desire will not generate.

Here then is another sense in which living well constrains: it gives us reasons to choose actions that we ought to desire, i.e. those that constitute living well. This excludes acting on our untutored desires. Living well is not the subjective terminus of any process of mere desiring, but of a final end that has been determined by practical wisdom. This second point suggests that, in addition to constraints, living well requires a set of conditions for its proper development. Living well requires constraints in order that persons may exercise practical wisdom. But it also requires conditions such that persons develop practical wisdom by making choices about what they have most reason to desire.

The sense in which living well requires constraints explains why political institutions must be coercive to fulfill their proper function. We need coercive institutions to coordinate our actions in such a way that persons can pursue their ends with others when

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<sup>6</sup> Ibid.

their fundamental purposes conflict. Political institutions take some choices off the table so that practical wisdom can operate within a game where the rules are known to all beforehand and enforced accordingly. Meanwhile, the sense in which living well requires conditions explains the comprehensive nature of political institutions. Since practical wisdom requires development, we need a system of laws that applies to all, structuring the institutional framework, so that persons become capable of making choices that constitute living well.

The next section surveys some Aristotelian accounts of the role of political institutions in living well. We will see that each emphasize, in different ways, first, the sense in which living well requires constraints so that persons can make practically wise choices, and second, the sense in which living well requires conditions that set the background environment against which persons make choices. Establishing a role for political institutions in living well requires the reconciliation of these two elements, which I attempt in the sections that follow.

### 3.3 Aristotelian Accounts

#### *Aristotle*

Begin with Aristotle who claims that ethics is subordinate to politics.<sup>7</sup> A consequence of this claim is that, for Aristotle, since politics is about the good life, and the good life requires a correct upbringing, any well-functioning political society will have laws that govern people's behaviour, specifically rewarding virtuous activity and sanctioning vicious activity. As we have seen, this poses a problem for liberal theorists

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<sup>7</sup> *NE*, I.2.

insofar as political institutions are supposed to accommodate reasonable pluralism. Liberals expect a line to be drawn between the good, understood by individuals, and the good, understood by the broader society. That is part of the *constraining role* of political institutions. But as we will see, there is something to Aristotle's prescription that is worth heeding. Our good, as we understand it, depends to some extent on the institutions we take part in and the society in which we are raised. Call that the *formative role* of political institutions.

Aristotle's claim about the relationship between ethics and politics appears early in *The Nicomachean Ethics* in a passage that attempts to clarify its subject matter as "a kind of political science."<sup>8</sup> Ethics and politics are intertwined for Aristotle because both aim at the good. But politics is a higher or more authoritative kind of science "because it lays down which of the sciences there should be in cities, and which each class of person should learn and up to what level."<sup>9</sup> And because politics "also lays down laws about what we should do and refrain from"—and these concern states of character—ethics is subordinate to politics.<sup>10</sup> The subordination is not, however, that every ethical matter is *ipso facto* a political matter, but rather that since ethics is about character and character depends on developing the right habits, the laws that concern politics play a crucial role in the formation of good character, and therefore ethics.

Further illustration of this idea comes later in Book VI of the *Ethics* in the discussion of practical wisdom. Aristotle thinks of practical wisdom as the virtue that

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<sup>8</sup> *NE*, I.2.

<sup>9</sup> *Ibid.*, 1094b.

<sup>10</sup> *Ibid.*

gives one knowledge “about what conduces to living well as a whole.”<sup>11</sup> This includes knowledge of what is in one’s own interests (self-interest narrowly understood) “but,” Aristotle notes, “there is much disagreement about it.”<sup>12</sup> Some people, it seems, view the politician as a “busybody,” while the person of practical wisdom is thought to mind his own affairs. In response, Aristotle claims that “nevertheless, one’s own good will presumably not exist without the management of a household and without a political system.”<sup>13</sup> This is to say that practical wisdom cannot be exercised independently from the political society in which it must first *develop*. Aristotle adds for good measure that this is why young people do not become practically wise: they don’t have the kind of experience that we acquire by living in a political society under a set of laws that enable us to judge well in ethical and political matters.

Aristotle’s full description of the formative role of political institutions appears appropriately enough in the *Ethics* transitory discussion to the *Politics*. In support of his general claim that ethics is about action, not merely knowledge, Aristotle cites Theognis’ remark that “[i]f arguments were sufficient by themselves to make people good, then they would have won many great rewards, and justly so.”<sup>14</sup> Considering then how we are to become good, Aristotle compares the virtuous person to the flourishing of plants, which require nourishing soil to develop. Just as a plant turns toward the sun for nourishment, our development as human beings involves feeling pleasure and pain at the appropriate objects. And since neither young people nor adults are naturally fitted to do so, Aristotle

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<sup>11</sup> Ibid., 1140a.

<sup>12</sup> Ibid., 1142a.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid., 1179b.

claims that “their upbringing [young people] and pursuits should be regulated by laws,” and also “[for adults] generally for the whole of life.”<sup>15</sup> Lastly, Aristotle thinks that laws are uniquely suited for this role because they “have compulsive power” proceeding “from a kind of practical wisdom and from intellect.”<sup>16</sup>

Aristotle acknowledges the importance of exercising practical wisdom in living well. That is why he says it gives one knowledge about how to live well as a whole. But he mainly emphasizes the *conditions* that persons need to become practically wise.

Where Aristotle stands on the nature of living well as particular to each person’s choice and circumstances is less clear. While Aristotle’s views on excluding certain classes of persons from the polis are well-known, he does say in the *Politics* that “the best constitution is the system under which *anybody whatsoever* would be best off and would live in felicity.”<sup>17</sup> There are also passages at the end of the *Ethics* that suggest Aristotle was aware of the importance of individual differences in education and upbringing, that is, differences that tell against a one-size-fits-all political approach.<sup>18</sup>

### *Martha Nussbaum*

Like Aristotle, Martha Nussbaum takes political institutions to have a formative role in enabling citizens to live well, but she also gives due weight to the constraining role. Because she takes seriously both practical wisdom *and* reasonable pluralism, she doesn’t follow Aristotle’s recommendation of a “comprehensive system of laws” to

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<sup>15</sup> *Ibid.*, 1180a.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Politics*, 1324a

<sup>18</sup> *NE*, X.9.

regulate and ensure that persons make good choices.<sup>19</sup> Instead, persons must make good choices for themselves. For this reason, Nussbaum is concerned only that persons have the requisite *capabilities* they need in order to make choices conducive to living well *should they wish to do so*. She writes, for instance, “[w]hat we are aiming to secure to people are precisely the *conditions* in which each of them, as individuals, will be able to exercise choice and to function according to their own practical reason.”<sup>20</sup> For Nussbaum, this is the idea that justifies political authority, but it also constrains political institutions from meddling with people’s choices. What matters in the political sphere is not that people actually function one way or another, but rather that they have the capabilities requisite for functioning, which take on value when chosen by individual persons.

Nussbaum’s conception of living well originates in Aristotle’s discussion of the virtues. Her original contribution shows how the virtues serve as a kind of shorthand for understanding universal aspects of human experience. This is what she calls the non-relative sense of the virtues. To understand the virtues in a non-relative sense, first “isolate a sphere of human experience that figures in more or less any human life” [e.g. fear of danger]. Then “[t]he ‘thin account’ of each virtue is that it is whatever it is to be stably disposed to act appropriately in that sphere.”<sup>21</sup> Thus, courage is the virtue having to do with the appropriate way of acting in the face of danger. Temperance is the virtue having to do with bodily pleasures and pains, and so on. While different cultures and

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<sup>19</sup> Martha Nussbaum, “Perfectionist Liberalism and Political Liberalism,” pp. 3-45.

<sup>20</sup> Nussbaum, “Nature, Function and Capability: Aristotle on Political Distribution,” in *Marx and Aristotle: Nineteenth-Century German Social Theory and Classical Antiquity* (Savage, MD: Rowman & Littlefield, 1992), p. 180 (emphasis added).

<sup>21</sup> Martha Nussbaum, “Non-Relative Virtues: An Aristotelian Approach,” *Midwest Studies in Philosophy XIII* (1988), p. 35.

societies disagree about conceptions of courage and temperance, they are nonetheless talking about the same thing; they share the virtue concepts. The virtues enter our moral language as specifications or summaries of what it means to act well in particular spheres of human activity. For Nussbaum, the common spheres of experience can then serve as a basis for an overlapping consensus (in Rawls's sense) about what a good human life consists in.<sup>22</sup>

To this end, Nussbaum's conception of living well identifies an open-ended list of valuable functionings that any good human life should have.<sup>23</sup> These include things like basic nutrition, affiliation with others, leisure, and having a connection to nature. Nussbaum calls this the first stage of what she terms the "thick vague conception" of the good life. The second stage moves from the list of important spheres of any good human life to a list of related capabilities: e.g. being able to live a normal healthy human life, being able to have meaningful relationships with others, and so on. Nussbaum claims that this minimal theory of the good shows the ways in which a human life is diminished if it lacks any of the capabilities. Hence, political institutions should ensure that all citizens have the equal opportunity to live worthwhile lives.

This task or aim of political institutions is what unites the ethical theory of essential human functionings to the political program of ensuring persons have the requisite capabilities for living well. Nussbaum writes, "citizens are to receive the institutional, material, and educational support that is required if they are to become

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<sup>22</sup> Nussbaum, *Frontiers of Justice* (Cambridge, MA: Harvard University Press, 2006), Ch. 5.

<sup>23</sup> *Ibid.*, Ch. 6. xii.

capable of functioning in that sphere according to their own practical reason.”<sup>24</sup> The role of political institutions, for Nussbaum, then, is to get everyone across the capabilities threshold by tailoring all-purpose means such as goods, wealth, income, educational opportunities, and so on to each person’s circumstances of choice. The good for each person will then consist in making choices from a set of valuable human capabilities.

Nussbaum adapts Aristotle’s account of the formative role of political institutions to many of the distinctive features of modern political theory. For instance, her theory does not dictate one conception of living well for all citizens to be trained up and regulated in accordance with. The conditions of living well must be chosen for oneself. Nussbaum goes some way to reconciling the formative role with the nature of living well. She does not, however, in my view, fully justify the move from her ethical theory of essential human functionings to the political program of promoting the capabilities. We are told that it is the task of political institutions to promote the capabilities, but not what the connection is between the *value* of the capabilities and the authority of political institutions. This is important, as I’ve argued, because there is a fundamental question about how political institutions relate to living well. While I agree with Aristotle that ethics is in some sense continuous with politics, we can’t make the shift from ethics to politics as seamlessly as Nussbaum does.

More specifically, Nussbaum focuses most of her attention on what political institutions should do to help persons develop practical wisdom. But this ignores a) how politics can sometimes undermine persons exercising practical wisdom or itself lack the

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<sup>24</sup> Nussbaum, “Aristotelian Social Democracy,” in *Liberalism and the Good*, eds. Douglass, Mara, and Richardson (New York: Routledge, 1990), p. 151.

direction of practical wisdom, and b) what persons need to do *for themselves* to become practically wise.<sup>25</sup> Another way of putting this is that Nussbaum doesn't recognize the *directive* nature of practical wisdom and how political institutions might sometimes undermine it. In her list of capabilities, for instance, practical reason appears alongside the other capabilities as goods valuable for their own sake, rather than the proper exercise of practical reason—practical wisdom—being what *makes* the other capabilities good. There is something good about having the basic capabilities, but they are not on the same value plane as practical wisdom.

#### *Rasmussen and Den Uyl*

Unlike Nussbaum (and Aristotle), Rasmussen and Den Uyl's (hereafter RDU) version of neo-Aristotelian liberalism takes seriously that politics as a coercive enterprise might be fundamentally incompatible with the nature of living well as a self-directed exercise of practical wisdom.<sup>26</sup> Following Aristotle's claim that the virtues must proceed from rational choice [*prohairesis*], RDU observe that this may undermine the role of political institutions in living well to the extent that politics necessarily constrains choice. More particularly, they argue for an account of rights as *meta-normative* principles that place moral constraints on political institutions. Meta-normative principles are principles that apply to the political/legal order, the space within which ethical activity takes place.

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<sup>25</sup> Catherine H. Zuckert makes the latter point about Nussbaum's account in "Aristotelian Virtue Ethics and Modern Liberal Democracy," *The Review of Metaphysics* 68 (September 2014), pp. 61-91.

<sup>26</sup> I follow here their account in *Norms of Liberty* (University Park, PA: Penn State Press, 2005). See also their most recent account of their view's ethical underpinnings in *The Perfectionist Turn* (Edinburgh: Edinburgh University Press, 2016).

A meta-normative principle is required, on RDU's view, because of the pluralistic character of human flourishing. This ensures that diverse persons' conceptions of living well can coexist (what they call "liberalism's problem"). On this basis, RDU argue for a right to negative liberty as the unique solution to liberalism's problem, which ensures "that the various forms of human flourishing are not in structural conflict."<sup>27</sup>

RDU's argument for the right to negative liberty is a consequence of their conception of the pluralistic character of human flourishing. Central to their account is the idea of self-direction, which is the capacity for choice (or human agency) that makes possible the exercise of practical reasoning, and so practical wisdom, the *proper* exercise of practical reason. Persons will not be capable of self-direction, RDU claim, if they lack political liberty, the state of being free from coercion. A right to negative liberty, thus, ensures that persons are not subject to coercion, and so are able to pursue living well in a self-directed way. But the right to negative liberty is not justified "in terms of either achieving or encouraging that ultimate end [i.e. living well], or even, in general, making it possible."<sup>28</sup> The right to negative liberty is justified in terms of meeting the criteria of a meta-normative principle that makes possible the coexistence of persons living well together.

RDU also emphasize the place of sociality in human flourishing. Human beings are not atomistic, but realize their own form of self-perfection in communities and through relationships characterized by *philia* (friendship in the broadest sense). But admitting this much "does not imply either that individuals must accept the status quo or

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<sup>27</sup> RDU, *Norms of Liberty*, p. 266.

<sup>28</sup> *Ibid.*, p. 268.

that they are passively shaped by it.”<sup>29</sup> What’s more, we form relationships with other human beings who are not part of our immediate communities, and so we should understand society as open (in the cosmopolitan sense) to all the divergent forms of human flourishing that exist in different societies.

These features of human flourishing place limits on what can count as the appropriate ethical basis for a meta-normative principle. In particular, RDU argue for the right to negative liberty as uniquely suitable for a meta-normative principle because it safeguards self-direction, which “is appropriate for individuals [...] because it is the very condition for the possibility of any individual in any circumstance being practically wise and thus self-perfecting.”<sup>30</sup> This means that positive measures such as Nussbaum’s capabilities approach that provide citizens with educational opportunities in order that they may develop practical wisdom are not suitable as a meta-norm. For, according to RDU, “if we are truly speaking of self-direction, it is not something for which one can provide assistance.”<sup>31</sup> That is, no separate person or institution can perform one’s own self-direction. We must choose to live well for ourselves, as self-directed agents.

RDU’s version of neo-Aristotelian liberalism shares my conception of living well as a) realized in the exercise of practical wisdom, and b) particularized to each person’s nature, circumstances and choices. Living well cannot take place without the choices persons make in a diverse set of circumstances that results in the fundamentally pluralistic character of human flourishing. However, because of the coercive and uniform nature of political institutions, and their potential to undermine the bases of self-direction, RDU

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<sup>29</sup> Ibid., p. 270.

<sup>30</sup> Ibid., p. 276.

<sup>31</sup> Ibid., p. 278.

conclude that political institutions have no role in living well apart from providing the general social framework within which living well is neither likely or actual, but merely *possible*.

This brief survey of Aristotle, Nussbaum, and Rasmussen and Den Uyl illustrates three very different ways of combining the two roles of political institutions in living well. First, the formative role ensures that persons live in conditions that are necessary for the development of practical wisdom. Second, the constraining role articulates the sense in which political institutions are necessary to realize the constraints on social cooperation necessary for developing practical wisdom with others. We saw that Aristotle and Nussbaum focus on the formative role and to varying degrees the constraining role. Meanwhile, Rasmussen and Den Uyl focus on the constraining role and reject the formative role except insofar as political institutions secure an ethical framework within which living well is possible. The major issue, then, is whether the formative role of political institutions can be reconciled with the constraining role. In the next section, I argue that the constraining role is best understood in terms of an institutional account of rights.

