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HENRIK D. KUGELBERG

STRONG POLITICAL LIBERALISM

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ABSTRACT. Public reason liberalism demands that political decisions be publicly justified to the citizens who are subjected to them. Much recent literature emphasises the differences between the two main interpretations of this requirement, justificatory and political liberalism. In this paper, I show that both views share structural democratic deficits. They fail to guarantee political autonomy, the expressive quality of law, and the justification to citizens, because they allow collective decisions made by incompletely theorised agreements. I argue that the result can only be avoided by changing public reason's role in collective decision-making. Instead of incompletely theorised agreements, we should demand agreement both on the public reasons themselves and on the other premises that justify political decisions. In this way, it is always possible to point to a procedure-independent reason that justifies democratic decisions, and the reasoning of the state is public and contestable. Finally, I explain how this, in turn, implies that only political liberalism can be rescued—by accepting what I will call strong political liberalism. Modifying justificatory liberalism in the necessary way will inevitably open the door to an objectionable form of perfectionism.

In many liberal democracies, anti-discrimination rules do not apply to the employment of religious leaders. Christian churches, Muslim mosques, and Jewish synagogues are legally allowed to hire only male priests, imams, and rabbis. It is often thought that this so-called 'ministerial exception' follows from a commitment to freedom of religion. Moreover, it is said that this is a *public reason*, a reason that in some important sense is accessible to every reasonable citizen.[1]

However, there are also reasons available for thinking that the ministerial exception is wrong. For example, one such reason is that the exception could be said to communicate that women are inferior to men. Another is that the exception could be seen to be discrim-

[1] Jonathan Quong, *Liberalism Without Perfection* (Oxford: Oxford University Press, 2011), pp. 205–206.

inatory in an objectionable way—it violates women's robust freedom of occupational choice. Women who want to be priests, imams, or rabbis are denied this opportunity. These reasons, too, are commonly thought to be accessible to every reasonable citizen, and so they are typically also seen as public.

It is a central feature of one of the most widely accepted views of liberal legitimacy, political liberalism, that political decisions must be justified with public reasons of this kind. Up until now, it has always been assumed that it is permissible to appeal to an indeterminate plurality of public reasons when justifying political decisions. In other words, decisions do not need to be justified by one public reason, or a clear ranking of public reasons. If a parliamentary majority wants to revoke the ministerial exception, and disagree about why that is, this is perfectly acceptable, as long as the reasons they rely on are public. One group can say that it communicates women's inferiority, another that it violates robust freedom of occupational choice. It is enough that they accept the conclusion. A decision can be reached by way of an *incompletely theorised agreement*.

Political liberalism belongs to a family of views of liberal legitimacy that is sometimes called public reason liberalism. Much recent work has focused on the differences between political liberalism and the main alternative in this family, *justificatory liberalism*.[2] However, both family members share an important similarity: they allow incompletely theorised agreements. Yet, whereas political liberalism puts restrictions on the reasons legislators might have for accepting the agreement, justificatory liberals say that there is nothing precluding an agreement based entirely on non-public reasons.

[2] Paul Billingham, 'Convergence Justifications Within Political Liberalism: A Defence', *Res Publica* 22 no. 2 (2016): 135–153; Paul Billingham and Anthony Taylor, 'A framework for analyzing public reason theories', *European Journal of Political Theory* 21 no. 4 (2022): 671–691; Gerald Gaus and Kevin Vallier, 'The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry, and Political Institutions', *Philosophy & Social Criticism* 35 no. 1 (2009): 51–76; Henrik D. Kugelberg, 'Opposing laws with religious reasons', *Journal of Social Philosophy* 52 no. 1 (2021): 132–151; Brian Kogelmann and Stephen Stich, 'When Public Reason Fails Us: Convergence Discourse as Blood Oath', *American Political Science Review* 110 no. 3 (2016): 717–730; Andrew Lister, *Public Reason and Political Community* (London: Bloomsbury, 2013); Andrew Lister, 'The classical tilt of justificatory liberalism', *European Journal of Political Theory* 12 no. 3 (2013): 316–326; Enzo Rossi, 'Legitimacy, democracy and public justification: Rawls' political liberalism versus Gaus' justificatory liberalism', *Res Publica* 20 no. 1 (2014): 9–25; Kevin Vallier, 'Against Public Reason Liberalism's Accessibility Requirement', *Journal of Moral Philosophy* 8 no. 3 (2011): 366–389; Jonathan Quong, 'What is the Point of Public Reason?', *Philosophical Studies* 170 no. 3 (2014): 545–553.

In this paper, I argue that incompletely theorised agreements cause significant problems for liberal views of legitimacy. They undermine political autonomy, lead to an erosion of the expressive quality of laws and fail to ensure justification to citizens. These problems are present for both political liberalism standardly understood and for justificatory liberalism.[3]

I then demonstrate that political liberalism can overcome these problems. What I will call *strong* political liberalism, a view according to which there needs to be a majority agreement on the reasons justifying a decision, is a plausible and attractive alternative that does so. An upshot of my analysis is that justificatory liberalism cannot be salvaged without opening the door for an objectionable form of perfectionism.

I make three main interventions. First, I argue that there is an intimate relationship between the decision-procedure we adopt, political autonomy, the expressive power of law, and justification to citizens. Second, I show how this entails that we must choose between committing to the standard interpretations of political liberalism and justificatory liberalism and upholding these ideals. I argue that we should opt for the latter, while changing our understanding of public reason's role in collective decision-making. Instead of incompletely theorised agreements, we should demand agreement both on the public reasons themselves and on the other premises that justify a decision. In this way, it is always possible to point to a procedure-independent reason that justifies democratic decisions, and the reasoning of the state is public and contestable. Third, I explain how this, in turn, implies that only political liberalism can be rescued.

I will proceed as follows. I begin by analysing political and justificatory liberalism as modes of making democratic decisions (Sect. I). After this, I argue that the structure of both views undermines political autonomy, the expressive power of law, and the justification to citizens (Sect. II). I then argue that political liberalism can mitigate these problems, whereas justificatory liberalism cannot without collapsing into perfectionism (Sect. III). Finally, I discuss possible objections and argue that the disadvantages of my proposed alter-

[3] However, I do not argue that these problems are such that they completely undermine the liberal legitimacy of political decisions.

native for collective decision-making are outweighed by the benefits, at least for public reason liberals (Sect. IV).