### 3.4 The Constraining Role: Rights as Institutional Constraints

The coercive nature of political institutions is sometimes held to be justified in terms of the role political institutions play in establishing and protecting our rights. That is roughly the view I will defend here. But there is a question about whether what we call our rights are pre-institutional constraints on a political authority or claims that emerge *within* institutional practices that have a authority because of their role in living well. Contrary to much rights theory since Locke, I will argue for the latter institutional account. Rights are

claims that emerge within institutions that are functionally related to living well. Just as living well, as an end, imposes constraints on our actions, institutions that are justified in terms of living well, realize constraints on action that make it possible for us to live well together.

An institutional account of rights is committed to Hume's claim that rights are "naturally unintelligible"; rights, and related notions like rules and promises, only make sense within the context of political society and its institutions. Hume's insight was that notions like rights depend on the background of institutions in which these concepts are deployed meaningfully.<sup>32</sup> A promise and the corresponding obligation it gives rise to, for example, assumes the existence of a promising practice. Similarly, the concept of property—what is rightfully mine and yours—depends on the existence of the institutional practice of property rights.

As Rosalind Hursthouse has noticed, the challenge for an institutional account of rights is to be able to account for so-called "natural rights."<sup>33</sup> For instance, on what grounds, within an institutional account, can we say that persons have a right to life? A natural rights account can say that persons have a right to life because there are pre-institutional natural rights that constrain our adoption of certain practices and institutions that would leave individuals vulnerable. Further, these pre-institutional rights give us the conceptual resources to criticize and update our ongoing practices from a critical perspective. For example, a political system that excluded some classes of persons from voting could be said to violate their natural right to political participation. But on the

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<sup>32</sup> Hume's idea is developed by G.E.M. Anscombe in her series of papers collected in Anscombe, *Ethics, Religion, and Politics*.

<sup>33</sup> Hursthouse, "After Hume's Justice," p. 234.

institutional view, since there are no pre-institutional rights, no such violation has occurred in a society with this discriminatory practice.

To gain a critical perspective for thinking about rights, Hursthouse makes a case for what she calls a limited-conventionalist account according to which we identify rights with the laws of well-functioning societies. And she explains a well-functioning society in terms of the general Aristotelian claim I have defended, namely, that the function of a political society is to enable its members to achieve *eudaimonia*. Rights, for Hursthouse then, ultimately depend on the idea of living well.

Like Nussbaum's account, the relationship between the ethical ideal of living well and the political ideal of well-functioning institutions, is not fully explained by Hursthouse and requires further development. I propose that we build on a neglected insight of Anscombe's about rights. Anscombe claims that there is, in fact, "a way of arguing for a right without appeal to custom, law or contract; and similarly of arguing that some customary right is no right but is, rather, a customary wrong."<sup>34</sup> The thing to attend to is modal statements of the type "x is necessary," where necessary means "that without which some good will not be obtained or some evil averted."<sup>35</sup> Anscombe's idea is that there are things we need if we are to be able to live well together, including certain institutional arrangements. Some institutions, then, might be necessary in this sense, given the premise that we want to live well, and the hypothetical imperative that living well comes with a set of institutional requirements. If Anscombe is on the right track,

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<sup>34</sup> Anscombe, "On the Source of the Authority of the State," in *Ethics, Religion, and Politics*, p. 145.

<sup>35</sup> *Ibid.*, p. 139. Anscombe attributes the idea to Aristotle. See Aristotle, *Metaphysics*, Bk. 5 1015a.

then an institutional account of rights can explain how institutions enable us to live well without appealing to pre-institutional natural rights. Let's examine this idea further.

Anscombe first notices that rights statements issue in what she calls a “stopping modal,” e.g. you *cannot* eat that piece of cake; it belongs to George. Now, the second half of the statement appears to give a reason for the first. But the interesting thing, Anscombe notes, is that you cannot explain this *as a reason* without referencing the rules of an existing property practice, and the first half of the statement *just is* a rule of a property practice. It would be wrong to eat the cake because it's George's cake according to the rules of a property practice. But what justifies *those* rules? The two statements are inseparable precisely because of Hume's point about natural intelligibility. We cannot explain why the cake belongs to George without first becoming acquainted with the rules of a property practice.

The way to explain George's property right is to think about the second half of the statement about rights, “it belongs to George.” Put another way, we might say “this cake is *for* George to eat.” Now, we have something like the claim that it is George's call to determine what happens to the cake. *He*, and nobody else, has a moral power to determine its use. Further, he has a liberty-right to use it as he wishes and a claim-right *against* others using it.<sup>36</sup> Conceptually speaking, this is what it means to have a property right.<sup>37</sup>

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<sup>36</sup> “Moral power,” “liberty-right,” and “claim-right” are from Wesley Hohfeld's classic analysis in *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1919).

<sup>37</sup> Schmitz refers to this as the “bundle theory” of property rights in “Property and Justice” *Social Philosophy and Policy*, Vol. 27, No. 1 (January 2010), pp. 79-100.

But why should we think George has these special claims outside of the fact that he participates in a property practice? We could claim that there is a natural right to property.<sup>38</sup> Alternatively, we can regard George as having these claims in virtue of his role as a person who must perform certain necessary tasks for the sake of living well in a community of other people, some of which presumably require owning some property. This is the functionalist idea that justifies institutions as tools of preventative problem-solving, Aristotle's idea of "that without which some good will not come about."<sup>39</sup> In this case, "some good" refers to the highest good, the final end of practical reasoning: living well. The claim is that persons cannot live well without being able to perform certain tasks, e.g. acquiring property. And the basic idea is that people should have what belongs to the performance of a task that is, in the above sense, necessary. If, for example, my wife asks me to take the garbage out, but stipulates that I mustn't use my arms to do so, there is a sense in which her request is unreasonable. If X must be done—the thought goes—we should have what is necessary to accomplish X. The following table illustrates the structure of property rights according to this view:

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<sup>38</sup> Eric Mack has recently argued for the natural right *of* property meaning that persons have a right *not to be excluded* from participating in an ongoing practice of property rights. Mack's view is a kind of hybrid balance between a pure natural rights view and an institutional view. I do not, however, think it is a stable balance because he does not consider Hume's claim that rights are naturally unintelligible outside of existing practices, and therefore it is unintelligible to claim that persons have a *right* to be included *in* a practice. See Eric Mack, "The Natural Right of Property," *Social Philosophy and Policy*, Vol. 27, No. 1 (2010), pp. 53-78.

<sup>39</sup> The expression "tools of preventative problem-solving" is Daniel C. Russell's from his "What virtue ethics can learn from utilitarianism."

Table 1 - The Structure of Rights

1) Who:	2) Necessary task	3) What belongs to the task	4) Rights claim
Participants in a property practice (e.g. George)	Acting to further one's material interests	Control over extra-personal objects	Property rights, i.e. "you cannot eat that piece of cake; it's George's"

The first column specifies whose task it is to perform. This is determined by the role a person occupies as a participant in an institution. The second column refers to the task required by living well, in this case, doing things with material objects. The third column refers to the modal sense of possibility, i.e. what persons need in order for it to be *possible* to carry out the task specified in 2). Lastly, the rights claim takes the form of a stopping modal, e.g. "you *cannot* eat that piece of cake" that is explained in terms of a constitutive rule of a property practice.

These modal statements are claims made within an institutional practice. We explain the justification of the institution itself by appealing to the higher order modal statement that invokes living well as the end for which a given task is necessary. A well-functioning society consists in institutions that secure the constraints persons need in order to be capable of living well, and rights are claims that persons have in virtue of participating in *these* institutions. Whereas on the natural rights view we ask which institutions best realize our natural rights, on the institutional account, we can ask which institutions function to enable us to live well. And this is a question that cannot be asked except from within ongoing institutional practices in comparison to some proposal for an alternative institutional arrangement.

The foregoing argument augments the institutional account of rights with a functionalist justification. Rights depend on institutions. That's Hume's claim. In this sense, rights are conventions subject to variation across different time periods and societies according to the local and temporal circumstances shaping how persons live well. There are, however, some institutions that are functionally related to living well. That's Aristotle's claim. The laws of these properly functioning institutions are identified as rights; they track what enables human beings to live well.

How do we identify the institutions that are functionally related to living well? There are two principal ways. The first is by taking a historical perspective. The fact that an institution has existed and served human purposes over time gives us a *prima facie* reason to regard it as functioning to enable us to live well. Laws against murder and other criminal offenses can be readily understood in these terms. Defenses of existing institutions draw on the thought that we should conserve the value of institutions that have worked and thus have demonstrated fulfilling a function.<sup>40</sup>

The second way is more difficult to grasp and articulate. While any well-functioning society consists in a relatively stable set of institutions that has endured over time, it isn't clear how we should *update* our institutions. The historical perspective needs supplementing with a forward-looking perspective. For example, why was it desirable, from the perspective of living well, for many democratic societies to expand the franchise to women in the beginning of the 20th Century? Since we cannot appeal to a natural right to political participation, the answer must be that universal suffrage was argued to be a better institution for serving the function of enabling persons to live well, given the

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<sup>40</sup> This is the basic idea of Edmund Burke's defense of conservatism.

circumstances of the time. We are always evaluating existing institutions in terms of new possibilities that shape how persons live well together in a community. The fact that it can be difficult to determine when this is the case shows that it is sometimes difficult to determine exactly the contours of living well when we are faced with changes in our environment and circumstances. There is no view from nowhere from which we can determine what universal rights we ought to have at a given moment.

This means that rights are always variable to the circumstances that affect how persons live well in a society. But rights are also invariable in the sense of serving the function of living well.<sup>41</sup> Some rights, for example, such as the right to life and the corresponding institutions that prohibit and punish murder, will be very nearly universal. But my account does not prescribe in advance one schedule of rights claims. The best we can do may be to identify different domains of rights. One aspect of rights will be jurisdictional. Property rights, for instance, divide up physical space and resources to deal with (among other things) the inconveniences of common usage. A second aspect of rights will be social. Through trial and error many societies have learned that insisting on the truth in matters of religion and other controversial subjects leads to social and political strife. A right to freedom of thought and religion is a solution. We also might think of rights as protecting certain material interests, such as social safety nets. Since persons are less likely to see the benefits of peaceful social cooperation when they are extremely poor, some institutions may support rights claims to a minimum of social assistance.

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<sup>41</sup> I owe this point to David Schmidtz.

On my view, then, the coercive nature of political institutions is justified because it is necessary to bring about and maintain institutions that secure the constraints on social cooperation required for persons to exercise practical wisdom together. Coercion belongs to the task of coordinating social cooperation. Political institutions occupy the unique role of performing the necessary task of protecting claims that persons have in virtue of participating in a system of social cooperation for the sake of living well. Political authority, therefore, consists in a right to a moral power that is coercively enforced. The constraining role of political institutions requires the use of coercion to coordinate effectively.

It will be instructive to compare my institutional account of rights justified functionally with Rasmussen and Den Uyl's (RDU) neo-Aristotelian account of classical liberal or Lockean rights. RDU's view resembles my own in several ways. We both acknowledge the need for an institutional/legal/political framework within which it is possible for persons to be ethical and live well. We also share a conception of human flourishing as fundamentally about the exercise of practical wisdom, lived socially and cooperatively in a community of other human beings. I also share RDU's view that rights are (part of) the solution to what they call liberalism's problem. The major difference, however, is that they deny a role for political institutions in living well. The purpose of political institutions, for them, is not to achieve, encourage, or even make possible living well, but rather to ensure that different conceptions of human flourishing can coexist. Consequently, they see rights not as tools that we utilize in our interactions through institutions, but more like pre-institutional constraints that any institutional arrangement must satisfy.

The next thing to note is that RDU treat sociality as a necessary ingredient in living well, but not as a fundamental feature of the socially embedded context within which we live well. On my view, sociality is both an ingredient in human flourishing and the context in which we develop the virtues required for flourishing. If flourishing is not atomistic and moral obligations are a function of practical wisdom—to which RDU assent—we must take seriously the socially embedded nature of those obligations. These are what practical wisdom works on. We learn, develop, and exercise practical wisdom in political society, and political society is shaped, in turn, by persons who are practically wise. Neither atomism, nor holism describes adequately the relationship between institutions and persons. Persons shape and are shaped by the institutions in which they live.<sup>42</sup> The point is not to blindly justify the status quo obligations generated by existing institutions, but rather to query how they fit into a virtuous life as a whole.

This is why I claim that political society is fundamental to the socially embedded perspective in which we live well by aiming at the virtues. When we reflect ethically on our lives we already have a life lived under the auspices of some political authority or another. But this political authority is not an abstract coercive order that must be justified in advance. For this reason, I do not justify rights as meta-normative principles, nor on perfectionist grounds as required by a conception of the human good. Rights are institutional *artifacts*; they are claims that emerge when persons who have different conceptions of living well cooperate for the mutual benefit of fulfilling their ends.

In this way, rights do not govern or constrain meta-normatively the *creation* of the political/legal order; they are the *output* of political institutions that properly function to

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<sup>42</sup> I explore this idea further in section 5.5.

enable us to live well. There will always be limits on political institutions considering the danger coercion poses to living well, but there is no *a priori* requirement that political institutions be limited by a right to negative liberty. Such a right, if it exists within some institutions, will limit certain coercive uses of political authority, but not a prohibition on coercion as such. Coercive may be an evil, but it is a necessary evil, a tool for coordinating joint action.

The above differences emerge even more clearly in RDU's account of the place of self-direction in flourishing. They usefully distinguish between practical wisdom as the proper exercise of practical reason and the capacity for self-direction (moral agency or choice) that is a precondition of being practically wise. The coercion wielded by political authority is fundamentally damaging to flourishing on their view because it undermines the capacity for individuals to be self-directed, that is, to make choices for themselves and so flourish in their own way. The logical extension of this position is that even if the *development of practical wisdom* requires, for example, educational opportunities, as Nussbaum advocates, providing such opportunities through the political apparatus will not substitute for the *exercise of self-direction*; this is something only individuals can "provide" for themselves.

I agree with RDU that the provision of conditions or goods for human flourishing by a political authority is not a substitute for the proper use of practical wisdom as an exercise of choice. But even if the *public* provision of the conditions for practical wisdom may not be justified (and I'm not sure they aren't), that doesn't show that educational opportunities and the social conditions for flourishing generally—however provided—are not necessary for genuinely self-directed activity. At minimum, the possibility of being

self-directed depends on what we learn as children in families. A society of self-directed persons is an achievement, not a forgone conclusion as long as nobody suffers coercion. Thus, even if it turns out that political institutions lack the authority to provide direct assistance for the development of self-direction, that doesn't show that political institutions have no role in producing a society with institutions that reliably produce persons capable of self-direction, and therefore persons capable of living well.

### 3.5 The Formative Role: Balancing Social Institutions

In light of these considerations, I argue that the formative role of political institutions is best understood in terms of balancing the political authority that is a function of living well with the authority of the social institutions that are the developmental loci of living well. Persons learn and exercise their capacity for practical wisdom in the context of social institutions. We become practically wise as citizens, parents, friends, students, employees, and so on. While any individual human being is in principle capable of choice or self-direction, we become self-directed *persons* by cooperating with and learning from others in social institutions suitably framed and supported by political institutions. Living well requires not mere choice, but choosing well, and choosing well requires an appropriate social context.

The formative role of political institutions consists in securing the social conditions we need to be capable of living well. There is a danger, however, that a reliance on political institutions to serve this function threatens the role played by the other social institutions in which persons develop the virtues. This danger was well-

described by Alexis de Tocqueville in a prophetic statement from *Democracy in America*. Imagining the future state of liberal democracies, de Tocqueville writes,

Above this race of men stands an immense and tutelary power, which takes upon itself alone to secure their gratifications and to watch over their fate. That power is absolute, minute, regular, provident and mild. It would be like the authority of a parent if, like that authority, its object was to prepare men for manhood; but it seeks, on the contrary, to keep them in a perpetual state of childhood: it is well content that people should rejoice, provided they think of nothing but rejoicing. *For their happiness such a government willingly labors*, but it chooses to be the sole agent and the only arbiter of that happiness; it provides for their security, foresees and supplies their necessities, facilitates their pleasures, manages their principal concerns, directs their industry, regulates the descent of property, and subdivides their inheritances: what remains, but the spare them all the care of thinking and all the trouble of living?<sup>43</sup>

What de Tocqueville saw was that emancipating individuals from so-called oppressive social institutional ties had the perverse effect of making them *even more* dependent on their tie to political institutions and thus more likely to become atomized and prone to what he called a “new despotism.” Once individuals are no longer dependent on the intermediate institutions to fulfill their needs, they must look toward political institutions to secure the goods necessary for living well. But in doing so, they lose out on the opportunity to develop the virtues that find a home in the non-political domain of family,

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<sup>43</sup> Alexis de Tocqueville, *Democracy in America*, ed. Nolla, trans. Schleifer (Indianapolis, IN: Liberty Fund, 2010), Vol. II, Section 4, Ch. 6 (emphasis added).

work, and community. Understanding the formative role requires that we pay attention to where formation occurs.