I. FOUR WAYS OF MAKING COLLECTIVE DECISIONS

A. *Justificatory Liberalism*

Political liberalism and justificatory liberalism are public reason liberalisms. This means that the animating idea behind both views is that citizens must have sufficient reason to accept the laws that bind them. However, political and justificatory liberals have two different interpretations of what follows from this. Previous work has consequently tended to emphasise the differences between the views.

When the theories are examined as modes of making collective decisions, an important similarity emerge. The most notable proponents of both theories are committed to what has been called the 'conclusion-based procedure' for making collective decisions.[4] They allow incompletely theorised agreements.[5]

The conclusion-based procedure is perhaps the most intuitive way of making collective decisions. Suppose, for instance, that the state (through the relevant branch) decides whether to enact a new tax policy. With the conclusion-based procedure, only the substantive issue is on the agenda, that is, the policy itself. If a majority (or a supermajority, or the whole assembly, depending on what voting rule is adopted) votes yes, the tax policy is adopted.[6] This is an *incompletely theorised* agreement because it does not require that the agreement goes 'all the way down'. There need not be a deeper agreement on why the decision is enacted.[7]

For those familiar with justificatory liberalism, it should be obvious that the view is based on incompletely theorised agree-

[4] This may come as a surprise to some readers. Fabienne Peter (2020, 154n17), for instance, states in a footnote that only justificatory liberalism is wedded to the conclusion-based approach, whereas political liberalism is not. As I will explain, I think this is mistaken. Fabienne Peter, 'Political Legitimacy Under Epistemic Constraints: Why Public Reasons Matter', In *Political Legitimacy*. Nomos, Nomos Volume LX, eds. Jack Knight and Melissa Schwartzberg (New York: NYU Press, 2020), p. 154 n. 17. For a different analysis of the relationship between judgement aggregation and public reason, see Lars J.K. Moen, 'Collectivizing Public Reason', *Social Theory & Practice* (forthcoming).

[5] Cass R. Sunstein, 'Incompletely theorized agreements', *Harvard Law Review* 108 no. 7 (1995): 1733–1772.

[6] It could, of course, also be the case that they use some decision procedure to choose between several different policies. In that case, there are numerous ways of aggregating the individual votes. But it would still be a vote on the substantive issue in the relevant sense.

[7] However, there is nothing precluding such an agreement.

ments. Here is an early formulation of the model from Fred D'Agostino:

> If A has a reason R_a that makes the regime reasonable for him, and B has a reason R_b that makes the regime reasonable for her, then the justification of the regime is based on convergence on it from separate points of view.[8]

In other words, there is no agreement on the justification for the proposal, only an agreement on the proposal itself. We might wonder whether a consequence of justificatory liberalism's commitment to this kind of public justification is that political decisions require unanimous consent, that is, that all citizens need to consider the regime reasonable. If so, the institutional implications would be that every citizen could veto any legislation that they do not approve of.[9] For Gerald Gaus, the most notable contemporary proponent of the view, this is not the case. Nor do all parliamentarians need to agree. It is enough that a law is supported by a majority or a supermajority of legislators.[10] I return to this question in Sect. III.

B. Political Liberalism

Political liberals argue that all laws need to be justified with public reasons, reasons that every citizens could accept. It is less obvious that this entails that democratic decisions should be made using incompletely theorised agreements, and it is not an inherent feature of the view.

Indeed, a common argument *against* political liberalism has been that the theory dictates that we must agree on the same law for the same reasons, and that this makes it too demanding.[11] But according to leading proponents, this is mistaken. Consider this passage from Jonathan Quong:

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[8] Fred D'Agostino, *Free Public Reason: Making it Up as We Go* (Oxford: Oxford University Press, 2016), p. 30.

[9] Andrew Lister, 'Public justification and the limits of state action', *Politics, Philosophy & Economics* 9 no. 2 (2010): 151–175.

[10] Surprisingly little rationale is given for this. Because it is not entirely convincing: the motivating thought behind Gaus's view is that acceptability among members of the public is what makes coercion permissible. So what standard, other than Gaus's own public reason view, could we appeal to if we want to know when it is allowed to impose a law on someone that she has reason to reject? Gerald Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (Cambridge: Cambridge University Press, 2011), pp. 458–459; 464; 488; 494–495.

[11] James Bohman, *Public Deliberation: Pluralism, Complexity and Democracy* (Cambridge: MIT Press, 1997), p. 80; John Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2000), p. 15.

> There seems nothing obviously problematic, for example, in a case where one citizen supports a law prohibiting prayer in public schools on the grounds that allowing it would be a violation of an individual's freedom of religious expression, while another citizen reaches the same conclusion by claiming such a law will effectively violate the state's commitment to establish fair equality of opportunity for all citizens, religious and non-religious alike.[12]

Citizens can agree to the proposal for different reasons. There is an incompletely theorised agreement, not agreement all the way down, since some citizens see the law as justified because it is a requirement of freedom of religious expression and others because of fair equality of opportunity. Other political liberals like John Rawls, Lori Watson and Christie Hartley use similar reasoning.[13]

Quong calls this the 'weak consensus' view. The alternative is the 'strong consensus' view, that 'insists that each person must accept a decision for the very same reasons'.[14] Jürgen Habermas might be thought to endorse something like the strong consensus view.[15] For consistency, I shall call the standard view endorsed by Rawls, Quong, and Watson and Hartley *weak* political liberalism, since it incorporates the idea of weak consensus.

I will defend what could possibly be described as a 'strong consensus' view. I will call it *strong* political liberalism. I say 'possibly', for it is not necessarily precisely what Quong has in mind when he talks about strong (and weak) consensus. Quong discusses private citizens, not public officials, in this context. I will grant that a requirement that each private citizen should agree to a proposal for the same reasons is implausibly demanding.[16] But I shall argue that the same is not true for parliamentary majorities and other public decision-making bodies.[17] In that sense, it is conceptually possible to accept a weak consensus view for citizens and a strong consensus

[12] Quong, *Liberalism without Perfection*, p. 262.