Another way of illustrating the problem is in terms of the two features of living well. I have claimed that living well consists in a) the exercise of practical wisdom *within* b) one's particular social context. Because practical wisdom requires choice, and ends necessitate interpersonal constraints, there is a sense in which we must make choices for ourselves relatively free from political and social influences. Institutions that *direct* our choices undermine our opportunity to become practically wise. But I have also emphasized that we always make choices within a social context, and as Aristotle understood, nobody becomes capable of choosing well without an appropriate social context. The institutions that constitute this social context—families, economies, polities—offer no guarantees of unfettered choice; they all direct and shape our desires in one way or another. What matters is that persons live in a social context within which choices, while not directed, are nevertheless presented against a background of options. In this respect, the parenting analogy is apt. For ideally parents do not direct what their children do with their lives, but they do present them with options and ways of weighing those options that render the choices they do make *meaningful*.

So much is to say that the intermediate institutions serve a crucial function in the development of practical wisdom. We can see this more clearly by taking three examples: a) families, b) economic institutions, and c) religious organizations. Families are perhaps the most important because they are where children are raised, children whom will eventually be responsible for perpetuating and carrying forth the institutions and culture of their society. Families represent forms of love and affection, teach social norms and

rules, and model how to manage one's affairs and responsibilities. A family that functions well teaches children to care for those close to them and expand their outlook to encompass others in the community and beyond.

As we become adults, we move from primarily occupying a role in a family to occupying a role in the broader society, and this usually takes the form of employment in the economic market or prefatory to that, an education. The economic realm encourages people to become cooperators, to provide something of value to others, and develop traits like self-esteem and responsibility. Well-functioning economic systems, therefore, are extraordinarily good at supplying people with things that they need and in doing so also provide people with a meaningful arena in which to pursue and exploit their interests and skills for the benefit of all.

Despite these obvious benefits, the economic domain is sometimes viewed lowly and not worthy of a fulfilling life. Whatever the merits of that claim, most people seek to augment their economic lives with a religious, spiritual, or artistic dimension. Institutions that aim at these ends allow us to commit ourselves to something that is bigger than any merely human endeavor. Religions, for example, bind groups together through shared beliefs, trust, and solidarity. These have obvious instrumental value, but are also valuable for their own sake. Religions are also crucial to the development of community and do charitable works where other institutions fall short. They transform practical wisdom by changing the way we look at the world, and therefore the scope of what it means for a person to live well.

A plea to revitalize the intermediate institutions can seem quaint.<sup>44</sup> There is also the problem of how this can be done from the standpoint of political institutions. For the explicit danger of political institutions, per de Tocqueville, is that they tend to crowd out many of the functions that were previously served by the intermediate institutions. Nonetheless, I have maintained that we must augment the constraining role of political institutions in safeguarding rights with the formative role that, we might say, gives us some idea of how to *use* our rights in fulfilling our responsibilities as members of society.

How then can political institutions play a formative role without displacing the essential functioning of intermediate institutions? The details of the formative role must necessarily be hammered out at the level of policy, which depends on the particulars and rests with perception.<sup>45</sup> But there are some general things that can be said about understanding the formative role as one of facilitation. First, the constraining role of political institutions issues in a set of rights that demarcates the boundaries between different forms of association and social organization, of which the smallest is the individual. The right to freedom of association is fundamentally a right to form institutions and groups that are smaller than the political state. Second, political institutions can function to decentralize power to allow intermediate institutions the space and authority they need in order to serve their peculiar functions. This *principle of subsidiarity* ensures that no institution grows so powerful as to envelope the functions of

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<sup>44</sup> For a plea to revitalize the intermediate institutions in the context of the current political situation in the United States, see Yuval Levin, *The Fractured Republic* (New York: Basic Books, 2016).

<sup>45</sup> This is an Aristotelian idea explored by Nancy Sherman in *The Fabric of Character* (Oxford: Clarendon Press, 1989), Ch. 2. See also Martha Nussbaum, “The Discernment of Perception: An Aristotelian Conception of Private and Public Rationality,” in *Love’s Knowledge* (Oxford: Oxford University Press, 1990), pp. 54-82.

all the other institutions. Lastly, political institutions maintain a framework of law that governs and facilitates the existence of crucial social institutions through things like family law, economic rules and regulations, and incentives for charitable and religious organizations.

In sum, the formative role and constraining role work in tandem. The formative role maintains an equilibrium of institutional authorities, while the constraining role protects the interests of persons as individuals and as members of social institutions. The formative role tends to the social context that persons need to develop the virtues. The constraining role draws a sharp line between each person's purpose, on the one hand, and between an individual's purpose and the society's overall purpose, on the other hand.

### 3.6 Conclusion

This Chapter has described the role of political institutions in living well. Political authority is justified to the extent that political institutions use their authority in enabling persons to live well. Enabling, as I have explained, consists in a constraining role and a formative role. This account of political authority, however, is preliminary in the sense that I have not yet explained the limits on political institutions and whether there is a social good beyond the good of each individual person at which political institutions aim.

Because I have taken the virtues, and not rights, as a starting point, the way to proceed is to examine in detail the relevant political virtues. The next Chapter begins by examining justice as a virtue of individual character.

## **Chapter Four: The Virtue of Justice and the Limits of Political Institutions**

I begin this Chapter with a brief recap. The authority of political institutions depends on performing the function of enabling persons to live well together in a community, while the virtues require, but also limit the authority of political institutions. As such, I see political institutions as partly constitutive of the good of cooperation that we take part in as social beings. Further, political obligation itself is part of living well within the socially embedded perspective. The first challenge for my thesis was to account for the place of disagreement and choice/agency in the idea of living well. Because we disagree about living well, I proposed in Chapter Two that political institutions are for the sake of living well in a thin sense, understood as different ways of exercising practical wisdom in one's socially embedded circumstances. And because living well requires constraints to enable practical wisdom as an exercise of choice/agency, Chapter Three explained the role of political institutions in terms of establishing and maintaining a set of institutional rights (i.e. the constraining role) in a way that is compatible with the other social institutions as the loci of moral development (i.e. the formative role).

The purpose of this Chapter is to expand the account of the justification of political authority to understand the limits of political institutions. Views of political authority descending from the social contract theories of Hobbes, Locke and others employ individual rights as an external constraint on the authority of political institutions. But because my view adopts an institutional account of rights, it cannot limit political authority in terms of pre-institutional rights. Rights are claims that individuals have as

participants in institutions and practices, not prior constraints on those institutions. While I have explained the general framework for how we justify the institutions and practices that determine our rights, it remains to explain what principled limits there are on the institutions of political authority as such.

The challenge for this Chapter is how to reconcile the idea of a limited political authority with my thesis that the function of political institutions is to enable us to live well. The issue is that a *limited* political authority is often thought to be neutral between different conceptions of the good, different ways of living well. While I have explained abstractly how political institutions can enable living well in a thin sense, we now need to know whether my view is compatible in practice with a limited political authority. The thin conception of living well explains the justification of political institutions in terms of living well, given reasonable pluralism. But it doesn't settle any substantive questions about the limits of institutions, given the actual disagreement about living well we find in political societies.

My view proposes justice—a necessary virtue for both individuals and institutions—as a limit on political authority. As I will explain, this makes possible a limited political authority justified in terms of living well. But what is the relationship between just persons and just institutions? Is justice a limit as a property of institutions? Or is justice a limit as a property of individuals who act through institutions?

As we will see, neither option is without obstacle for my thesis. If just institutions come first, justice can be a limit on political authority, but it divorces political authority from its role in living well insofar as institutional justice is defined independently of living well. On this view, individuals are only just insofar as they follow antecedently just

institutions. Call that *the structural view* of institutional justice.<sup>46</sup> Reversing the priority, we might start with the just individual and define just institutions as the proper relations between just persons. But, on this view, because persons disagree about justice, it is not clear that political institutions could have a role in living well without prejudging or privileging some conceptions of living well (and so justice) over others. Call that *the compositional view* of institutional justice.

To explain the relationship between individual and institutional justice, I distinguish two conceptions of the virtue of justice: i) justice as fairness, and ii) justice as lawfulness.<sup>47</sup> Justice as fairness understands the just individual as disposed to act in accordance with a conception of fairness.<sup>48</sup> Justice as lawfulness understands the just individual as disposed to follow the laws and social norms (or *nomoi*) of her community. Building on the compositional view of institutional justice, I argue for the lawfulness conception of individual justice. Justice as lawfulness limits political authority in a way compatible with disagreement about justice (as fairness) and the role of political institutions in living well. It does so by drawing on the norms and practices of a community in a way that is publicly justifiable, thus fulfilling an important function of justice in political society. The conception of justice as fairness, meanwhile, fails because it cannot account for public justifiability.

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<sup>46</sup> These views are distinguished in LeBar, “The Virtue of Justice Revisited,” in *The Handbook of Virtue Ethics*, ed. Van Hooft and Athanassoulis (London: Acumen Publishing, 2014), pp. 265-275.

<sup>47</sup> I follow here legal theorist Lawrence B. Solum, “Natural Justice: An Aretaic Account of the Virtue of Lawfulness,” in *Virtue Jurisprudence*, eds. Farrelly and Solum (New York: Palgrave MacMillan, 2008), pp. 166-192.

<sup>48</sup> Despite the name, I am not referring here to Rawls’s specific view of Justice as Fairness, but rather more generally to conceptions of justice that are based in fairness, including, but not limited to Rawls’s view.

The first section (4.1) introduces justice as a virtue of individual character. I continue in (4.2) with the structural and compositional views of institutional justice. As we will see, each view presents a distinct challenge for reconciling the function of political institutions to enable us to live well with a limited political authority. Section (4.3) considers and critiques Mark LeBar's combination of the compositional view with a conception of justice as fairness. The failure of the fairness conception in accounting for the function of justice suggests the lawfulness conception as a viable alternative (4.4). Section (4.5) explains the place of fairness in justice as an individual virtue. I conclude (4.6) that this account of justice is naturally supplemented with a conception of friendship and the common good that explains the role of community in a political community, setting up Chapter Five.

#### 4.1 Justice as an Individual Virtue

Ancient philosophers like Plato and Aristotle understand justice as “the only virtue considered to be the good of another.”<sup>49</sup> Aristotle gives two reasons. First, justice is exercised in relation to another person. Second, acts of justice are acts that benefit another person. While all virtues benefit their possessor, justice is a virtue that also renders benefits to others. But contrary to the modern view that the just person is willing to sacrifice some (or all!) of his own interests in order to benefit others, the ancient view does not necessarily oppose self-interest to other-regarding interest. It sees no special problem for reconciling the good of individuals with the demands of justice simply

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<sup>49</sup> Aristotle, *NE* 1130a. Cf. Plato, *Republic* 343c.

because justice concerns the interests of others. But it does raise the question of how the good of individuals intersects with the interests of the broader society.<sup>50</sup>

Following Aristotle's general account of virtue, we can define justice as a settled disposition of character to perform just acts a) with knowledge, b) sound emotion, and c) from rational choice.<sup>51</sup> Aristotle also thinks of virtue as hitting a mean between two extremes of vice in terms of excess and deficiency, that is, performing the right action, with the appropriate emotion, at the right place, at the right time. As many commentators have noticed, the virtue of justice fits uncomfortably within the doctrine of the mean, which may be why Aristotle says justice is only "a sort of mean" because "it is related to a mean."<sup>52</sup>

More germane for our purposes is Aristotle's distinction in Book V between different modes of justice/injustice. He distinguishes a) what is just, b) a just act, and c) a just person.<sup>53</sup> What is just, for Aristotle, is determined either by natural justice or conventional enactments that aim at the happiness of the community. This enables him to distinguish a) justice/injustice per se from b) an act of justice/injustice, which is something done in accordance with a). Further, b) an act of injustice performed through ignorance or emotion can be separated from acts that are performed from c) an unjust character, which requires choice and a settled disposition. To Aristotle's tripartite distinction, we can add for the purposes of this Chapter, d) the justice of institutions. A just institution meets the standards of a) what is just.

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<sup>50</sup> Annas, *The Morality of Happiness*, pp. 291-292.

<sup>51</sup> *NE* II.

<sup>52</sup> *Ibid.*, 1134a.

<sup>53</sup> *Ibid.*, V.6-8.

How are these different modes of justice related? It might seem that the obvious place to begin, on a virtue ethical account, is with the just person. But as David Wiggins has pointed out, the notion of c) a just person depends on a prior analysis of b) just acts (i.e. what acts the just person performs), which in turn depends on a) what is just.<sup>54</sup> What's more, the notion of a) what is just seems to be related to d) the justice of institutions, since many questions of what is just invoke or assume the existence of institutions that can be either just or unjust. Before getting into the details, we can see here the seeds of the structural and compositional views of institutional justice. The structural view insists on starting with the justice of institutions, whereas the compositional view will insist that institutional justice cannot be divorced from the judgments and dispositions of the just (or virtuous) person.

One interesting feature of Aristotle's discussion is that he begins with *injustice* instead of justice. The idea is that if we can identify the one state, either positive or negative, the contrary state will reveal itself.<sup>55</sup> And we do in fact seem to take more notice when someone acts unjustly, since this is more likely to arouse negative emotions than the cold virtue of justice.<sup>56</sup> A secondary reason for starting with injustice is that it allows us to start with the question of how to incrementally improve a state of affairs, instead of imagining an ideally just state of affairs to strive for. We ask, "what would make this better?", not "how good could this possibly be?"

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<sup>54</sup> David Wiggins, "Neo-Aristotelian Reflections on Justice," *Mind*, Vol. 113, No. 451 (July 2004), pp. 487-491.

<sup>55</sup> Aristotle, *NE* V.1.

<sup>56</sup> J.R. Lucas, *On Justice* (Oxford: Clarendon Press, 1980), pp. 4-5.

Aristotle cites two types of unjust persons: i) the lawless person, ii) the greedy and/or unfair person. These types reflect the two senses in which the Greek adjective *dikaion* is used, meaning either that someone is lawful or that they are fair. The difference forms the basis of a distinction Aristotle makes between general justice and particular justice.<sup>57</sup> General justice refers to the whole of virtue: the lawful person is understood to follow the laws that enjoin acting according to the virtues. Particular justice, in contrast, concerns fairness in terms of the distribution of external goods and the emotions related to the greedy person who is desirous of or grasping toward these goods (*pleonexia*). But the two are obviously related since some laws concern the distribution of goods, and similarly laws raise issues of fairness. In what follows, strictly speaking, I focus on particular justice, although as we will see, the distinction is, in some ways, artificial on the lawfulness conception that I will defend.

Following, then, Aristotle's distinction between the lawful and the fair person, we can distinguish the conception of justice as fairness and the conception of justice as lawfulness. How are these conceptions related? The issue is how we should understand the just person. Is the just person someone who has a disposition to follow and endorse the laws? Or is the just person someone who has a disposition to act fairly? Obviously, both concepts must feature in an adequate account of the virtue of justice, so the real question is how they are related. We also need to know how these conceptions relate to the justice of institutions. The foregoing table yields the following possibilities for combining individual and institutional justice:

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<sup>57</sup> Mitzi Lee, *Justice in Aristotle's Ethics and Political Philosophy* (forthcoming).

Table 2 - Individual and Institutional Justice

Justice as Lawfulness (individual)	Justice as Fairness (individual)
Compositional (institutional)	Compositional (institutional)
Justice as Fairness (individual)	Justice as Lawfulness (individual)
Structural (institutional)	Structural (institutional)

Before moving to discuss institutional justice, we should note a contemporary criticism of Aristotle’s conception of justice. Bernard Williams criticizes Aristotle’s conception of justice as a virtue for focusing on the narrow motive of *pleonexia* in accounting for the injustice of persons.<sup>58</sup> According to Williams, Aristotle’s conception is unsatisfactory because there are obvious acts of injustice that need not draw on the motive of greediness. For instance, the act of stealing is not mitigated *as an unjust act* because it is motivated to do good for another person. Some actions or states of affairs are simply unjust regardless of motivation. In light of this, rather than make *pleonexia* the defining feature of the unjust person, Williams thinks of the unjust person as someone who lacks a disposition to promote just distributions or outcomes, *however* motivated. Someone who steals is unjust because he has failed to preserve the just distribution wherein a particular person justly holds a piece of property. For Williams, then, the just person seems to be guided by considerations of fairness, and considerations of fairness seem to invoke an account of the justice of institutions. Thus, Williams seems to hold the structural view of institutional justice with a justice as fairness conception of individual justice.