[13] John Rawls, *Political Liberalism* (expanded ed) (New York: Columbia University Press, 2005), p. 241; Lori Watson and Christie Hartley, *Equal citizenship and public reason: A feminist political liberalism* (Oxford University Press, 2018), pp. 40–61. To my knowledge, Rawls does not argue explicitly for the weak consensus view, but his view is usually taken to at least imply it. On this, see Jonathan Quong, 'Public Reason', *The Stanford Encyclopedia of Philosophy* (2022), Edward N. Zalta (ed.), https://plato.stanford.edu/archives/spr2018/entries/public-reason/.

[14] Quong, *Liberalism without Perfection*, p. 264.

[15] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: MIT Press, 1996), p. 339.

[16] In correspondence, Quong confirms that he has not addressed the question of how best to understand the strong and weak distinction at the level of legislative politics.

[17] The view is therefore the exact opposite of Habermas's, since he arguably does not demand strong consensus at the level of legislative politics. Habermas, *Between Facts and Norms*, p. 110.

view for public officials. Indeed, this is what I will be doing, and this is what I take strong political liberalism to entail.

At the same time, since there has not been a discussion about whether things should be different for public officials, a reasonable inference is that political liberals have thus far not thought it an important distinction to make. The gap gives us reason to think that political liberals like Quong and Watson and Hartley do not see a problem with public officials collectively reaching incompletely theorised agreements, as long as those agreements are made on the basis of public reasons. Hence, I assume, for the present purposes, that what these political liberals say about private citizens goes for legislators too.

C. What Makes Law Publicly Justified?

Justificatory liberals typically have a permissive understanding of the kinds of reasons that can permissibly form the basis of the incompletely theorised agreement. It is enough that a reason is *intelligible*, that it is logically consistent and compatible with the worldview of the person who uses the reason. Hence, for example, many religious reasons are permissible in public justification—people who are not practicing the religion themselves can still appreciate a religious reason as an intelligible consequence of the theological commitments of others.[18]

For political liberals on the other hand, legislators must only endorse laws that they genuinely believe are supported by public reasons, reasons that are in some sense acceptable to every reasonable citizen. In this sense, there is a prior agreement concerning the reasons that can permissibly figure in public justification. Andrew Lister describes the differences between the views in the following way:

> In the first account [political liberalism, in the terminology of the present paper], it is the reasons that lie behind our decisions that must pass the qualified acceptability test, otherwise we exclude the reasons in question from our decision-making. In the second [justificatory liberalism], it is that the laws themselves must pass the qualified acceptability test, otherwise we refuse to enact any law in the domain in question.[19]

[18] Kevin Vallier, 'In defence of intelligible reasons in public justification', *The Philosophical Quarterly* 66 no. 264 (2016): 596–616.

[19] Lister, *Public Reason and Political Community*, p. 15.

Consequently, in what I call weak political liberalism there is a prior agreement concerning the reasons that can permissibly figure in public justification, but there is no consensus on precisely which reasons justify a particular law. To reiterate: each citizen (and, I take it, each public official) 'must appeal only to considerations they sincerely believe other reasonable citizens can endorse, but different citizens may still endorse the same decision (or different decisions) for different reasons'.[20] So, Anna can support a tax policy because it benefits the worst off, and Beatrice can support it because it promotes equality. In that sense, the agreement is still incompletely theorised—it is not fully theorised—but it is in a sense *more completely* theorised than on justificatory liberalism.

Before moving on, let me again emphasise that even if this is how political liberalism has often been understood, it is not inherent to the view. I shall argue that political liberals can (and should) give up the conclusion-based procedure as the ideal for how public officials make collective decisions. They should embrace strong political liberalism. The fact that this is possible makes the framework superior to justificatory liberalism.

D. Conclusions, Premises, Public Reasons, Private Reasons

Political and justificatory liberalism can be understood as ways of theorising what makes political decisions publicly justified. Interpreted this way, we should look at a law or a policy *ex post* and determine whether it is legitimate. Depending on what framework we endorse, the law or policy is legitimate either when all citizens have reason to endorse it or when it is justified with public reasons.

It is, however, also possible to re-describe the views as two different ways of making legitimate democratic decisions, as rules that parliaments and other state agencies should follow, as conditions such that when they are met, the resulting decisions will be publicly justified and legitimate. This approach asks the question of how public reason should be institutionalised.

Understood like this, and as established, justificatory liberalism allows incompletely theorised agreements with private reasons, and weak political liberalism demands incompletely theorised agree-

[20] Quong, *Liberalism without Perfection*, p. 263.

ments with public reasons. Both follow the conclusion-based procedure.

This could be contrasted with a different way of making collective decisions: the *premise-based* procedure. On this method, the reasons for a decision, not the conclusion, are on the agenda. Individual public officials vote on the premises underpinning the decision. To exemplify, we could again think of a tax policy, where the reasons might look something like this:

P_1: The policy benefits the worst off in society.
P_2: The policy should be implemented if and only if it benefits the worst off in society.
C: The policy should be implemented.

If a parliament follows the premise-based procedure, the members of parliament first determine whether a majority of them agrees with P_1 and P_2, after which they follow the 'appropriate logical relation' to determine their stance on the conclusion, C.[21] If they believe that the policy benefits the worst off in society and that it should be implemented if and only if it does so, the policy is implemented. If a majority believes that the policy does not benefit the worst off in society, and a majority believes that it should be implemented only if it does, the policy is not implemented. If a majority does not believe that the policy should be implemented only if it benefits the worst off, if they believe that there are other reasons that could support the tax policy, the agenda would have to be adjusted accordingly. Institutionalising the premise-based approach might require things such as setting up a system for sub-committees and sequential premise-based voting to ensure majority endorsement of the premises.