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<sup>58</sup> Bernard Williams, “Justice as a Virtue,” in *Essays on Aristotle’s Ethics*, ed. Rorty (Berkeley, CA: University of California Press, 1980), pp. 189-200.

Notably, Rawls shares Williams' view. Responding to the charge that his conception of justice is a break from philosophical tradition, Rawls says, "Aristotle's definition [of justice] clearly presupposes, however, an account of what properly belongs to a person and of what is due to him."<sup>59</sup> Further, "such entitlements are [...] very often derived from social institutions and the legitimate expectations to which they give rise."<sup>60</sup> Rawls's point is that even if, following Aristotle, we understand justice as an individual virtue—as a disposition to perform just acts—we need a conception of institutional justice to apply to the basic structure of society in order to determine what acts are just, and so what people are entitled to as a matter of justice. The virtuous person is then the person disposed to promote these just distributions in her actions. But what counts as a just distribution? Must we, like Rawls, answer this question independently of the judgment of the just (or virtuous) person, with a theory of ideally just institutions? Or is there something central about the justice grasped by the just person? To answer this, we need to connect justice as a virtue of character to the justice of institutions.

#### 4.2 Justice as an Institutional Virtue

As I explained, there are two ways to understand institutional justice. On the structural view, we begin with the justice of institutions and define the just individual as someone who is disposed to uphold and follow just institutions. In contrast, on the compositional view, we begin with the just person and understand just institutions in terms of the relationships between just persons. This section examines these two

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<sup>59</sup> Rawls, *A Theory of Justice*, pp. 9-10.

<sup>60</sup> Ibid.

competing views in more detail. While I ultimately defend the compositional view, I will show that each view presents a challenge for my thesis that political institutions perform the function of enabling persons to live well together. Both views threaten the possibility of a limited political authority justified in terms of living well.

Let's begin with the structural view. The structural view of institutional justice has dominated political philosophy since Rawls's *A Theory of Justice*, so it needs no grand explanation. The main idea on this view is that justice is primarily a property of institutions and practices (i.e. "the first virtue of institutions"), and further, that we can develop an idea of what the institutions of a just society would be like, which provides normative guidance in the evaluation of existing institutions. The just person, then, is someone who has a disposition to promote institutions that are just according to the best theory. As Rawls puts it, the duty of justice "requires us to support and to comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established."<sup>61</sup> The structural view fits comfortably with a conception of individual justice as fairness, since the theory of just institutions provides criteria for assessing whether a person is fair by the lights of the theory.

One feature of structural views of institutional justice is that they draw a sharp line between justice (the right) and living well (the good). We have already seen, for instance, that Rawls's theory permits individuals broad latitude to pursue different conceptions of the good so long as they are consistent with what justice requires. Rawls's later work takes this idea further drawing a distinction between a *political* conception of justice (as fairness) that applies only to the basic structure institutions of a society, and

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<sup>61</sup> Ibid., p. 99.

different *comprehensive* doctrines held by individuals.<sup>62</sup> Comprehensive doctrines may support an overlapping consensus on a society's political conception of justice, but they cannot themselves form the basis of public policy. The result is some notion of state neutrality about the good.

The structural view rightly focuses on institutions and practices as a site of justice. It also captures the liberal idea that there ought to be some principled limits on political authority when it comes to questions of the good. These are important points for my account to address. However, there are two problems affecting the structural view and its viability for my thesis. The first is a point made by LeBar whose view we will have occasion to consider in the next section. LeBar's criticism of the structural view is that it divorces the reasons an individual has to be just, as part of living well, from the reasons an individual has to support (ideally) just institutions. Famously, Rawls requires us to leave behind ideas we might have about the good (living well) in order to enter the original position and consider justice impartially behind the veil of ignorance. This creates a bifurcation in practical reasoning that is alien to virtue ethics. On the structural view, institutions are not justified in terms of how they enable actual persons to live well, but in terms of an ideal theory of just (or fair) institutions that may or may not answer to the concerns of actual persons and how they conceive of the good for themselves and their community. This too is a problem. For fairness is something that exists in real communities. The structural view is right to consider the fairness of institutions and practices, but these play roles in people's lives that themselves raise questions of fairness.

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<sup>62</sup> Rawls, *Political Liberalism*.

To fulfill their function in social life, institutions and practices need to be fair, or at least seen to be fair. But they need not be ideally fair.

The structural view, at least in Rawls's case, seems to have been partially motivated to avoid the utilitarian attempt to define just institutions in terms of satisfying the principle of utility. According to Rawls, utilitarianism extends to "society as a whole the principle of rational choice for one man."<sup>63</sup> The utilitarian account of justice is a compositional view insofar as it defines the just person as someone who promotes utility at the individual level and is disposed to promote utility aggregately through political institutions. As we have noted, Rawls rejected utilitarianism because it allowed individual interests to be sacrificed when they were in service of the overall good. Can the same objection be made to compositional views generally? Do political institutions that enable us to live well blur the distinction between persons, so that the good of society permits sacrifices of the individual good? Setting aside utilitarianism, there is good reason to think the objection does not apply to a eudaimonist compositional view. As Rosalind Hursthouse writes,

The thought that motivates regarding utilitarianism as a threat is the thought that wrong or wicked acts regarding particular individuals can be 'justified' when they maximize the good of happiness. But a *eudaimonia*-based account gives no such reductive account of wicked or wrong acts. *If a just law, determining a right, cannot, as things stand, be implemented in a particular society, without*

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<sup>63</sup> Rawls, *A Theory of Justice*, p. 24.

*necessitating that some members of the society act wickedly or wrongly, then it cannot, as things stand, be implemented.*<sup>64</sup>

The italicized portion of this passage is what LeBar has called “Hursthouse’s Constraint.”<sup>65</sup> According to LeBar, Hursthouse has shown that virtue is a *limit* on the exercise of political authority. Fundamentally, then, Hursthouse has a compositional view of the justice of institutions. We start with just persons, who are virtuous, and then consider what kind of institutions are compatible with the actions of virtuous persons. And whatever merit there is to a theory of just institutions, Hursthouse maintains that the theory must be consistent with the requirements of virtue exercised by individual persons who act through political institutions. Thus, one important feature of the compositional view seems to be that we consider what kind of actions institutions require of individuals in carrying out policies in accordance with a theory of (institutional) justice.

Following Hursthouse’s Constraint, the compositional view needs an account of what it means for institutions to require vice. I note here a danger for the compositional view, namely, that virtue as a limit on political authority will be too strong to justify the role of political institutions in living well. As we saw Rasmussen and Den Uyl claim in the previous Chapter, it may be that there is something vicious about political authority itself as a coercive enterprise. The problem is that people disagree about what it means to be a just person, and therefore what it means for political authority to be justified in terms of virtue. This is a more entrenched version of the problem of reasonable pluralism that raises the question of state neutrality about the good. Can individuals who disagree about

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<sup>64</sup> Hursthouse, “After Hume’s Justice,” p. 242 (emphasis added).

<sup>65</sup> LeBar, “Virtue and Politics,” p. 273. I first introduced “Hursthouse’s Constraint” at the end of Chapter One.

the grounds of political authority nonetheless live together in a society that claims to be for the sake of living well understood *by* and *for them*?

LeBar puts this challenge for the compositional view in the following way. Virtue ethical accounts of political authority can maintain a *weak* form of liberal neutrality, whereby political authority depends on performing the function of enabling persons to live well, but the institutions of the society maintain neutral and do not prohibit conceptions of the good.<sup>66</sup> In this way, weak liberal neutrality sustains a limited account of political authority. Persons can pursue different conceptions of living well consistent with the justifying end of political authority. “But,” according to LeBar, “that is not quite the point. The issue is not one of how much latitude one has in choosing the terms of one’s own life. Instead, it is *who gets to decide* what that latitude is.”<sup>67</sup> We should distinguish, then, between the first order question of how persons should be allowed to live under a political authority and the second order question of who makes that decision about the limits of political authority.

LeBar’s challenge implies that it may be vicious to impose a conception of living well on another person, either from one individual to another *or* by individuals acting through the medium of political institutions. This is a very strict interpretation of Hursthouse’s Constraint. For instance, adapting one of LeBar’s own examples, we can imagine three persons who each hold one of the three views of the role of political institutions considered in the previous Chapter: Aristotle, Nussbaum, and Rasmussen and

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<sup>66</sup> LeBar attributes the weak neutrality view to Christine Swanton in her “Commentary on Michael Slote’s ‘Virtue Ethics and Democratic Values,’” *Journal of Social Philosophy* 24, pp. 38-49.

<sup>67</sup> *Ibid.*, p. 278 (emphasis original).

Den Uyl.<sup>68</sup> In such a society, LeBar points out that a coercive political authority acting on behalf of any of these views singularly will be seen as vicious by those who hold the two opposing views. According to LeBar, “in each case, the party on the ‘receiving end’ of the coercive authority would regard it as unwarranted by an adequate or correct conception of the justifying aim of political authority.”<sup>69</sup> The compositional view, then, may put a very strong limit on the use of political authority, so strong, in fact, that institutional justice may be self-defeating, at least judged against a strict standard of individual justice according to each person’s judgment.<sup>70</sup>

I consider LeBar’s treatment of this issue in the next section. For now, to summarize this section, I put the issue in terms of a dilemma for how to understand institutional justice on my account. Either we take the structural view, in which case political authority is limited by a theory of justice, not living well; or we take the compositional view, in which case living well may offer no justification for a limited *political* authority. The former bifurcates living well and considerations of justice in the account of practical reasoning. The latter considers individual justice so stringent as to undermine living well as the justifying aim of political institutions. To maintain the compositional view, then, we need a clearer understanding of justice as an individual virtue. Hursthouse’s Constraint identifies virtue as a limit on the exercise of political authority. But as we’ve seen, justice as a virtue of character can be understood in terms of

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<sup>68</sup> Ibid., pp. 276-277.

<sup>69</sup> Ibid.

<sup>70</sup> This strong interpretation of Hursthouse’s Constraint seems to require a form of anarchism, perhaps the form Aristotle thought of as an extreme version of democracy. See *Politics* VI. 1-2.

fairness or lawfulness. In the next section, I consider and critique LeBar's fairness-based compositional view of justice before arguing for the lawfulness conception.

#### 4.3 The Fairness Conception

In a series of papers, LeBar defends a version of virtue ethics that incorporates Kantian insights about respect for persons in a way suitable to approaching issues in political philosophy from a eudaimonist perspective, particularly political authority.<sup>71</sup> One form LeBar's view takes is an argument for "a certain *liberal* conception of political authority—what is sometimes called 'justificatory liberalism'—[as] something virtue ethical theories have reason to endorse."<sup>72</sup> Justificatory liberalism is a liberal conception of political authority that "requires the justification of that authority to each individual subject to it."<sup>73</sup> Drawing on Rawls's work in *Political Liberalism*, justificatory liberals (or sometimes "public reason liberals") ground their account of political authority in a conception of persons as fundamentally free and equal insofar as they are reciprocally placed to determine their obligations and duties.<sup>74</sup> No person, according to this view, has any natural or pre-existing obligation to obey another.

An understanding of this justificatory relationship between persons, LeBar argues, is something missing from virtue ethical accounts of political authority. To illustrate this relationship, let us return to the example from Chapter One: the case of the Petty Despot

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<sup>71</sup> See his "Virtue and Politics," "The Virtue of Justice Revisited," as well as "Eudaimonist Autonomy," *American Philosophical Quarterly* 42 (2005), pp. 171-84, and "Virtue Ethics and Deontic Constraints," *Ethics* 119 (2009), pp. 642-71.

<sup>72</sup> LeBar, "Virtue and Politics," p. 265 (emphasis original).

<sup>73</sup> *Ibid.*, p. 279.

<sup>74</sup> Gaus, *The Order of Public Reason*, pp. 14-35.

who rules a small country, but then becomes convinced by a particular conception of living well and corresponding liberal policy recommendations (e.g. Nussbaum's capabilities). As a result, the country becomes more liberal at the level of policy. But, LeBar observes, "nevertheless there is still something awry: the citizens are still living *at the whim of the despot*."<sup>75</sup> The petty despot still acts *wickedly* toward his citizens. And if we take Hursthouse's Constraint seriously, this is something a virtue ethical account ought to care about. But how can the viciousness of this relationship be understood in terms of the virtues?

LeBar draws on T.M. Scanlon in proposing that we see ourselves as standing in a relation of *mutual recognition* with each other, and he identifies this relation as involving a virtue. As LeBar cites Scanlon:

The contractualist ideal of acting in accord with principles that others (similarly motivated) could not reasonably reject is meant to characterize the relation with others the value and appeal of which underlies our reasons to do what morality requires. This relation, much less personal than friendship, might be called a relation of *mutual recognition*. Standing in this relation to others is appealing in itself – worth seeking for its own sake.<sup>76</sup>

Elsewhere LeBar is clear that this relationship between persons is a way of understanding the reasons we have to respect persons, and that respect for persons is plausibly part of an adequate conception of justice as an individual virtue. This is the Kantian element of his view. The impetus for the Kantian element stems from LeBar's dissatisfaction with the

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<sup>75</sup> LeBar, "Virtue and Politics," p. 278 (emphasis original).

<sup>76</sup> T.M. Scanlon, *What We Owe to Each Other* (Cambridge, MA: Harvard University Press, 1998), p. 162 (emphasis added).

limits of ancient accounts of the virtue of justice. Thus, he asks, “[a]re there not ways in which we can treat each other unjustly in ways that do not involve unjust distributions, or corrections, or claims to political authority?”<sup>77</sup> What about our relations to persons as such? Or what about our obligations to those who do not share our political community? Apart from some tentative developments in the Stoics, the ancient philosophers are mostly silent on these questions.<sup>78</sup>

There are three core Kantian elements to LeBar’s expanded conception of the virtue of justice. The first is the familiar Kantian principle of always treating persons as ends in themselves and never *merely* as means. Here the idea is that we cannot simply use other people as means to our own ends, since they have ends of their own that demand our respect. A just person will recognize these ends as morally weighty for their own sake. The force of the first Kantian claim leads to a second idea that the just person, in his relations with others, “refrains from imposing his will on them in any way that is incapable of reciprocation.”<sup>79</sup> Thirdly, this recognition of respect suggests that others have a kind of moral standing to demand that we treat them in ways that can be reciprocally justified. And lastly, LeBar argues that seeing others in this way “is quite congruent with the idea that there is a virtue involved.”<sup>80</sup> Treating others justly requires treating them with respect, and respect involves justifying our actions to others in ways that they themselves can accept. To treat others justly is, in part, to respect them as persons.

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<sup>77</sup> LeBar, “The Virtue of Justice Revisited,” p. 267.

<sup>78</sup> For the Stoic influence on Kant see Martha Nussbaum, “Kant and Stoic Cosmopolitanism,” *The Journal of Political Philosophy*: Vol. 5, No. 1 (1997), pp. 1-25.

<sup>79</sup> *Ibid.*, p. 269.

<sup>80</sup> *Ibid.*

LeBar's conception of the virtue of justice focusing on respect for persons is best understood as a version of the fairness conception. Recall that the justice as fairness conception understands the virtue of justice in terms of what the just person judges to be fair. For LeBar, treating others with respect is a way of treating them fairly. The just person is disposed to treat others as free and equal persons, deserving of respect and reciprocal justification for any (and all) obligations and duties imposed. Unlike Rawls, however, LeBar does not adopt the structural view that justice as fairness requires a prior account of just (or fair) institutions. Instead, he defends the compositional view, according to which the virtue of justice requires that we treat others fairly (i.e. with respect), and this conception of fairness limits the ambit of political institutions. In terms of Hursthouse's Constraint, then, the "person of individual virtue who sees others in the ways we have characterized [...] need not seek to impose her conception of justice (individual or institutional) on others in any way that is not reciprocal."<sup>81</sup> The second order question of "who gets to decide" is determined by each individual person according to a reciprocal standard of justification. The question of public justifiability gets answered by scaling up these justifications in accordance with a theory of public reasons.

As I see it, LeBar's view makes room for a modern limited account of political authority while abandoning the ancient grounding of political authority in living well. This is a departure from my own view. But since there is no reason to resist this implication by the lights of his own theory, I move to two critical remarks that set up my discussion of the lawfulness conception of justice.

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<sup>81</sup> Ibid., p. 273.

First, LeBar's attempt to settle what he calls the second order question of political authority is not successful. The second order question of *who gets to decide* is fundamentally about having a means of public justification about the limits of political authority. On LeBar's view, a first order question of fairness would concern who has (or what is) the best conception of fairness, and such a person will be just if we can agree on the best conception of fairness. But of course, we do not agree. LeBar accounts for this disagreement in abstracting our relations to one another to consider the second order question of *who gets to decide* the best conception of fairness, that is, who gets to determine how we should treat one another in accordance with respect for persons. And his response, joining the public reason liberals, is that each person has a fundamental claim to determine this question for themselves. Thus, we are reciprocally placed in our moral obligations to each other. Following Locke, Rawls, Gaus, and others, fairness requires that we are free and equal in this way. Public justification requires public reasoning in terms that others can accept according to their own reasons, not merely ours.

The problem here is that there is no answer to the question of who gets to decide in the abstract. Second order questions are essentially questions about jurisdiction, and jurisdiction cannot be determined without first accounting for existing institutions and rights, which are publicly justified in terms of the laws of some existing community. As Lucas puts it, "[the law] tells us not what is to be done in a situation, but who is to decide what shall be done. And to have the say is to have a right."<sup>82</sup> While we could join public reason liberals in constructing a second order theory of fairness, I will argue in the next section that the conception of justice as lawfulness does better on this score because it

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<sup>82</sup> Lucas, *On Justice*, p. 27.

answers to the *functional role* of institutions in our lives; it answers to their role in living well.

Moreover, what LeBar refers to as the “justificatory relation” between persons is something that already exists embedded in institutions, practices, and roles. Authority resides in our relationships to persons through the social context of institutions. These relationships settle questions of jurisdiction, that is, who gets to decide. As I have emphasized, institutions, practices, and roles determine our relationships to others in ways that make our obligations and duties transparent even if not fully determinant. In this framework, virtue consists not in an abstract determination of what our moral obligations to others consist in, but rather in shaping and working on the materials provided by our existing relationships that already answer *part* of the question of how we should act. While we must allow a place for something like a freestanding way to construe our relationships with others insofar as we are human beings, it is not necessary for understanding the virtue of justice. The reason for this is that justice articulates only *some* of our relations with others, namely, those that involve institutions, social practices, and their corresponding rights claims. LeBar is correct in saying that there are right and wrong ways of treating others as such, but there is no need to make all these ways of treating others matters of justice. To make good on these claims, in the next section, I argue that we should think of the virtue of justice in terms of lawfulness.

#### 4.4 The Lawfulness Conception

As I’ve set it up, the challenge for understanding the virtue of justice as a limit on political authority is to reconcile this idea with living well as the justifying aim of that

authority. In this section, I will argue that the conception of justice as lawfulness can meet this challenge. It does so in two ways. First, if, as I've argued, institutions and practices are central to our moral development, a disposition to act in accordance with the rules of institutions and practices will be crucial for our ability to live well in political society. Second, the institutions and practices of a society inevitably draw lines between the purposes of individuals and the purpose of the society as a whole. While these lines are not always clear, there are resources on the justice as lawfulness conception to resolve the tensions in favor of a limited account of political authority.

The conception of justice as lawfulness claims that the just person is disposed to act in accordance with the laws (or *nomoi*) of the community. Recalling Wiggins' distinction, the modes of justice are a) what is just, b) a just action, c) a just person, and d) a just institution. What is just in sense a) on this view refers to the *nomoi*. A just act in sense b) is an action that is consistent with the *nomoi*, while the just person in sense c) acts from a settled disposition in accordance with the *nomoi*. Finally, since I defend the compositional view of institutional justice, a just institution will be an institution that a just person supports, which is to say that it is an institution that is consistent with the *nomoi*. I use the Greek term *nomoi* deliberately to indicate the usefully broad sense of "law" in ancient Greek political thought. As Richard Kraut explains,

[W]hen [Aristotle] says that a just person, speaking in the broadest sense in *nomimos*, he is attributing to such a person a certain relationship to the laws, norms, and customs generally accepted by some existing community. Justice has to do not merely with the written enactments of a community's lawmakers, but with the wider set of norms that govern the members of that community.

Similarly, the unjust person's character is expressed not only in his violations of the written code of laws, but more broadly in his transgression of the rules accepted by the society in which he lives.<sup>83</sup>

The critical role of the *nomoi* in a political society is that they function as public judgments for how persons should act toward each other. A thoroughly lawless society is one in which persons act solely based on their own judgment without regard to the community or others. While there can never be complete unanimity, full transparency, or determinacy in the social norms of a society, the public nature of law, either written or informal, allows people to interact beneficially, since they know what to expect from each other. Law is the institutionalization of trust.

The foregoing justification is analogous to the importance of the rule of law, and sharply distinguishes the lawfulness conception from the fairness conception. For on the fairness conception, each individual person has a right to determine her obligations for herself, independent of the expectations of others or the community more broadly. The question "who is a just person?", thus may have as many different answers as there are persons in the community, since everyone may have their own idiosyncratic conception of fairness. But this ignores the critical function of the shared expectations that institutions and social practices serve, the requirements of which are codified or embedded in written and customary law.

The first virtue of the lawfulness conception, then, is that it fulfills the function of public justifiability. We answer the second order question of who gets to decide by referring to the offices and relationships that are defined by the institutions and practices

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<sup>83</sup> Richard Kraut, *Aristotle* (Oxford: Oxford University Press, 2002), pp. 105-6.

of a society, expressed in its *nomoi*. This is not a constructed Rawlsian notion of public justifiability understood as public *reason*, but rather a version of public justifiability that accounts for the actual role played by institutions and practices in our socially embedded moral lives. My view focuses on public *practices* rather than public reason.

Constructed accounts of public justifiability seem to have descended from coming to terms with the fact of reasonable pluralism. For it is thought that we need a way to model and explain how the diversity that exists in modern societies can coexist with a coercive political authority. While the fact of reasonable pluralism is important<sup>84</sup>, I believe it carries too much weight in the discussion of public justifiability. Any stable society characterized by reasonable pluralism also consists of a set of shared beliefs, the *nomoi*. Indeed, reasonable pluralism is only possible if there exists some set of stabilizing beliefs about how groups with different beliefs ought to behave toward one another. Otherwise, while there might be pluralism, there is also likely chaos on the horizon. As Hursthouse puts it, “[a] society made up of mostly quite decent people, with, moreover, a history in which the state has concerned itself, directly, or indirectly, with its members’ virtues as well as their (liberal) rights, will not contain many examples of startlingly different moral views.”<sup>85</sup> In other words, it is precisely when societies begin to break down morally that we start to see very different moral views that cannot or will not coexist. This suggests that well-functioning societies need some relatively stable and homogenous set of *nomoi* so that healthy pluralism can take root. And justice as

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<sup>84</sup> See Chapter Two.

<sup>85</sup> Hursthouse, “After Hume’s Justice,” p. 243.

lawfulness, I contend, is more likely to result in a stable pluralism than a conception of justice as fairness.

Before continuing to consider the implications of the lawfulness conception on the compositional view of institutional justice, it will be beneficial to revisit how individual and institutional justice intersect. Below is a table illustrating the different combinations that are possible and some paradigm views for the sake of illustration.

*Table 3 - Conceptions of Justice*

	Compositional	Structural
Justice as lawfulness	My view	Natural Law Theorists
Justice as fairness	LeBar	Rawls

Note that I share with LeBar the compositional view of institutional justice, but we differ in the interpretation of justice as an individual virtue. Meanwhile, LeBar and Rawls share a broad conception of justice as fairness, but take different views on its relation to the justice of institutions. Rawls thinks of fairness as primarily a property of institutions and thinks we need a theory of fairness in order to determine what a just person is. LeBar, in contrast, thinks of fairness in terms of respect for persons and takes this requirement to lay a considerable constraint on how we construe the justice of institutions. Lastly, it is possible to have a conception of justice as lawfulness, but to understand lawfulness in terms of a set of institutions that realize or embody natural law. While I will not consider this possibility, natural rights views, drawing on natural law theory, seem to take this approach and understand just persons in terms of their acceptance and promotion of natural law through just institutions.

We are now able to reconsider Hursthouse's Constraint. What limit does justice as an individual virtue place on political authority? How is the just person who is disposed to follow the *nomoi* of her community a model for understanding the limits of political institutions? Since the just person follows the *nomoi*, which consist of both social and legal norms, we can think about the relationship between these two kinds of norms. The legal theorist Lawrence Solum has proposed three forms this relationship can take:

1. *Congruence*: a legal norm can be congruent with a social norm, e.g. laws against murder.
2. *Support*: a legal norm can be supported by a social norm, e.g. social norms about who determines the rules of the road.
3. *Inconsistency*: a legal norm can be inconsistent with a social norm, either in terms of content or lack of recognized authority.<sup>86</sup>

The *congruence* relation is one that raises no special problems from the standpoint of virtue. When legal norms are congruent with social norms, there exists a harmony between what the law requires and what we think the law ought to require as a matter of justice. The same legal norm, of course, can lose congruence if it is exported to a place where the appropriate social norms do not exist (e.g. exporting democracy to the Middle East). The *support* relation is similarly unproblematic. Every functioning society relies on social norms that sanction specific authorities to have jurisdiction over some realm of social life such as traffic laws. The just person is disposed to recognize these authorities, where established by the legitimate law of a community.

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<sup>86</sup> Solum, "Natural Justice: An Aretaic Account of the Virtue of Lawfulness," pp. 188-9.

The crux of Hursthouse's Constraint resides in the *inconsistency* relation. As Solum shows, the inconsistency can take at least two forms: a) conflict in content, b) conflict in recognized authority. I would also add c) conflict in implementation.<sup>87</sup> What does the just person do when faced with such a conflict? Either he acts on the legal norms, in which case he is betraying the social norms, or he acts on the social norms, in which case he is betraying the legal norms. Neither option preserves the just person as a lawful person.

Begin with conflict in content. In cases of new or proposed legal norms, it is easy to see how an established social norm takes precedence. For instance, if a political authority attempted to pass a law of mandatory government informing on fellow citizens, this would violate a clear social norm regarding privacy in the United States. We also have norms about which institutions have recognized authority to perform certain functions. For example, there are norms sanctioning the traffic management authority to regulate speed on public highways, but we would not accept a traffic authority that mandated what colour cars may drive on the highways.

The final possibility is a law that, while having some plausible justification, requires action inconsistent with a social norm in its implementation. This seems to be the kind of case Hursthouse has in mind.<sup>88</sup> If, for instance, there is some justification for a law prohibiting certain drugs, but in practice the enforcement of the law requires the authorities to treat minor drug offenders in an inhumane way (as arguably the "War on Drugs" does), there is some reason to think that the law as such is inconsistent with a

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<sup>87</sup> I owe this point to Fred Miller Jr.

<sup>88</sup> Hursthouse mentions, in particular, Aquinas' case of the impossibility of legislating for the man with an erring conscience. See her "After Hume's Justice," p. 242-3.

social norm, and therefore not a law acceptable to the just person, at least in its current form of implementation.

I close this section with an obvious objection to the lawfulness conception that sets up the final section of this Chapter. I have explained the limit virtue places on political authority in terms of the relationship between legal and social norms (collectively, the *nomoi*). But what should we say if the *nomoi* of a community themselves are vicious or unjust? My view seems to depend on the *nomoi* tracking what is good for the members of a community. But we know this is often not the case. As I will suggest, this is one reason why we need a conception of justice as fairness, so we can subject the *nomoi* to criticism where they fall short of justice. What place does fairness have in the conception of justice as lawfulness? At the very least, it seems my view needs an explanation for how we change or update the *nomoi* and how we determine what the law ought to be.

#### 4.5 Reconciling Lawfulness and Fairness

Situating fairness into the compositional view of justice as lawfulness requires that we return to the relationship between individual and institutional justice. I have explained the justice of institutions compositionally in terms of the just person who has a disposition to follow the *nomoi* of her community. We gain traction on the justice of institutions by paying attention to the *nomoi* of a community. But we also need to incorporate the role of fairness in a community. People expect the institutions they live under to be fair, which is why there are social norms about fairness. As I will explain, fairness supplements justice as lawfulness. Fairness guides our judgments about existing

institutions and possible changes to those institutions in a way that goes beyond the boundedness of the existing *nomoi*.

Part of the task of finding a place for fairness within my view is to explain why the view is not essentially conservative. For the requirement that political authority is limited by the existing *nomoi* might seem unduly prejudiced against new proposals for social and political change. Indeed, one of the attractions of justice as fairness is that it begins with the premise that existing institutions are very likely unjust (because unfair) and therefore require overhauling in order to be *made* just. Undoubtedly notions of fairness play a role in how we improve our institutions (e.g. women's suffrage). But fairness is a deeply contested concept and it is unclear how to construct an ideal of fairness that can serve the function of justice in a political society characterized by disagreement about justice.

An important feature of the *nomoi* is that they are bounded in time and place. They are the path-dependent result of successful responses to social problems that existed in the past, to which their mere existence testifies. But this means that new economic conditions and new social challenges will necessitate new social norms. For example, while necessities having to do with the division of labour made women's participation in politics a near impossibility in earlier ages of human society, economic progress and social change toward the end of the 19<sup>th</sup> century made the prospect seem inevitable and eminently desirable to enough people to win women's suffrage. In this case, women challenged the existing social norms of their time that confined women to fixed roles in society. Why, as Mill argued, should women not be given a *fair* chance to succeed on the same terms as men? It was and remains a compelling argument that would not have been

possible but for the new conception of fairness championed by Mill and others. This shows that absent new proposals that invoke considerations like fairness, justice as lawfulness can become stagnant and ossified.

The difficulty is the point at which private judgments about fairness become widespread enough that they qualify as part of the *nomoi*. For example, refusing persons opportunities and services based on immutable characteristics, for example, was once an accepted and widely practiced social norm in the United States. But over time individual judgments about the unfairness of this practice consolidated to make this kind of discrimination one of the worst transgressions of a social norm one can commit. Private judgments, then, grounded in an ideal of virtue, alert us to ways in which our current institutions fall short of fairness, and therefore fall short of more fully enabling us to live well together. But attempts to transform existing institutions to fit an ideal of fairness can be dangerous if they are not based on widespread judgments emergent in the *nomoi* of a community. This is why it is essential that private judgments about fairness and other political values be argued for in public. Like Martin Luther King's pronouncements on the evils of segregation, they have the power to change the social norms over time, if only they are heard and considered. Likewise calls to change the social norms in vicious ways can be heard and defeated.

The *nomoi* include second order judgments about fairness, i.e. what kinds of social arrangements are considered fair by the community. These judgments are by definition widely shared. This can create pressure to reform legal norms that are no longer judged to be fair, which is to say they no longer serve the function of maintaining a society that is judged to be fair by its members. The process also works in the other

direction. For sometimes the social norms are the problem and new legal norms are needed to exert downward pressure for persons to change their behaviour.

This process of balancing considerations of lawfulness with fairness requires care and above all, practical wisdom. The distinguishing feature of the lawfulness conception is that it places the emphasis on incremental change from an initial place of conformity, rather than revolutionary change. On the one hand, insisting too much that institutions conform to a novel conception of fairness without paying attention to the *nomoi* creates discord and chaos. On the other hand, the maintenance of manifestly unfair institutions for the sake of short term stability can undermine the long-run authority of said institutions, since they no longer serve the purpose of answering to our desire for fairness. Of course, there is no perfect balance between stability and change, and sometimes people need to live under laws they don't fully accept for a while in order for the social norms to catch up (e.g. post-Jim Crow America). In this way, we can understand virtuous persons in unjust societies like Mill as "ideal entrepreneurs," modeling and arguing for new conceptions of virtue in the hope that others will pay attention and catch on.

We are now able to consider the relationship between just persons and just institutions. I have set up the contrast between the structural and compositional views of institutional justice as concerning the relative priority given to either just institutions or just persons in the order of explanation. But as Annas notices, Aristotle himself "has much to say about both [i.e. just institutions and individuals], and, in his usual fashion, has no drive to *reduce* one to the other or to force them under a specific common account."<sup>89</sup> The conception of justice as lawfulness explains why. The just person is

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<sup>89</sup> Annas, *The Morality of Happiness*, p. 316 (emphasis added).

disposed to follow the *nomoi*. But the *nomoi* are inextricably linked to the existing institutions of a society. And so if the institutions are congruent with and supported by the *nomoi*, the just person, as the lawful person, in effect is someone who follows just institutions (per the structural view). Lastly, these just institutions will be fair if they are in balance with the public judgments of fairness in the community. Therefore, the judgment of the just person represents a balance between lawfulness and fairness.