While the result of the conclusion-based procedure ideally depends on individuals making up their minds about the reasons behind a decision (rather than having them, say, toss a coin), the premises form the basis for the group's decision in a rather direct way in the premise-based procedure. The individual members' judgements on the premises function as inputs to let the group—the parliament in this case—perform logical reasoning of its own.[22] Just as for the conclusion-based procedure, we could hold either that only

[21] Christian List, 'The Discursive Dilemma and Public Reason', *Ethics* 116 no. 2 (2006): 362–402, p. 369; Christian List and Philip Pettit, *Group Agency: The Possibility, Design, and Status of Corporate Agents* (Oxford: Oxford University Press, 2011).

[22] List, 'The Discursive Dilemma and Public Reason''.

public reasons are permissible inputs to this process, or we could also allow private reasons to permissibly figure as premises:

		Reasons: Public	Reasons: Private
Procedure	**Conclusion-based**	Weak political liberalism	Justificatory liberalism
	Premise-based	Strong political liberalism	Perfectionism

Political decisions made on the basis of the premise-based procedure and private reasons violate what has been called the public justification principle.[23] The model allows reasons that are not acceptable to all citizens while not everyone need to consider having the law or policy as superior to having no law or policy in its place.

In other words, it allows perfectionism.

With perfectionism, I mean the idea that the state can justify its central institutions and policies with reasons based in thick notions of human flourishing. For my purposes, perfectionism is therefore the same as the rejection of the value of state neutrality.[24] It should, however, be noted that the idea of perfectionism does not fully capture what is allowed in polities that follow the premise-based procedure with private reasons. This is because perfectionism is not the only possible outcome of it. If the policy and the reasons for it are not perfectionist, the resulting outcome would of course not be perfectionist either. In that sense, the label perfectionism is only

[23] Steven Wall, 'Is public justification self-defeating?', *American Philosophical Quarterly* 39 no. 4 (2002): 385–394.

[24] Ronald Dworkin, ''Liberalism'', in *Public and Private Morality*, S. Hampshire (ed.), (Cambridge: Cambridge University Press, 1978): 113–143; Charles Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987); Gina Schouten, 'Political liberalism and autonomy education: Are citizenship-based arguments enough?', *Philosophical Studies* 175 (2018): 1071–1093.

meant to denote that following the premise-based approach with private reasons *allows* perfectionism.[25] I say more about this in Sect. III.

I will defend strong political liberalism. That is, I will argue that the set of permissible reasons should be restricted to public reasons, and that decisions should be made with the premise-based procedure. This model allows the realisation of three liberal and democratic values that public reason liberals should care about: political autonomy, the expressive power of law, and justification to citizens.

II. LIBERAL AND DEMOCRATIC VALUES

A. Political Autonomy

Political liberals have drawn attention to how public reason can realise a valuable form of political autonomy. The idea has been traced to Rawls, who argues that 'public reason is the form of reasoning appropriate to equal citizens who as a corporate body impose rules on one another by sanctions of state power'[26] and that citizens achieve political autonomy 'by participating in society's public affairs and sharing in its collective self-determination over time'.[27]

In line with this, Blain Neufeld argues that it follows from a commitment to civic respect that citizens should be allowed to act as a corporate body, or civic people. The only way of achieving this is through demanding that public reasons are offered in collective decision-making.[28] In a similar spirit, Paul Weithman has argued that political liberalism, and specifically public reason-giving can realise public autonomy,[29] and Watson and Hartley point out that 'the use of nonpublic reasons for matters concerning basic justice and constitutional essentials undermines political autonomy, for such reasons may be reasonably rejected by citizens who do not regard such reasons as authoritative'.[30]

[25] It is also important to note that not all perfectionist theories would be committed to the procedure.

[26] John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), p. 92.

[27] Rawls, *Political Liberalism*, p. 78; see also Blain Neufeld, 'Shared intentions, public reason, and political autonomy', *Canadian Journal of Philosophy* 49 no. 6 (2019): 776–804.

[28] Neufeld, 'Shared intentions, public reason, and political autonomy', p. 784.

[29] Paul Weithman, 'Autonomy and Disagreement about Justice in Political Liberalism', *Ethics* 128 no. 1 (2017): 95–122.

[30] Watson and Hartley, *Equal citizenship and public reason*, pp. 82–83.

While I do believe that there is something to be said for these arguments, I will not assess them in any detail. The reason is that there is a further question to be answered if we are interested in political autonomy, that has thus far been not been examined by public reason liberals. For the citizens to act as a corporate body, it is not enough that they use reasons that are acceptable to all. They also need to find agreement about which reasons, specifically, that justify a given policy.

Let us begin by considering a multi-judge courtroom, as an analogy. When a ruling is made, we do not only care about whether the defendant was guilty of a crime. We also want to reliably determine what crime she committed. To do so, it is important to find out what the court 'thinks', over and above what its individual members think. In one sense the judges act as individuals. In another, however, we need them to act together *as a court*. They need to be able to act together as a corporate body. This is what it means for them to have public (or political) autonomy.

The conclusion-based procedure endorsed by weak political liberalism and justificatory liberalism makes this impossible.

To see this, suppose that the court has three judges, and that they make decisions with the conclusion-based procedure. If a majority of the judges agree with the conclusion that the defendant should go to prison, she goes to prison. Now, suppose that the defendant is accused of three different crimes. Each crime is severe enough that if the defendant would have committed it, she would be sentenced to prison. The judges all believe that the defendant has committed one crime, but that she has not committed the other two crimes. They disagree about which crime she committed.[31] Hence, all of them conclude that she should go to prison, but they do so for different reasons. This is an incompletely theorised agreement. When the court operates like this, it is impossible to point to a reason for why *the court* is handing out the prison sentence. The behaviour of the group is irrational, because the court—as an entity—thinks that the defendant is not guilty of any crime. Nevertheless, the court 'thinks' that she should go to prison. The judges are unable to act together as a court. They cannot exercise their public autonomy because they fail to make consistent rulings together.

[31] c.f. List, 'The Discursive Dilemma and Public Reason', p. 397; Lewis A. Kornhauser and Lawrence G. Sager, 'Unpacking the court', *Yale Law Journal* 96 (1986): 82–117.

In line with the recent turn to political autonomy among public reason liberals, there is a case to be made that being able to act together in this way is valuable in and of itself for citizens of liberal democracies. However, there are also adverse consequences of not realising political autonomy that should worry even those who do not see the intrinsic value. Conversely, the positive effects of realising political autonomy make clear that we have good reason to value political autonomy, if not for intrinsic, then at least for instrumental reasons. To show this, I begin by returning to the simplified court case before extending my analysis to legislative politics.

B. The Expressive Force of Law

Many legal theorists hold that part of the reason for why punishment is important is that it communicates that this is something that a person who committed a crime deserves for the crime she committed.[32] In the case at hand, this is impossible. All the court can communicate with its punishment is that the defendant did something wrong, not what wrong they committed. I will not take a stand on whether 'communicative punishment' is the right rationale for criminal punishments. But something similar can be said about political decisions. They, too, have an important communicative function. Laws have 'powerful expressive force'.[33] If we have inconsistent justifications for a law, we cannot know what the law is meant to express to us. The law sends a powerful message, 'do not φ!', but the message is not very clear. Why should we not φ?

With this, I do not wish to suggest that it is always a problem if a state entity cites several reasons in favour of a legal rule. What is worrying is, specifically, if the reasons are mutually incompatible or inconsistent. And when it comes to law-making, it is also a problem

[32] Joel Feinberg, 'The Expressive Function of Punishment', in his *Doing and Deserving* (Princeton, NJ: Princeton University Press, 1970); Igor Primoratz, 'Punishment as Language', *Philosophy* 64 (1989): 187–205.

[33] I grant that this is not true for all laws. Maxime Lepoutre, 'Can More Speech Counter Ignorant Speech', *Journal of Ethics and Social Philosophy* 16 (2019): 155–191; Maxime Lepoutre, 'Hate speech laws: expressive power is not the answer', *Legal Theory* 25 no. 4 (2019): 272–296; Richard H. McAdams, *The Expressive Powers of Law: Theories and Limits* (Harvard University Press, 2015).

if there is a certain kind of disagreement over what reasons justify a given law.[34]

Let me illustrate these problems by considering the debate outlined in the opening paragraphs over whether the state should revoke the ministerial exception, the rule that says that anti-discrimination protections do not apply to the employment of religious leaders. Suppose that in making up their minds, the parliamentarians consider two reasons that could count in favour of removing the exception:

R_1 The ministerial exception communicates women's inferiority.
R_2 The exception violates robust freedom of occupational choice for prospective female priests.
C The ministerial exception should be removed.

For reasons of simplicity, suppose that it is a parliamentary democracy where the legislature elects the executive—'the government'—and that there are three equal-sized parties, led by Anna, Beatrice, and Charlotte. Together they control a majority of the seats in parliament and they have formed a coalition government. The parliamentarians always vote with their party leader.[35]

Anna, Beatrice, and Charlotte all believe that if either R_1 or R_2 holds, the ministerial exception should be removed ($((R_1 \vee R_2) \rightarrow C)$). They make the following judgements:

	R_1	R_2	$(R_1 \vee R_2) \rightarrow C$	C
Anna	True	False	True	True
Beatrice	False	True	True	True
Charlotte	False	False	True	False
Majority	False	False	True	True

A two-thirds majority rejects each reason. Nevertheless, there is a two-thirds majority accepting the conclusion: the ministerial exception should be removed. The law forbidding churches from hiring only male priests is in one sense expressive: 'it is wrong to hire only male priests', but the expressive quality is low. It does not provide

[34] Generous comments from an anonymous reviewer were helpful for clarifying what is at stake here.

[35] Nothing hinges on these simplifications; I only assume them for presentational purposes.

any information about *why* it is wrong. Is it because the exception communicates women's inferiority? No, says the government. Is it because it violates robust freedom of occupational choice? The answer is, again, no. Even if the individual judgements are logically consistent, the collective judgement—the government's judgement—is not.[36] Consequently, the government cannot communicate the reasoning behind the law. The citizens, through their parliamentary representatives, cannot act together to make laws have expressive force of the right kind. One way of describing what is going on is by saying that being able to communicate effectively through law is made possible by political autonomy, that is, through granting decision-makers the power to act together as a collective body.

There are strong instrumental reasons for why we should be worried about a lack of this kind of political autonomy. When chosen laws are to be implemented, interpreted, and applied to unanticipated contexts it will be difficult to do so. If public officials such as judges cannot go back to the reasons for why the law was chosen, it is difficult—or impossible—to administer the law in a coherent and non-arbitrary way. In many legal systems, when a judge is ruling on a law, she needs to know what the purpose of the law is. In a similar vein, citizens cannot internalise complex laws if they do not have coherent justifications. This is important because a legal system's effectiveness depends on voluntary compliance with the laws. And to achieve that, citizens need at least a 'general sense' of the rationale behind the laws, if they are unsure about their exact requirements in a given situation.[37]

In cases where we follow the conclusion-based procedure and find that there are mutually incompatible reasons for a law, it becomes impossible to determine what the spirit of the law is. In such cases,

[36] Legal theorists have referred to a subset of this problem as the 'doctrinal paradox'. Christian List and Philip Pettit have generalised the findings and shown that what they call 'the discursive dilemma' can arise whenever a group of three or more individuals have to decide on a series of logically related propositions. Christian List and Philip Pettit, 'Aggregating Sets of Judgments: An Impossibility Result', *Economics and Philosophy* 18 no. 1 (2002): 89–110; Christian List and Philip Pettit, 'Group Agency and Supervenience', *The Southern Journal of Philosophy* 44 no. 51 (2006): 85–105. See also Gabriella Pigozzi, 'Belief merging and the discursive dilemma: an argument-based account to paradoxes of judgment aggregation', *Synthese* 152 (2006): 285–298.

[37] Stephen Macedo, 'Why Public Reason? Citizens' Reasons and the Constitution of the Public Sphere'. (Unpublished Manuscript, August 23, 2010). Available at SSRN: https://ssrn.com/abstract=1664085, p. 22; Gillian K. Hadfield and Barry R. Weingast, 'What is law? A Coordination Model of the Characteristics of Legal Order', *Journal of Legal Analysis* 4 no. 2 (2012): 471–514.

when there are gaps in the legal text, it is impossible to sensibly act in accordance with the law and to sensibly administer it.