This final thought is why I believe justice as a virtue of character can be usefully understood in terms of a mean. Aristotle famously defines virtue as a mean with respect to a vice of excess and a vice of deficiency. These are two ways of going wrong. For example, the temperate person avoids gluttony (excess) and asceticism (deficiency) with respect to bodily pleasures. The virtue of justice, it has been argued by Williams and others, allegedly does not fit this model because there seems to be no special feeling associated with justice, no corresponding way to do the just thing in a way intermediate between two unjust things, being either *too* just or not just *enough*. On my view, however, there is a sense in which justice can be a mean between two ways of *going wrong*. As the lawfulness conception illustrates, the two ways of going wrong are: a) excessive conformity to existing law/institutions without regard for fairness, and b) deficient regard for existing law/institutions in pursuit of fairness. Hence, justice is a mean between an excess of stability and a deficiency of change, or an excess of change and a deficiency of stability. Justice is a matter of getting it right.

#### 4.6 Conclusion

Political authority is limited by the virtue of justice, understood as lawfulness. The role of political institutions in living well must be consistent with the *nomoi* existing in a community. Since the pluralism characteristic of modern societies depends on the underlying support of the *nomoi*, it is reasonable to think the role of political institutions in living well is consistent with disagreements about justice, so long as there exists a publicly justified set of institutions and practices. Justice as lawfulness also accounts for the importance of the role played by these institutions and practices in our moral lives, the ways in which developing the virtues takes place within institutions.

A final issue remains to be discussed. The limits of political authority can be traced to what I called the constraining role of political institutions in the previous Chapter. Justice as a virtue of character is a constraint on the proper exercise of political authority. Justice determines when political authority functions to undermine rather than enable us to live well. Justice draws a line between each person's good. But people also need a way to understand their own good in a way congruent with the good of the society as a whole. If justice is a constraint on political authority, what should a political authority aim at? The next (and final) Chapter explores the positive side of political authority that is naturally understood as an extension of the formative role of political institutions. Following Aristotle, I will claim that political authority aims at the common good.

## Chapter Five: The Common Good and the Aim of Political Institutions

The aim of this Chapter is to understand the role of community in a political society. While the previous Chapter explained that political institutions are limited by the virtue of justice understood as lawfulness, this Chapter proposes that their proper aim is the common good understood as a form of community. Correlative of the rights secured by political institutions is the responsibility we have for maintaining the political community as the precondition for each person's good. If this Chapter is successful, and justice aligns with the common good, then political society is part of our good in a deeper way than the fact that we are political/social animals. A just society not only serves individuals' interests in living well, but makes possible a greater good: living well together.

The central issue of this Chapter is whether there is a common good that can unite the individual good with the good of others and society more generally. Is it possible to achieve a sufficient degree of moral harmony in a society marked by moral diversity? Building on justice, which I argued is dependent on the *nomoi* of a community, we can understand the common good as the object of the *nomoi*. The *nomoi* of a community aim at the good of that community. But because individual ideals sometimes clash with the norms of a community, the common good must not come at the expense of the individual good.

This Chapter argues for a conception of the common good as the shared social condition we inhabit as members of a political society. This condition allows for the peaceful existence of pluralism and the possibility of individual persons identifying with

the good of their society. I call this conception political friendship. Political friendship is characterized by i) shared institutions, beliefs, practices, and ii) the act of sharing these things. The first element secures a framework within which pluralism is possible, while the second element cements the act of sharing such things as something irreducibly common. Thus, while justice consists in adherence to the *nomoi* of a political community, the common good consists in identifying the *nomoi* and the community that sustains them with one's own good. Rather than undermine individual agency and choice, the common good is a precondition for a free society and the individual freedom one finds in such societies.

I begin by exploring further the place of sociality in living well (5.1). In particular, I ask what kind of communities allow persons to live well without destroying the sociality that is a precondition for a well-functioning political society. The following section (5.2) frames the issue of sociality as the problem of integrating community and justice, revisiting the problems of pluralism and individual agency/choice, but this time as constraints on an adequate conception of the common good. I then argue in a preliminary way that reconciling community and justice is mitigated by noticing the affinities between justice and friendship (5.3). The common good is plausibly a kind of friendship. Section (5.4) proceeds to develop a conception of the common good as a political form of friendship. This accounts for pluralism. The final section (5.5) responds to concerns about individual agency and choice by explaining the sense in which the common good of political friendship affords us the freedom characteristic of a free (i.e. not despotic) society. I conclude with remarks on how my conception of the common good challenges modern ideas about social and moral progress.

## 5.1 Living Well and Sociality

In his brief survey of Aristotelian accounts of political authority, LeBar observes that these “accounts recognize the significance of our *sociality* for our flourishing.”<sup>1</sup> Or as Nussbaum puts it, “The good human life is a life with and toward others: membership in a polis is an important part of one’s other-directed activity.”<sup>2</sup> I have emphasized this point in two ways already. First, social cooperation in political institutions is partly constitutive of living well. (2.1) That claim motivates the thought that political authority has more than a merely instrumental justification. Second, we should not understand the good of others as necessarily opposed to the individual good in the manner of egoism versus altruism. The real question is rather how the good of others and the good of society feature in the individual good. (4.1) One might object, however, that the fact that we are *social* does not show that certain *political* institutions are necessary. The Greek *politikon* is ambiguous between political and social. The burden of this Chapter, then, is to show not only that some form of community is necessary for living well, but that the *political* community is necessary for living well in a deeper sense.

While I have not drawn a sharp distinction between the social and the political, the difference deserves further comment. Like Aristotle, Nussbaum does not distinguish the social from the political and she comes under criticism from LeBar for not doing so. Citing Rasmussen and Den Uyl with approval, LeBar observes that we should distinguish the political from the social because a) we have many social relationships that are at a

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<sup>1</sup> LeBar, “Virtue and Politics,” p. 282 (emphasis original).

<sup>2</sup> Nussbaum, *Love’s Knowledge*, p. 98.

smaller level than political organization, and b) we have many social relationships that are cosmopolitan in the sense that they transcend local political affiliations.<sup>3</sup>

These two points cannot be denied, but we should question their implication. In response to a), for Aristotle, the political community is the framework within which we undertake all our other social relationships, and it has, for this reason, special features (e.g. monopoly on coercion, universality of law, etc.) that allow it to play this role. In response to b), the political community also makes it possible to speak of cosmopolitan relationships, since we relate to others as members of one political community (e.g. a Canadian) to another (e.g. an American). So while we can distinguish the political from the social for the purposes of one kind of analysis, both are necessary. The short answer, to why we should embrace the political community as part of our good is because it is a precondition of our good in the sense that it is a precondition for sociality. It sustains sociality at the lower community levels, and makes possible a broader sociality in the cosmopolitan realm of the global community.

But the importance of the political *community* as a framework for the pursuit of living well should not lead us to mistake it with the close ties characteristic of smaller communities. As Bernard Yack points out, “Aristotle never confuses the intense sense of belonging to a group, what Herman Schmalenbach calls ‘*bund*’ (communion) with community itself.”<sup>4</sup> Communion is characteristic of small groups with strong social bonds. In contrast, a community, in Aristotle’s sense, just is any association of persons

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<sup>3</sup> LeBar, “Virtue and Politics,” p. 282 fn. 62.

<sup>4</sup> Bernard Yack, *The Problems of a Political Animal: Community, Justice, and Conflict in Aristotelian Political Thought* (Berkeley, CA: University of California Press, 1993), p. 31.

for the sake of some good. It follows that some but not all communities will exhibit communion. But while members of a community must share some things in virtue of belonging to the same group, they need not have the same purposes or possess the kind of close ties found in smaller communities such as the family. The upshot is that identifying the political community as part of a person's good does not resolve the problem of how one should relate to that community in the way that imagining the political community as a tight-knit family might. That is to say, we are relatively clear how we should behave toward our family members; we are less clear how we should behave toward our fellow citizens through shared political institutions.

So how should we understand the individual in relation to her community? I have claimed in this work that we occupy two perspectives: i) the socially embedded perspective of our role as members of a society, of families, of occupations, of relationships, etc. and ii) the universal perspective of the virtues that instruct us how to act well in our roles. Sociality emerges here as the various social positions we occupy from our embedded perspective. Some of these positions are chosen (e.g. occupation), others are not (e.g. who our parents are). Further, some of these social relationships are dynamic and changing (e.g. membership in voluntary clubs) and others are static and fixed (e.g. citizenship at birth). The dynamic aspect of our sociality depends on the relatively fixed and static communities within which the human personality flourishes. That is why Aristotle claims that political society has the most authority; it is the community within which all other forms of community take place. We always exercise virtue within some community that provides a fixed point from which we act. We can

transform our communities, but they are nevertheless the starting point for that transformation.

Like all relationships, the political relationship is based on something shared. Citizenship depends on sharing a location, a set of rights and obligations, a history, and so on. Family members share blood relations, personal history, and a concern to care for one another into the future. Meanwhile, friends share interests, a sense of humour, and activities together. In terms of political institutions, we can think of everyone sharing equally in the goods of the political partnership from which we act on a basis of reciprocity. As Rawls might put it, we are equal members of a cooperative association for mutual advantage. The opposite of this propitious condition is faction, inequality, and social strife or destructive (uncooperative) behaviour.

Our question, then, is what it means to relate well to others from the socially embedded perspective and what this tells us about the relationship between the individual good and the social good. A pessimistic answer is that there is no overlap and social organization is of purely instrumental value to the extent that it is efficient in securing individuals' ends. But because virtue is internal to social relationships and organizations, and virtue is required for living well, there is reason to think that there is value in sociality itself, and further that the individual good and the social good make a harmony. The next section describes what I call the problem of integration, that is, the problem of reconciling the idea of the common good with the diversity of the individual good that justice affords.

## 5.2 The Problem of Integration

Throughout this work, I have argued that the authority of political institutions depends on performing the function of enabling persons to live well together in a community, while the virtues require, but also limit the authority of political institutions. Chapter Two argued, in part, that political institutions are an advanced form of social cooperation that is a constitutive part of our good. Chapter Three explained the two roles political institutions have in living well, while Chapter Four argued for a political authority limited by the individual virtue of justice, understood in terms of lawfulness. It remains to explain what political authority properly aims at.

I will claim that a public authority acts well when it aims at the common good. But in order to get there, we must meet a challenge. I noted in the previous Chapter that compositional views of institutional justice—views that define just institutions in terms of just individuals—need to resolve the issue of how to justify the use of political authority, given the persistence of different individual judgments about justice. (4.2) For political institutions claim the authority to override what individual persons may think is just. It was on this basis that I criticized LeBar for failing to provide a means of *public judgment* about what individual justice requires because each person may have their own conception of fairness. A similar problem affects our attempt to understand the common good. For the idea admits of as many answers as there are people, and if everyone has their own idiosyncratic conception of the common good, the *idea* of the common good cannot possibly play the role of being the object of the *nomoi* that serve as public judgments of justice.

In light of this, it is tempting to reduce the common good to the good of individuals without remainder. The common good, on this view, is simply an aggregate of the individual goods. But even here, a problem remains, since we must ask who decides how we should understand the individual good. There are two options. Either the good is determined by the public authority or it is determined by individuals themselves.<sup>5</sup> The former, we have observed, immediately strikes us as tyrannical and authoritarian. Public authorities are unlikely to have either the knowledge or competence to determine what is good for a diverse population of persons. But the latter option fares no better. If each person determines their own good for themselves, there is a risk of disorder and fragmentation in the social order. The clash of interests at stake will require bettering the conditions of some persons at the expense of others in the name of *some* person or group's understanding of the common good. While there are undoubtedly points of overlap, these are unlikely to serve as points of convergence due to our much more strongly felt differences.<sup>6</sup> Avoiding authoritarianism comes at the cost of instability and disorder, and the idea of the common good no longer seems a viable aim of political authority.

To avoid the problems associated with individual judgments and the common good, we should return to the idea of the *nomoi* of a community. I argued that the *nomoi* solve the problem of public judgment and provide part of the standard for how a just person acts. According to Aristotle, the *nomoi* "aim at the common advantage either of all or of the best or those who hold power or something of the sort; so that in one sense we

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<sup>5</sup> Bertrand de Jouvenal, *Sovereignty* (Indianapolis, IN: Liberty Fund, 1957), Ch. 7.

<sup>6</sup> Hume points out this feature of human psychology in *A Treatise of Human Nature*, Bk. III, Pt. II, sec. VII. Recent events suggest he seems to have been right.

call those acts just that tend to produce and preserve happiness and its components for the political society.”<sup>7</sup> In other words, the *nomoi* of a community aim at the common good, and the common good is whatever enables persons to live well together in a community. To determine what the common good is, then, we should not think of individual conceptions of the common good, as objects we aim at, but rather how something like the common good functions in a community, as a matter of how persons relate to each other.

Put in these terms, the problem is how to understand the relationship between the *nomoi* and the individual ideals persons adopt as members of a community. For a community’s understanding of the good often diverges from what some of its members take to be the good. This is a tension between justice, understood as following the *nomoi*, and community, understood as identifying one’s own good with the good of the community expressed in the *nomoi*. This can happen, for instance, when individuals develop ways of living that conflict with the norms of the community. When this happens, as it often does, we should ask what makes the decision of the community authoritative. It seems that justice as lawfulness might well be inconsistent with the common good as that which preserves the good of each individual person consistent with the good of the community.

Putting it more abstractly, the problem is how to attain a degree of moral unity in a community that is characterized by diversity. The problem goes back to Plato’s search for moral harmony within the city (and the soul) in the *Republic*. Once again, Aristotle’s criticism of Plato in the *Politics* is pertinent to my treatment of the issue. For Aristotle observed that “A city-state consists not only of a number of people, but of people of

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<sup>7</sup> Aristotle, *NE* V.

different kinds, since *a city-state does not come from people who are alike.*<sup>8</sup> For Aristotle, at the extreme, the drive to unify the city-state terminates in the individual person, and therefore destroys the city-state. This transforms society into a totalitarian organism rather than a cooperative enterprise where different kinds of people unite in order to pursue their divergent ends.

While too much unity eventually destroys a political society, Aristotle is adamant that the political community depends on some degree of unity; a political community must share in *some* things as the basis for shared life together. But whatever is shared, it must be the kind of thing that preserves diversity as one of the preconditions of political community. We don't solve the problem of diversity by dissolving diversity. But we also need some shared purposes, otherwise it is more likely that the specter of ideology and factionalism will rush in to fill the vacuum created by diversity unmoored. Thus, we need a shared purpose that does not undermine the bases of sociality on which a robust diversity must depend.

The foregoing reintroduces the problems of a) disagreement and b) individual choice/agency, but this time as conditions on an adequate conception of the common good. The challenge of a) is to find something shared that can unite persons in political institutions who have different conceptions of living well. The challenge of b) is to understand the common good in such a way as to preserve individual choice/agency in a community which may not always act in the interests of each individual person. The next section explores the affinities between justice and friendship in ways that will prove

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<sup>8</sup> Aristotle, *Politics*, 1261a23 (emphasis added).

fruitful for reconciling the individual good with the social good. Justice needs friendship in order to retain a degree of moral unity within the diverse society that justice affords us.

### 5.3 Justice and Friendship

Early on in his discussion of friendship, Aristotle makes a striking claim about the relationship between friendship (*philia*) and justice: “when people are friends, they have no need of justice, while when they are just, they need friendship as well; and the highest form of justice seems to be a matter of friendship.”<sup>9</sup> The kind of friendship that Aristotle has in mind is less personal than what we think of as intimate friendships, and so a city held together by friendship still has a need for justice in a way that intimate friends, as Aristotle claims, do not. Meanwhile, in an ideal sense, justice and friendship coincide, since friendship is valuing the good of another as one’s own good, and justice is the good of another.

The tendency seems to be that as friendship increases, the need for justice decreases, and as justice increases, justice approaches and resembles more and more an ideal of friendship. This result is consistent with Hume’s influential claim that the virtue of justice only emerges under certain conditions, what Rawls refers to as “the circumstances of justice.”<sup>10</sup> Rawls divides them into objective and subjective circumstances. The objective circumstances are a) the fact of coexistence in some geographic territory, b) the rough equality between individuals in physical and mental powers, and c) moderate scarcity of resources. The subjective circumstances include d)

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<sup>9</sup> Aristotle, *NE* 1155a.

<sup>10</sup> Rawls, *A Theory of Justice*, pp. 109-112.

persons have their own plans of life, e) their interests are to some degree self-focused, and f) they suffer from lack of knowledge. Taken together, the circumstances of justice presuppose that justice is only useful and necessary where there is the possibility for conflict *and* cooperation. Thus, a society of angels or saints has no need for justice, and neither does a society engaged in a war of all against all.