But there are also other problems, problems that should worry public reason liberals in particular. I discuss them next.

C. Justification to Citizens

Let us return to the state deciding whether to enacting a new tax policy. Anna, Beatrice, and Charlotte are considering the propositions outlined earlier[38]:

R_1: The policy benefits the worst off in society.
R_2: The policy should be enacted if and only if it benefits the worst off in society.
C: The policy should be enacted.

Anna thinks that the policy should be enacted if and only if it benefits the worst off. Evaluating the policy, she concludes that it would, and that it therefore should be enacted. Beatrice agrees that the policy only should be enacted if it is to the benefit of the worst off, but she does not think that it would benefit them, because of negative incentive effects. She therefore does not think that the policy should be enacted. Charlotte agrees with Beatrice about the incentive effects—the policy probably will not benefit the worst off—but disagrees that net benefit is the only valid reason for taxing wealthy people. She subscribes to a kind of egalitarianism where the state is justified in trying to limit the wealth gap even if this does not directly benefit the worst off. And so, Charlotte believes that the policy should be enacted.

	R_1	R_2	C
Anna	True	True	True
Beatrice	False	True	False
Charlotte	False	False	True
Majority	False	True	True

[38] For a structurally similar problem, see Franz Dietrich and Christian List, 'Arrow's theorem in judgment aggregation', *Social Choice and Welfare* 29 no. 1 (2007): 19–33, p. 19. For other kinds of logical connections, see Franz Dietrich and Christian List. 'Strategy-proof judgment aggregation', *Economics & Philosophy* 23 no. 3 (2007): 269–300. See also Kai Spiekermann, 'Judgement aggregation and distributed thinking', *AI and Society* 25 no. 4 (2010): 401–412.

When using the conclusion-based procedure, the collective judgements about the reasons are irrelevant. The parliament only votes on C: should the policy be enacted? A majority of the party leaders (Anna and Charlotte) vote yes, and the policy is enacted. Clearly, Anna, Beatrice, and Charlotte have all made their decisions based on public reasons, and they have used a majoritarian, presumably publicly justified, procedure for making the decision. Neither weak political liberals nor justificatory liberals could therefore say that anything has gone wrong. Justificatory liberals, because as long as an agreement is made based on intelligible reasons it is permissible. And political liberals, because the agreement needs to be made on the basis of public reasons, and this is what happened. Nevertheless, a problem still arises, because citizens cannot evaluate whether the reasons were sound in themselves, and whether the reasons really supported making the decisions.[39]

Why? Suppose that the election is coming up and the ruling coalition is questioned in a news programme. Donna, a hard-hitting journalist, demands an explanation from the government for why the policy was enacted. The party leaders are unable to provide coherent procedure-independent reasoning for their decision. Donna insists: 'do you agree with the judgement that it is only right to raise taxes if it benefits the worst off?' The government believes this to be true. She asks if they think that the policy would generate such a surplus. The government says that they believe that it would not. Then why—Donna might rightfully ask—are you enacting the policy? The government would have no means by which they could justify the outcome other than appealing to the procedure adopted. 'There is no talking to a group that operates like this', as Philip Pettit succinctly summarises the problem.[40]

From the perspective of the system they operate in, Anna, Beatrice, and Charlotte have not done anything wrong. They have honestly and sincerely voted on their views about the conclusion—a conclusion that they believe is supported by public reasons. But this leaves the government unable to give a procedure-independent explanation for why it exercises political power. This is a particularly

[39] For a similar point, see Philip Pettit, 'Deliberative Democracy and the Discursive Dilemma', *Philosophical Issues*, 11 (2001): 268–299.

[40] Pettit, 'Deliberative Democracy and the Discursive Dilemma', p. 284.

pressing problem for public reason views. As we have seen, not only will incompletely theorised agreements deny citizens the opportunity to exercise political autonomy with a deprivation of the expressive content of laws as a result. It also removes the justificatory force of the offered public reasons. On weak political liberalism, citizens will know that the proposal was justified with public reasons. Still, there is no justification *to* them from the state. *The state* does not explain *to its citizens* why a particular policy is implemented. All it can provide is incoherence.

III. STRENGTHENING POLITICAL LIBERALISM

At this point, a reader might suggest that compromises, bargaining, and strange coalitions are just basic facts of political life. Are they not in fact necessary for making political decisions? Moreover, we can explain exactly what happened to the citizens who want a justification for why a law, or a policy, was enacted. This party thought it generated a surplus of such-and-such size, this other party thought it increased equality, and this third party believed it benefitted the worst off. They took a vote, and it was determined that the law was a law that 'they' wanted. So, the objection might go, why is it not sufficient to appeal to proceduralism?

The first response is simple. Why should we appeal to this particular kind of proceduralism? As argued, it is inconsistent with the basic values of public reason liberalism, it makes political autonomy impossible, and it makes the coherent application of law difficult. Moreover, if it could be shown that there is an alternative that could provide both a sound procedural justification, and avoid the outlined problems, such a view would be superior in both regards.

The premise-based procedure is such an alternative. When it is employed, it is always possible to point both to a credible and fair democratic procedure, and to the procedure-independent reasons that underpin and justify the political decisions. The reasoning of democratic bodies is, in this way, public and contestable—disagreeing citizens can demand, and get, rational explanations for decisions.

To exemplify with the tax policy case, the premise-based procedure entails that the parliament votes on the premises. If a majority holds that the policy should be enacted only if it benefits the worst off, and a majority holds that it does not, in fact, benefit the worst

off, the group's judgement is that the tax policy should not be enacted. This ensures citizens' political autonomy. They can act together to make laws with expressive force. The laws (or the reason not to enact them) also express something to the citizens. Citizens who believe that the policy should have been implemented are given an explanation. The state (however it is understood, either as the corporate body of citizens or, in less loaded terms, the government) provides them with an explanation. It did not believe that a good balance of public reasons came down in favour of implementing the policy. Disagreeing citizens are told that the policy should only be enacted if it benefits those who are worst off but that it does not do so. The decision to not implement the policy is justified to the citizens.