Hume's circumstances of justice are useful for understanding some of the preconditions of a social order. However, Hume's circumstances either assume or do not fully explain that norms of justice implicitly presuppose the existence of some community already engaged in social cooperation.<sup>11</sup> Only in a community with a social tie that induces us toward cooperation can persons relate to each other on terms of justice. In other words, they do not view each other as enemies. It might be, for instance, that Hume's circumstances of justice obtain, but individuals are nevertheless not disposed to cooperate because of mutual distrust. Instead, they view each other as competitors over scarce resources rather than cooperators in a joint enterprise for living well. As Aristotle puts it, political justice "is found among people who associate in life to achieve self-sufficiency, people who are free and either proportionality or arithmetically equal."<sup>12</sup> So we should add to Hume's circumstances of justice, the idea that justice only exists where people see themselves as beholden to act justly as a member of a particular community. While justice assumes the absence of close ties of friendship in a society at large, justice requires the existence of a social tie that is plausibly a form of friendship.

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<sup>11</sup> Hume himself does not seem to have made this error in his own thought, but it is often made in discussions of his circumstances of justice in Rawls and others.

<sup>12</sup> *NE* V.6.

This seems to be why Aristotle claims that we still need friendship even when justice has been secured. A sense of friendship or partnership in a community is a prerequisite to share norms of justice, and further, just communities allow us to extend the bonds of friendship in ways that express our sociality as part of living well. We might even construe friendship as a virtue similar to the virtue of individual justice. Following David O'Connor's analysis, we can understand justice in a corrective sense. This is the virtue of justice discussed in the previous Chapter, i.e. of adopting and conforming to the *nomoi* of one's community. But justice also has an expressive sense: "justice is the virtue of a human being who is *a good partner in the pursuit of some worthwhile goal*, especially the goal of virtuous action within the context of a political community."<sup>13</sup> The expressive sense of justice is a kind of friendship because it enjoins shared activity with those with whom a social bond is shared. This form of friendship is a matter of recognizing that the *nomoi* of the community aim at the good one cooperates with others in order to obtain. Society is an enterprise we participate in as equal members for the sake of this common good.

The affinity between justice and friendship shows that justice and community are not necessarily at odds. A community aims at the common good and a community is held together by norms of justice, which, as I've argued, depend on a tie of friendship. A political community, therefore, must share some conception of justice and the common good. The crucial questions are i) who constitutes a political community? and ii) what things does a political community share? The following section provides an answer to ii).

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<sup>13</sup> David O'Connor, "Aristotelian Justice as a Personal Virtue," *Midwestern Studies in Philosophy* XIII (1998), pp. 425-6 (emphasis added).

But before we get there, we need to get a better grasp on what it means to be a political community. Aristotle's answer remains as good as any:

Evidently, then, a city-state is not a sharing of a common location, and does not exist [solely] for the purpose of preventing mutual wrongdoing and exchanging goods. Rather, while these must be present if indeed there is to be a city-state, when all of them *are* present there is still not yet a city-state, but only when households and families live well as a community whose end is a complete and self-sufficient life.<sup>14</sup>

Sharing a common location, according to Aristotle, is not sufficient, since different groups can occupy the same location without constituting a single community (e.g. the Israelis and Palestinians). Neither are pacts preventing unjust behaviour or treaties that secure mutually beneficial trade sufficient, since international states practice these things without constituting a single community.<sup>15</sup> Such associations Aristotle calls "alliances" whereby "law becomes an agreement 'a guarantor of just behavior toward one another,' [...] but not such as to make the citizens good and just."<sup>16</sup> What defines a political community, then, are the foregoing necessary conditions, but also the condition that members live well together. A political community presupposes a first-personal plural, an "us" for which things can go better or worse.<sup>17</sup> Just as a friendship between two people can improve, suffer setbacks, or dissolve completely, the political community is based on

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<sup>14</sup> Aristotle, *Politics*, 1280b29. (emphasis original [translation])

<sup>15</sup> Critics of the European Union will find common cause with Aristotle's definition of a political community.

<sup>16</sup> Aristotle, *Politics*, 1280b10.

<sup>17</sup> Charles Taylor, "Cross-Purposes: The Liberal-Communitarian Debate," in *Liberalism and the Moral Life*, ed. Rosenblum (Cambridge, MA: Harvard University Press, 1989), Ch. 9.

a kind of friendship that makes it the kind of entity for which things can go well, individually *and* collectively.

Having answered the question of *who* constitutes a political community, we are now able to explore what things a political community shares. We can distinguish here between what Charles Taylor calls convergent goods and either mediately or immediately common goods.<sup>18</sup> The distinction concerns not how a good is provided, but rather how the good is consumed. Thus, the classic public good of national defense is nevertheless a convergent good, according to Taylor, because while it is provided publicly, the good of security is enjoyed by each person individually. In contrast, a mediately common good would be the experience two people share in going to a concert together. The concert, let's say, is provided privately and paid for us individually, but the two people enjoy the good together as a shared experience. Lastly, some common goods like friendship are immediate, in the sense that "what centrally matters to us is *just that there are* common actions and meanings."<sup>19</sup> The sharing itself is a good regardless of what is shared. We can represent the range of possible goods in the table below.

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<sup>18</sup> Ibid., pp. 167-9.

<sup>19</sup> Ibid., p. 168 (emphasis added).

Table 4 –Taylor’s Types of Goods

	Consumption: individual	Consumption: common
Provision: individual	Private (e.g. consumer goods)	Mediate good (e.g. restaurant meal with friends)
Provision: common	Convergent (e.g. public goods)	Immediate good (e.g. friendship) <sup>20</sup>

The next section explores the extent to which the relationships that constitute a political community represent a common good in the sense of an immediate good, as something we share in together. A political community is a partnership for the sake of living well. This is the relatively static community within which all the other dynamic communities of human society aim at living well. In terms of Oakeshott’s distinction, a political community is a civil association, based on shared institutions, rules, and norms within which persons pursue the good through various enterprise associations that are smaller than the political community.<sup>21</sup> This act of sharing institutions, rules, and norms give us a model for understanding the common good as a form of what I call political friendship.

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<sup>20</sup> The immediate good of friendship is provided in common because it is “we”, the description common to us individually, who jointly constitute the friendship.

<sup>21</sup> Michael Oakeshott, *Rationalism in Politics and Other Essays* (Indianapolis, IN: Liberty Fund, 1962).

#### 5.4 The Common Good as Political Friendship

Aristotle calls the political form of friendship concord (*homonoiia*).<sup>22</sup> Political friendship exists “when people agree about what is beneficial, rationally choose the same things, and carry out common resolutions.”<sup>23</sup> It does not require that people agree about everything, only those things that constitute their political society. A community is held together by political friendship. And it is plausible to suppose this is a kind of common good, since without it, the community dissolves and individuals lack the necessary social framework within which to pursue the individual good. The common good depends on reciprocity to encourage members of the community to maintain the bond of political friendship. Without it, there is civil strife and instead of cooperating, individuals insist on “pressing one another to do what is just while not wishing to do it themselves.”<sup>24</sup>

This is an indirect way of understanding the common good. The way in which political institutions enable persons to live well is not by appeal to a substantive conception of the common good, but rather by promoting the social condition that makes living well in a community the best option for everyone. The common good does not direct us to pursue shared ends, but rather consists in the way we each pursue our ends in community with other people. The shared end constituted by the common good just is the way persons relate virtuously to one another in political society. The common good is an *adverb*, the way in which we pursue our ends, rather than a *noun*, the substantive end that we all aim at.<sup>25</sup>

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<sup>22</sup> *NE IX.6*.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, 1167b.

<sup>25</sup> I thank Daniel C. Russell for this way of putting the idea.

We can refine the idea of political friendship by distinguishing: a) what is shared, and b) the act of sharing. First, political friendship consists in sharing institutions, practices, and norms that define justice. To the extent that members of a political community have shared beliefs, they have shared beliefs as participants in practices that prescribe common rules, obligations, and expectations. This social morality, as I mentioned in Chapter One, is the institutional framework within which persons pursue the virtues. Social morality is the glue that allows diversity to play out within a system that is a precondition of each person's good, and is therefore a common good.

Second, we can abstract from what is shared to consider the act of sharing itself. The fact that a political community shares common understandings, practices, and so on allows people to live in such a way that they can identify their own fate with the fate of the broader community. This is why harms to the community are also harms to individuals, even if particular individuals are personally left unharmed. We can see this most clearly in cases of national catastrophe such as a terrorist attack. The damage done to the community is something over and above the damage done to the direct victims of the attack. So while two people may share little in the way of individual purposes, when their shared political community is harmed, they experience it as a threat to their shared life together.

The common good understood as a) what is shared and b) the act of sharing aligns justice and friendship. Members of a political community share institutions which define justice, while the identification with these shared laws that define justice constitutes political friendship. This unites the good of individuals with the good of others. For, as the ancients remind us, justice is the good of others, and friendship is adopting the good

of others as one's own good. Further, friendship is good for both parties; everyone benefits from norms of justice. For this reason, a pluralistic society is still capable of a common good that enables members of the community to cooperate in beneficial ways, even while their substantive aims and purposes differ.

What does this idea of political friendship imply for the use of political power? In Cicero's *De Republica*, we find the character Scipio Africanus explaining the purposes of the idea of political friendship on analogy to the management of public property. In the voice of Scipio, Cicero writes:

Well then, states Africanus, a *res publica* is the property of the people (*res populi*). However, a people (*populus*) is not any gathering (*coetus*) of human beings assembled in any way at all, but a gathering of a critical mass united in a partnership (*sociatus*) by an agreement about law/justice/rights (*iuris consensus*) and by commonality of advantage (*utilitatis communione*).<sup>26</sup>

Cicero uses the idea of property as a metaphor representing the interests and business of the people. The *res publica*, consisting of a set of shared institutions, practices, and norms, is a piece of public property that we all share in virtue of being members of the same political community. As public property, the people therefore have a claim and responsibility to manage (or govern) their political community equally.

The basis of this partnership (or friendship) is the kind of reciprocal equality sought by Aristotle, "ruling and being ruled," but rather than a meritocratic basis, Cicero makes the claim that citizens are equal in the sense of being equal under the law framed

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<sup>26</sup> Cicero, *Republic*, 1.39, quoted in Jed W. Atkins *Cicero on Politics and the Limits of Reason* (Cambridge: Cambridge University Press, 2013), p. 130.

by rights defined by their shared institutions. Despite apparent similarities, this is not the Lockean view that individuals have pre-institutional natural rights that constrain the adoption of certain kinds of political institutions from the outset. Rather, with Aristotle, Cicero's view is that the political community itself is a good; good institutions and laws complement the kinds of desires, plans, and ambitions that citizens develop as members of a political community.

Hence, the type of agreement about rights referred to by Scipio is a positive agreement, to a partnership (*societas*) or an identification with one's political community whose terms are secured by justice. And because this is an institutional account of rights as part of the good of political society, agreement about rights and the common good amounts to an agreement about the good of society. The good that justifies political authority harmonizes with the good that justifies rights, and the good of individuals living together in society.

The responsibility of citizens to secure and promote the common good falls under the formative role of political institutions. Extending the public property metaphor, we can think of the shared institutions of a political community as a "network of roads, which each member of society uses for his own ends, and tends to spoil by the use he makes of it."<sup>27</sup> That is, over time the bond of political friendship can weaken due to the vagaries of politics, social change, and the evolution of norms that put strain on the stability of a community. By maintaining the balance of social institutions and underscoring the extent to which a political community depends on the shared condition

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<sup>27</sup> De Jouvenal, *Sovereignty*, p. 154.

of citizenship, political institutions avoid social strife, making it possible to reform institutions without undermining their essential basis and functioning.

To summarize this section, the common good is the shared social condition of membership in a political community: political friendship. Whatever differences exist in a society, they depend on the unifying idea of common membership in a set of institutions, practices, and norms that are a prerequisite for living well. Moral unity within a political society does not consist in substantive shared purposes and ends, but rather the sharing of a framework within which diverse purposes and ends are possible. This accommodates pluralism.

#### 5.5 Freedom, Social Ontology, and the Political Order

Despite the accommodation of pluralism within a community held together by political friendship, as we see in Chapter Four, one may still wonder the extent to which persons are free to diverge from the norms of their community. Just as our understanding of the role of political institutions needs to allow for the importance of individual choice/agency in living well, we must also show that the common good does. The *nomoi*, after all, aim at the common good. But if the *nomoi* do not allow any room for individuals to innovate and exercise practical wisdom in ways that test the bounds of the *nomoi*, then the shared social condition as a common good will be too constraining of individual flourishing. This is not just bad for individual persons; it's bad for a society, since the renewal of a society's institutions requires the innovation made possible by individual persons. So, the common good should not necessitate a homogeneous and restrictive

political community. As Gaus might object, that would be a way of avoiding the problem of modernity rather than providing a solution to it.<sup>28</sup>

The problem this time can be put in terms of the interaction between individual ideals and social norms. Social norms emerge from our socially embedded perspective, prescribing rules and expectations according to the roles we inhabit. However, in order to perform our roles well, we need to bring practical wisdom to bear on what our roles require of us. But if the common good consists in identification with and conformity to the *nomoi* of a community, there will be no room for individual judgment in living well within one's socially embedded perspective. This is necessary, as we saw in Chapter Three, because it is the critical perspective through which we reform and update our institutions. The political community, in order to advance the ends of persons, needs to be open and able to absorb and transform external shocks from outside its own narrowly defined terms.

We should ask, then, whether the form of community I have defended is compatible with a broadly liberal order. Why, for instance, is the view I defend not essentially communitarian?<sup>29</sup> As Charles Taylor has shown, there are really two issues at stake here.<sup>30</sup> One is the kind of social ontology adopted, that is, whether my view of community is individualistic or holistic. Second, there is the issue of what Taylor calls "advocacy" or institutional recommendation, that is, what political order is required by a

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<sup>28</sup> See my discussion of Gaus in section 0.1.

<sup>29</sup> For example, in the article I have had occasion to reference several times already, Hursthouse announces that she is "unwilling to declare shamelessly that we want no truck with liberalism and to follow MacIntyre in espousing traditionalist authoritarianism." See her "After Hume's Justice," p. 229.

<sup>30</sup> Taylor, "Cross-Purposes," pp. 159-182.

conception of community. Here again, we can distinguish a liberal order from a collectivist one.<sup>31</sup> Positions on these two issues can be combined in different ways as shown below:

*Table 5 - Social Ontology and Political Orders*

Individualist ontology (e.g. Rawls, Nozick) Liberal order	Holist ontology (e.g. Humboldt, T.H. Green) Liberal order
Individualist ontology (e.g. Hobbes) Collectivist order	Holist ontology (e.g. Marx, MacIntyre) Collectivist order

An individualist ontology takes individuals as the primary unit of social analysis and understands groups in terms of the actions of individuals, whereas a holist ontology takes social groups as primary and insists on understanding individuals through their membership in social groups.

It might seem that my broadly Aristotelian view must have a holistic ontology since Aristotle holds that the polis is in some sense “prior” to the individual.<sup>32</sup> However, we should notice that the dichotomy between a holist and individualist ontology is false. As I have claimed, we see that individuals are primarily members of social groups from the socially embedded perspective. But there is also an important sense in which

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<sup>31</sup> This particular taxonomy is teased out by Rasmussen and Den Uyl in “The Myth of Atomism,” *The Review of Metaphysics*, Vol. 59, No. 4 (June 2006), pp. 841-868.

<sup>32</sup> *Politics* I.

individuals are prior to the group because they can reason from the universal perspective and alter the composition of the socially embedded context over time.

Social scientists explain this interdependency in terms of what they call “structure-agency” theory: “socially embedded individuals are neither ‘atoms outside a social context’ nor beings who ‘adhere slavishly to a script written for them by the particular intersection of social categories they happen to occupy.’”<sup>33</sup> Instead, individuals and groups are mutual influences on each other, defining the social structure while simultaneously allowing for its change through individual norms and ideas. It follows from this social ontology that we need a political order that is stable, yet capable of reform, a holistically grounded political order that embraces individuality. Historically, it has been broadly liberal orders that have proven capable of this combination. Liberal orders depend on the culture and practice of free institutions, with rights protections, a balancing of power, and mechanisms for institutional reform that do not amount to outright revolution.