There is also a procedural story available: the parliament voted on the premises and this is the result that emerged. In this way, the premise-based procedure retains the procedural benefits of the conclusion-based procedure, while avoiding the problems that incompletely theorised agreements are faced with.

Political liberalism is perfectly compatible with making collective decisions using the premise-based procedure. According to what I have called strong political liberalism, the relevant government agencies make collective judgements on the premises, and all normative premises are based on public reasons. Justificatory liberalism, on the other hand, cannot incorporate the premise-based procedure without violating its central ideals. That is, if we allow every intelligible non-public reason into the premise-based procedure, all kinds of non-neutral perfectionism would be permissible.

Under such a regime, Legislators would collectively try to determine which of their (potentially) private reasons that could justify a given law. Now, imagine the Liberation Party, a party that advocates liberation theology, is voted into power through a fair democratic procedure. The party holds that 'God has a preference for the poor', and this 'obliges us to take quite drastic measures in narrowing the disparities in life opportunities between rich and poor'.[41] These are clearly intelligible reasons given certain Christian

[41] Christopher Eberle, *Religious Conviction in Liberal Politics* (New York: Cambridge University Press, 2002), p. 112.

premises, but on most political liberal views, they are not public reasons.[42] The party controls a majority of the seats in parliament. They are considering a policy proposal that raises taxes and expands the welfare state for the following reasons:

R_1: God demands that we show preference for the poor.
R_2: Raising taxes and expanding the welfare state shows preference for the poor.
R_3: If a policy is in line with what God demands it should be enacted.
C: The policy should be enacted.

According to justificatory liberalism's view about what counts as permissible reasons, the normative premises are acceptable, because they are intelligible consequences of doctrines like liberation theology. If a majority of the parliamentarians agree with each premise, and we follow the logical relation, we find that the law should be enacted. It would be permissible for the government to implement the policy even if all citizens neither agree that it is the right policy (or that it is better than not having a new policy at all), nor that it is chosen for reasons that they all accept. This is a Christian perfectionism that violates the public justification principle, and it circumvents the central tenets of public reason liberalism.

Justificatory liberalism demands that all citizens need to have reason to prefer having the policy to not having any policy. Some citizens, such as reasonable libertarians, would prefer not having a welfare state at all over expanding it. Consequently, the policy is, in line with the convergence understanding, not publicly justified. At the same time, it could be permissible to implement it, because even if a law is not publicly justified, in the convergence sense that all citizens do not have reason to prefer having no law to having the law, as I have said, 'the use of coercion to enforce it may [still] be permissible'.[43] There are many reasons for why we might think that this kind of perfectionism is objectionable, but I do not need to rehearse them here. Public reason liberals already share these concerns.[44]

Justificatory liberals might want to suggest that there is a way to avoid the problems outlined above, without the theory collapsing into perfectionism. They could demand that political decisions re-

[42] Henrik. D. Kugelberg, 'Civic equality as a democratic basis for public reason', *Critical Review of International Social and Political Philosophy* (forthcoming).

[43] Gaus, *The Order of Public Reason*, p. 495; see also pp. 462–468.

[44] Gerald Gaus, 'On dissing public reason: A reply to Enoch', *Ethics* 125 no. 4 (2015): 1078–1095; Quong, *Liberalism without Perfection*.

quire unanimity. If no one disagrees to the proposed course of action, it may seem as if the problems disappear, because the law is justified for everyone. If the law is a failure, everyone is equally responsible, so there is no one who have the standing to question it.

There are a few reasons for why this response does not work. First, because unanimity is an incredibly demanding standard for making collective decisions. As noted, Gaus rejects unanimity because it has 'severe problems in actual choice situations'.[45] In short, we might wonder if we could realistically make any decisions. This fact is amplified since it is not enough to achieve unanimity among the members of parliament; every single citizen must have reason to want the law enforced. Otherwise, dissenting citizens have grounds for complaint. This standard looks unfathomably high. Surely, we could never find laws that no citizens have reason to disagree about.

It might be asked if on some justifications for democracy, the conclusion-based procedure remains superior. In examining this, I also respond to the main shortcoming of the premise-based procedure: that a proposal might be implemented even if a majority is against the conclusion. I will argue that from the point of view of public reason liberalism, this is an acceptable cost.

IV. COMPETING JUSTIFICATIONS FOR DEMOCRACY AND CONCLUSIONS BACKED BY A MINORITY

The preceding sections have not relied on a particular justification for democracy. However, it might be thought that things could look a bit different for those who value democracy for its epistemic credentials, that is, for those who believe that democracy is valuable because it produces decisions that are likely to be right.[46] According to these 'epistemic democrats', democracy is valuable because it is better at arriving at the right decision than alternative modes of decision-making. And if strong political liberalism is worse at arriving at the right decision than weak political liberalism and justificatory liberalism, that would be a reason against it. Consequently, those who subscribe to this justification for democracy might hold that the

[45] Gaus, *The Order of Public Reason*, pp. 458–459.

[46] e.g. Elizabeth Anderson, 'The epistemology of democracy', *Episteme: A Journal of Social Epistemology* 3 no. 1 (2006): 8–22; Hélène Landemore, *Democratic Reason* (Princeton: Princeton University Press, 2013); Hayley Stevenson, 'The wisdom of the many in global governance: An epistemic-democratic defense of diversity and inclusion', *International Studies Quarterly* 60 no. 3 (2016): 400–412.

fact that a majority believes that a law should be implemented should count so much in favour of implementing it that it does not matter that there is no coherent, procedure-independent, reason for why it is chosen.

In response, however, we cannot be certain that aggregating judgements on the conclusion should lead to better truth-tracking than aggregating judgements on the premises. On the contrary, it might be the case that if we want democratic decisions to produce good decisions, the premise-based approach can fare better. One reason for this is that it is difficult to interpret what the 'rightness' of a decision is outside the standard we use for assessing the decision. Hence, the proponent of epistemic democracy can plug in whatever arguments she uses for the truth-tracking properties of collective decisions such as Condorcet's jury theorem,[47] the Aristotelian wisdom-of-the-crowds potluck,[48] and so on, and apply them to the premise-based approach. *If* it is true that aggregating the judgements about conclusions leads to better knowledge, then the same could reasonably be expected to hold also when we aggregate judgements about individual premises. In other words, by a similar mechanism, it could entail that the premises that justify political decisions are more likely to be correct. If that is right, the premise-based approach could be appealing to epistemic democrats, because it would ensure not only that we make the right decision, but that we make the right decision for the right reasons.[49]

Nevertheless, this uncovers a peculiarity with the premise-based procedure. For it might sometimes be the case that there is a majority in favour of each premise that leads to the enactment of a policy, while only a minority supports the substantive conclusion that the policy should be enacted. And this raises an immediate objection: is this not an antidemocratic outcome? If so, would that not be a strong reason in favour of weak political liberalism? Let us return to our three party leaders one last time to see how this sort of case might play out.[50]

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[47] Robert Goodin and Kai Spiekermann, *An Epistemic Theory of Democracy* (Oxford University Press, 2018).

[48] Josiah Ober, 'Democracy's wisdom: An Aristotelian middle way for collective judgment', *American Political Science Review* 107 no. 1 (2013): 104–122.

[49] For an interesting argument to this effect, see Luc Bovens and Wlodek Rabinowicz, 'Democratic answers to complex questions—an epistemic perspective', *Synthese* 150 no. 1 (2006): 131–153.

[50] This is a variation of a case from List, 'The Discursive Dilemma and Public Reason''.

It has come to the government's attention that so-called political dark advertising, where individuals get targeted internet ads, invisible to others, might undermine trust between citizens and erode the democratic process.[51] If this is true, every party leader agree that dark advertisement would need to be banned. They make up their minds about the following propositions:

R_1: Dark advertising undermines trust between citizens.
R_2: If trust between citizens is undermined it will erode our democracy's functioning.
R_3: Dark advertising should be banned if it erodes our democracy's functioning.
$C \leftrightarrow (R_1 \,\&\, R_2 \,\&\, R_3)$: If all propositions hold our democracy's functioning is eroded and we should ban dark advertising.
C: Dark advertising should be banned.

	R_1	R_2	R_3	$C \leftrightarrow (R_1 \,\&\, R_2 \,\&\, R_3)$	C
Anna	True	True	True	True	True
Beatrice	True	False	True	True	False
Charlotte	False	True	True	True	False
Majority	True	True	True	True	False

Anna believes all premises to be true, and that dark advertisement therefore should be banned. Beatrice believes that dark advertisement undermines trust between citizens, but that this does not affect the democratic process. Hence, she believes that dark advertisement should remain legal. Charlotte does not believe that dark advertisement currently undermines trust between citizens. However, she thinks that if (or when) it does so, this would erode democracy's functioning.

There is a majority in favour of each premise. Following the premise-based procedure would lead to dark advertisement being banned even if only a minority, Anna, shares this conclusion.

Equipped with cases like this, a critic might press that it could well be true that the decision retains citizens' political autonomy and that the law sends a powerful expressive message (dark advertisement is wrong because it undermines democracy's functioning). They might even say that the law is justified *to* citizens. Nevertheless, even granting all this, she might suggest, there is still something

[51] Carissa Véliz, *Privacy is power* (Random House 2020); Joe Saunders, 'Dark Advertising and the Democratic Process', in *Big Data and Democracy*, eds. Kevin Macnish and Jai Galliott (Edinburgh University Press, 2020).

objectionable about the fact that only a minority believes that the policy should be implemented. Should this not worry us?

Let me say a few things in response. First, whether or not it is worrying depends on how we conceptualise what political decision-making is. If democracy is conceived of as private individuals bargaining with each other to get their own, private, conclusion-oriented preferences through, then clearly this is a suboptimal outcome. A majority of the private individuals (Beatrice and Charlotte) do not get what they want. Moreover, from this perspective, we can see that two members of the government are unable to justify or explain why the law is in place. From their own, private, point of view it is wrong that the law is enforced.

On the other hand, if political power is conceived of as a public power, the outcome may be less unpalatable. And this is arguably a more liberal view. As Samuel Freeman puts it, liberals are typically committed to a view of political power as a 'public power, to be impartially exercised for the common good'.[52] For those who find this view attractive, it might even be a good thing that legislators have to put aside their own outcome-oriented preferences.

In the case at hand, the question of whether banning dark advertising is in the public's interest or not is precisely a question of whether the premises are true. In that sense, the epistemic argument above provides additional support for strong political liberalism, because the state would then be more likely to do the right thing (for the right reasons).

Public reason liberals with a commitment to political autonomy should want to avoid seeing state power as only being exercised by individual legislators over us, or as the bargaining between different interests. What they should be interested in is not whether a law is justified for the individual legislator. They should care about whether the law is justified for the government, as an entity, and to each citizen.

There might be those who deny this. My final response to them is to appeal to the overall balancing between realising the other values of strong political liberalism, and ensuring individual outcome-oriented preferences. In other words, to appeal to all-things-considered judgements, based on the full picture. This picture, it seems to me,

[52] Samuel Freeman, *Liberalism and Distributive Justice* (Oxford: Oxford University Press, 2022), p. 63.

clearly favours strong political liberalism. For even if laws are sometimes enacted that go against the majority's views on the conclusions, the laws have a clear, rational, and public justification, with all the benefits that follow from this.

V. CONCLUSION

I have argued in favour of what I called strong political liberalism. On this view, public reasons function as premises in the collective reasoning of decision-making state bodies. This ensures that citizens can exercise their political autonomy, which—in turn—ensures the expressive force of laws and justification to those subject to them. This insight has so far been overlooked: the two most prominent contemporary versions of public reason liberalism fail to ensure that these values are realised.

Justificatory liberalism cannot be salvaged because it would collapse into perfectionism. This gives us a new reason, previously unexplored, for being sceptical of it as a model of public reason. Especially once we recognise that the state exercises its authority over us not as an amalgamation of individual agents, but as an agent in its own right.

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London School of Economics and Political Science, London, UK
E-mail: h.kugelberg@lse.ac.uk