Thus, a free society is to be distinguished from a despotic society. Recalling again LeBar’s “Petty Despot” example, a society can be ruled despotically and adopt liberal institutions, but such a society lacks the relationship between the political authority and its citizens that constitutes the shared good of living together. Individual freedom in a free society does not consist in living however one wishes, but rather living in such a way that is good for oneself and good for one’s broader society across time. As Aristotle, puts it “living in a way that suits the constitution should be considered not slavery, but

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<sup>33</sup> Granovetter (1985, p. 487) quoted in Davis, “The Conception of the Socially Embedded Individual,” p. 93.

salvation.”<sup>34</sup> Living in accordance with the constitution means understanding the institutions, practices, and norms of a liberal order and how that order makes it possible to pursue the individual good.

Institutions promote individual freedom by defining and protecting rights. But institutions do not sustain themselves. We need common responsibilities that instruct us how to use our rights for the sake of living well together. Hence, individual freedom is not an end in itself; it is a means through which we exercise practical wisdom in our own lives and in the ways that we shape our shared institutions over time. Effective institutional reform requires the right to advocate for change without failing to fulfill the responsibility of maintaining the functions served by existing institutions. The former allows us to update our institutions according new exigencies; the latter ensures that we do not neglect to preserve what we already have.

Finally, it is a mistake to think of political institutions as oppressive or overly restrictive of individual freedom because it is only through political institutions, as a common good we share, that we can use our freedom to live well. The conditions of political society that the common good secures are the conditions for freedom. Without them, we are left in Hobbes’ antisocial state of chaos, where there is license, but no liberty. This result is consonant with living well understood as the exercise of practical wisdom realized *within* one’s socially embedded circumstances. Practical wisdom requires freedom in order to develop and exercise, but it is always freedom realized within the constraints of the roles we inhabit from the socially embedded perspective. Freedom depends on the order furnished by the political community.

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<sup>34</sup> *Politics* V.9.

This understanding of the common good and the value of community within a liberal order gives individual choice/agency its proper due. Individual choice/agency is bounded within the social conditions that are necessary for living well. Primary among those conditions is political friendship, understood as the set of shared institutions, practices, norms, and the act of sharing these things.

## 5.6 Conclusion

To conclude this Chapter, I note here a thought that challenges some ideas about social progress. One way in which modern societies have progressed has been to expand the bounds of political friendship ever more broadly, e.g. the pursuit of equality across multiple dimensions. What's more, modern societies have proven adept at accommodating an ever-growing amount of diversity within very large political communities (nation states). It has sometimes been noticed that one unfortunate result of this has been to tear at the ties of community leading to something like Taylor's charge of "atomism" or de Tocqueville's "soft despotism." There seems to be a tendency that as societies grow and become more diverse, they depend more on justice in the pursuit of individualism or equality than on community in the pursuit of the common good. Consequently, justice comes to be seen as *the* sovereign virtue and begins to subsume the other virtues.<sup>35</sup> Thus, discussions that used to be about what is good for the community, an activity that all must participate in, become dominated by discussions about what justice requires across all human communities, an activity that we may outsource to the

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<sup>35</sup> Ronald Dworkin, *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2013).

political institutions of large nation states. Consequently, persons come to emphasize more their individual rights rather than their collective responsibilities. This weakens the bases of political friendship and makes it difficult to agree about what is good for the community. We oscillate between extreme stability and extreme change. But the mean of justice is lost.

In the worst cases, this tendency leads to the eventual destruction of societies and risks undoing all the social progress that had hitherto been made. We should be cautious, therefore, in seeking to expand the bounds of political friendship beyond a capacity it can handle. Like the carrying capacity of a piece of land, our ability to form political bonds with others may be limited in scale and scope. This gives us another reason to view the formative role of political institutions as maintaining an equilibrium among a balance of lower social authorities. It also raises the question of what institutions, practices, and norms will support the social tie of community as our societies get bigger and more complex without getting any closer. Justice draws lines between the purposes of each person, but we need political friendship to draw a circle around those who unite into political communities for the sake of living well together.

## Conclusion

### 6.1 A Restatement

As I've claimed, the problem of political authority on a virtue ethics account is how to justify the coercive nature of political obligation in a way compatible with the virtues. (1.2) There is also the challenge of reconciling a political order justified in terms of virtue with the place of disagreement and choice/agency in living well. These challenges, I argued, can be met by understanding living well in a thin sense, while choice/agency are best protected by political institutions that take on a constraining and formative role in the exercise and development of practical wisdom. Lastly, we understand the limits and aim of political institutions in terms of the virtues of justice and friendship. These are the main claims of this dissertation. In this concluding Chapter, I will examine these claims in light of the overall account I have developed, apply them to some ongoing debates in political philosophy, and consider possibilities for future work.

I claimed earlier that this account of politics and virtue is best evaluated in holistic terms. (1.2) Now that the pieces have been put together, we are able to do that. Whether it does, in fact, hang together, of course, is for others to judge. But I want to restate the account here more abstractly, to see the forest for the trees, so to speak.

I see the relationship between persons and the social structure as reciprocal. Persons begin to think ethically in terms of the obligations they face within their socially embedded roles as members of a society. Since we cannot completely escape these social ties, any plausible ethical theory should tell us something about how to act within those roles. And once we understand virtue as internal to these roles and practices, the virtues

serve as realistic ideals to guide our behaviour within the socially embedded perspective. These ideals point us to a broader universal perspective within which we share a capacity for practical wisdom and other capacities that define the human condition.

On the other side of the reciprocal account, there are social structures, the institutions, practices, and roles that shape our experience and ground us socially in a time and place. While it is tempting to view the social structure as basically oppressive and undermining of human flourishing, I have argued that it serves an essential function. Optimally speaking, this function is to constrain our interactions with each other, so that we can exercise practical wisdom to meet the challenges of social life. But it also makes possible the social conditions within which practical wisdom can take root.

While my thesis is a normative claim, I believe my account also better captures how actually well-functioning societies operate. Instead of thinking of a well-functioning society as one that protects a canonical set of universal rights, for instance, my account illuminates the sense in which a well-functioning society relies on both rights and responsibilities. It relies on rights because rights are claims that exist within institutions whose function is to clearly delineate the claims and entitlements of persons who are subject to them. These claims and entitlements enable them to cooperate peacefully and efficiently, with clear expectations. But a well-functioning society also depends on responsibilities. Institutions depend on persons exercising their rights and fulfilling their obligations in ways that take responsibility for their own flourishing and the flourishing of others. Take the institutional protection of free speech, for example. If free speech is not to descend into chaos and enmity, we need not only the freedom to say anything, but

the responsibility for one's speech, to speak in ways that model the truth and the values of a free society.

The joint responsibility of individuals for the perpetuation of the social order is equivalent to responsibility for the common good. Political friendship consists in the maintenance of the relationship between persons that allows them to cooperate together in a shared political society. The shared elements also allow them to interact on terms of justice, since justice is given by the *nomoi* of a community and subject to updating through individual ideals of justice. Thus, the virtues on my account are what enable persons to engage well with the social structure of their society. Political friendship ensures that persons can pursue their individual ends without losing sight of the shared end of a society that makes the individual good possible. And justice safeguards the institutions that have proven successful in meeting challenges, while alerting us to ways of meeting future challenges.

Justice, then, turns out to be a backward-looking and forward-looking notion. It is backward-looking because it preserves institutions that have and continue to function well. But it is also forward-looking because it is responsive to new ideals and solutions to how we might shape institutions to suit our ever-changing purposes. Justice is a solution to the problem of how to live together and an ideal of how we might live better.

## 6.2 Applications

I believe my account can illuminate debates about justice in political philosophy. First, consider the ideal/non-ideal theory debate. Theorists like David Estlund argue that theories of justice cannot be faulted for failing to satisfy the constraint human nature

places on whether principles of justice can be realized.<sup>1</sup> The immediate appeal of this idea is that we don't want to be held back by contested claims about human nature. We want our principles of justice to be held up as ideals worth aspiring to, even if distantly. Against this runs the thought that we want theories of justice to have traction in the world and respond to the kinds of problems real societies face. Theories of justice should be practical. Thus, David Miller argues that theorizing about justice is bound up with the consideration of contingent-facts, including facts about human motivation, that place limits on what justice can be before we even begin theorizing.<sup>2</sup> Here the danger seems to be that we will take too much for granted and tailor principles of justice that are too beholden to current arrangements and sentiments, which, after all, we might want to criticize on grounds of justice. The result is potentially ending up with something less than justice.

As should be clear by now, one prerequisite for ideals of justice is that we have a stable social order that is dependent on institutions that embody evolved collective wisdom about how to live together. We cannot forsake the principles that make an orderly society possible when we go on to theorize about a just society. We cannot have a well-ordered society without first having order. Or in terms of distributive justice, we must first have fruits before we talk about distributing the fruits of the division of labour.<sup>3</sup> But if what I've argued is right, we cannot stop here in theorizing about justice. Order is compatible with injustice because justice is a solution to a problem that is always

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<sup>1</sup> David Estlund, "Human Nature and the Limits (If Any) of Political Philosophy" *Philosophy & Public Affairs* 39, no. 3 (2011), pp. 207-237.

<sup>2</sup> David Miller, "Political Philosophy for Earthlings" in *Justice for Earthlings: Essays in Political Philosophy* (Cambridge: Cambridge University Press, 2013), pp. 16-39.

<sup>3</sup> The expression is borrowed from Schmidtz, "Property and Justice," pp. 79-100.

changing. A political order can also include vicious citizens, who threaten the stability of institutions, bringing chaos into order. My account goes beyond, but does not ignore order, because it locates the function of political institutions in enabling persons to live well. A society is not functioning well, is not just, therefore, to the extent that it is not succeeding at this task.

A just society requires both well-functioning institutions and well-functioning citizens. That is an ideal worth aiming at, but one that takes seriously the human condition and the problems to which justice is a solution. It does not require prioritizing the ideal over non-ideal. We get the objective of theorizing from the kinds of problems we try to solve, namely, the problem of living well together in a society. But once this is identified, there remain ideals of justice and virtue to guide and support the direction of just institutions.

One of the problems justice needs to solve, for example, is the problem of a diverse political order, where many different conceptions of the virtues flourish and a society risks being thrown into chaos by a lack of a unifying ideal. Public reason liberals, following Rawls, have tried to solve this problem by constructing theories that model what it would be like for there to be an overlapping consensus or equilibrium on a set of political ideas from a diverse input of comprehensive doctrines. Part of that attempt to find an overlapping consensus is the exclusion of comprehensive doctrines from the public sphere. Justice, on this view, is more like a compromise to live together on terms of mutual tolerance than an ideal that we strive for together. It tells us how not to live, but nothing about what to live for.

My account takes a different route. Instead of attempting to find an abstract political conception of justice for diverse persons, I have tried to show how the very possibility of a diverse set of persons in a political society is dependent on some shared moral or ethical framework, however abstract, unnoticed or unexamined. The conceptions of the good that we develop for ourselves grow out of our allegiance to a set of shared institutions that may give rise to disagreement and difference in *how* we live, but cannot upset the fact that we still live together, as one political society. I am, therefore, not optimistic that a liberal order can be sustained on the basis of an overlapping consensus of diverse ethical views. A liberal order may have the veneer of neutrality, but its institutions are grounded in a deep moral culture. And we ignore that moral culture at our peril.

For this reason, I do not believe we can neatly separate ethics and politics in ways that liberal theorists have sought. This issue is evident in the debate between Rawls and G.A. Cohen on where principles of justice apply: to the basic structure only? Or also in our personal lives? Rawls, as a liberal theorist, wanted to separate ethics from politics, so that a just basic structure could leave persons free to pursue their ethical ideals, whereas Cohen, as a left-liberal/socialist, claimed with the feminists that “the personal is political,” so that principles of justice are as urgent in your personal behavior as in your society’s institutions.<sup>4</sup>

Cohen also argued that Rawls mistook rules of regulation, which are fact-sensitive (or “non-ideal”), for principles of justice, which are fact-insensitive (or “ideal”), and that,

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<sup>4</sup> G.A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), Ch. 3.

in turn, this led him to be compromise his egalitarianism by allowing individuals to ignore justice in their personal lives.<sup>5</sup> If my account has anything to recommend, then Cohen is right that Rawls wrongly restricts principles of justice to institutions, for a just society depends as much on just persons as just institutions. But if Cohen had clearly distinguished just institutions from just persons, he would not have had to insist that justice as an ideal requires that we ignore the limits of human nature, for instance. This is because the justice of institutions is a response to the problems posed by institutions, the problem of how to live well together, given partial compliance and imperfect human motivation. It remained for Cohen, however, to claim that individual justice requires full compliance and better than normal motivation, as part of a just society as an ideal we strive for individually.

As a segue to consider future challenges, I close this section by noting some limitations of my thesis. First, I have not answered in any systematic way what we need to live well besides a reasonably well-functioning institutional framework. There are further questions about living well addressed by other theories like Nussbaum's capabilities account that have not concerned me except by way of contrast. I believe questions about what people need cannot be disentangled from questions about living well itself which take place in communities and get worked out in practice. I am for this reason skeptical of theories of distributive justice such as Nussbaum's that exhort us to satisfy a list of basic needs or universal human rights without considering particulars of people and place. It remains, in any case, to think more carefully about distributive justice in terms of the account I have developed.

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<sup>5</sup> Ibid., Ch. 4.

Second, I have avoided grounding my thesis in any kind of metaphysical doctrine or meta-ethical view. That grounding of course would probably require another work of this length. But I do think it is a question worth considering whether a sound political order can be sustained without a coherent metaphysical grounding. Myths and comprehensive worldviews provide support for institutions that is easy to ignore, but such support is probably essential to the long run success of well-functioning political institutions that depend for their success on essentially flawed human beings.

Lastly, the account I have defended is intended as an account of a domestic political society, rather than an international political order. The reason for this is primarily because the idea of social embeddedness requires that we think first about what obligations persons have as members of particular political societies. There is, of course, the possibility of extending the account to consider persons as cosmopolitan members, in some sense, of international political institutions. But I do think this is a difficult proposal because a) it is unclear what those institutions are, and b) psychologically speaking it is difficult for persons to identify with institutions of that scale.<sup>6</sup> A vision of a well-functioning international order, therefore, cannot be anything more than another ideal at this point, maybe something worth aspiring to, but not something with which to guide action here and now.

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<sup>6</sup> In spite of this, I believe the Stoic idea of *oikeiosis*, whereby we try to expand the perspective of our ethical relationships to the outer edges of the concentric circles of association is an attractive individual ideal, but again, not something with which to guide politics.

### 6.3 Future Work

The previous section detailed ways in which my account can be used to illuminate debates in political philosophy. There are also ways in which we can gain a deeper understanding of the virtues by working in a virtue politics framework. So to close, I mention three possible avenues for future research.

First, in developing my account, I have been concerned primarily with developing a framework for thinking about virtue and politics. Such a framework, I believe, requires a conception of justice and (political) friendship because these are the virtues that connect individual flourishing, as realized in practical wisdom, with the flourishing of others that depends on shared institutions. I have not, however, developed conceptions of the other two cardinal (or pagan) virtues, courage and temperance, nor have I considered the Christian (or theological) virtues of hope, faith, and love. It would be worthwhile to study how these virtues strengthen institutions, and in turn, how particular institutions either encourage or hinder the manifestation of such virtues in a society.<sup>7</sup>

Second, focus on the virtues might usefully be taken up in connection with empirical disciplines such as psychology and economics. I take my philosophical account to have laid some of the conceptual work within which we can think about living well and politics. But such an account is bounded by what is possible, both for us as the kind of beings we are, and for the environment of scarce resources and constraints within which we reason practically. Empirical work in psychology can tell us a lot about the

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<sup>7</sup> This has already been impressively undertaken by the economist Deidre McCloskey in her magisterial *The Bourgeois Virtues: Ethics for an Age of Commerce* (Chicago, IL: University of Chicago Press, 2006).

former, while economics can frame the non-ideal constraints we face as practical reasoners.

Finally, and perhaps most importantly, I have stressed that we learn to be virtuous within our socially embedded circumstances. As Aristotle reminds us, the virtues are realized, in part, by developing habits that we first encounter very early on in life. For this reason, the success or failure of an account like mine, in practice, depends crucially on an understanding of moral education, namely, the ways in which we can reasonably expect persons to acquire the virtues required for living well together. This is ultimately how we become educated about the kind of life we share together as members of the same political society. I have assigned this task to what I call the formative role of political institutions. But it is a task that each person must undertake for themselves and their loved ones. In doing so, I enthusiastically join Hursthouse in “[fostering] the idea that nothing in our individual lives is more important than acquiring a correct grasp of what *eudaimonia* consists in, and nothing in our communal life more important than the moral education of our children.”<sup>8</sup>

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<sup>8</sup> Hursthouse, “After Hume’s Justice,” p. 245.

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