

## On public happiness

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Theories of happiness usually consider happiness as something that matters to us from a first-person perspective. In this paper, I defend a conception of public happiness that is distinct from private or first-person happiness. Public happiness is presented as a feature of the system of right that defines the political relationship between citizens, as opposed to their personal mental states, desires or well-being. I begin by outlining the main features of public happiness as an Enlightenment ideal. Next, I relate the distinction between the political and the personal to the distinction between having normative reasons for a particular political arrangement and merely having a ‘pro-attitude’ towards a state of affairs that accords with one’s preferred definition of happiness. Following this, I demonstrate why well-being, understood as a normative rather than a purely descriptive conception of personal happiness, nevertheless cannot serve as a normative *reason* in the political domain. In the final section, I show why normative reason-giving matters for the relationship between citizens, and how such reason-giving relates to public happiness.

### Introduction

Is happiness a mental state or a prudential value? Is it a function of pleasure, the satisfaction of desires, or the satisfaction of preferences? Is happiness equivalent to well-being, or merely a contributor to well-being? Is happiness the highest good, or merely one good among others? The debate about happiness is an intractable one.<sup>1</sup> However, beyond the quarrel over definitions, philosophers generally agree that happiness is something that matters to us from a first-person perspective. That is to say, happiness is viewed as a matter of what persons – subjectively or objectively, correctly or mistakenly –; feel, want, need, prefer, aim for, desire, believe, or value on their own behalf, whether considered individually or aggregated across groups.

In this paper, I consider happiness from another point of view, namely that of the citizen. While a citizen is necessarily also a person, she is a person in her specific capacity as a member of a political society: someone whose status is wholly defined by the system of rights and obligations *vis-à-vis* her fellow citizens. One’s identity as a citizen is entirely relational, and the relation itself is defined by a system of law rather

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<sup>1</sup> For a helpful overview, see Feldman (2010) and Haybron (2003, 2008).

than by accident, individual choice or natural affiliation. My claim, then, is that happiness understood from the point of view of the citizen – which I will call *public* happiness – is neither equivalent to nor merely an extension of happiness understood from the point of view of the private person, and that there are reasons for happiness that are only available to us in our capacity as citizens, regardless of how happy we might be in other respects. Public happiness, so understood, is a feature of the political relationship between citizens and not of their personal beliefs, psychological propensities, or conditions for flourishing.

This is a normative rather than a descriptive claim. My aim is not to examine how we happen to distinguish between public and private happiness in practice – on the contrary, we often fail to draw this distinction – but to provide reasons for why we *ought* to draw such a distinction, and to draw it in a particular way. I must also emphasise that this argument does not turn on any particular definition of private or first-person happiness or well-being. My project is to defend the *distinction* between public and private happiness, however the latter is defined, and to work out a particular definition of public happiness in light of this distinction.

I begin with a brief discussion of the eighteenth-century concept of public happiness, broadly understood as the freedom of citizens to decide the laws that bind them. I show, further, that public happiness is a function of the distinction between citizen and person that is central to the idea of the social contract. In the following section, I explain this distinction in terms of the difference between having normative reasons for particular political arrangements and merely having a ‘pro-attitude’ towards a desired state of affairs. Next, I demonstrate why well-being – while it is a normative rather than a purely descriptive conception of happiness – nevertheless cannot serve as a normative justification for any political order. In the final part of the paper, I take a closer look at normative reason-giving in the political domain and explain how it relates to public happiness. The aim throughout is to defend a conception of public happiness that is neither an extension of private happiness, nor an end to be pursued for its own sake, but a feature of the system of right that defines our civic relations.

### **The concept of public happiness**

While there are examples of earlier use, the phrase ‘public happiness’ first came to prominence through the work of the eighteenth-century Italian political economist Ludovico Antonio Muratori. The concept was subsequently taken up by the philosophers of the French Enlightenment, most notably Rousseau (see Bruni 2006; Stutzer & Reggiani 2014). Rousseau employs the notion of ‘public happiness’ (*le bonheur public*) to distinguish the free participation of the citizen in political affairs – specifically, in law-giving – from both the natural pleasures of human beings in their pre-social state, and from happiness founded solely on self-interest.<sup>2</sup> He further argues

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<sup>2</sup> I am here relying on Rousseau's essay ‘On public happiness’ (*Du bonheur public*), which was not published in his lifetime, but which nevertheless contains the key distinctions between individual and citizen, nature and political institutions, our duties and our inclinations, that are central to his published works. The original can be found in Rousseau (1964). For an insightful analysis of the tensions in Rousseau's conception of public happiness, see Shklar (1969: pp. 193–197).

that it is both impossible and undesirable to derive the criteria for political decision-making from individuals' personal conception of happiness. For one thing, even if we presume that human beings seek to arrange their societies in such a way as to promote their individual happiness, the many discrepancies between our political systems prove that individuals have different conceptions of happiness. Moreover, it is often the members of the 'best governed' societies who complain most about their government (Rousseau 1983: p. 5). Hence, argues Rousseau, we have to accept that it is impossible to devise a form of government that takes its direction from the conceptions of happiness held by its individual members: 'political government should not mould itself on the situation that best suits the wishes and the dreams of each individual. If it is to be effective, it has to follow more general rules' (ibid.). Since individual happiness is variable, these 'general rules' could not be derived from personal conceptions of happiness, and they could not compel people to live happily. Instead, 'the best [a government] can do is to give them an opportunity to do so if they are rational beings' (ibid.).<sup>3</sup>

Rousseau's conception of public happiness should be understood in light of the distinction between the private and civic or public self that is central to the idea of the social contract. The starting assumption here is that the mere existence of a state is not sufficient proof that it ought to exist, or that it ought to exist in its present form. Instead, the state, as defined by a system of law, stands in need of moral justification, and the citizens are the ones to whom such justification is owed. Such justification, in turn, cannot be derived from the interests and desires the members of the polity happen to have, since the mere fact of them having such interests and desires does not yet tell us whether these ought to be codified into law. While one is who one is – a particular constellation of needs, wants, aims and desires, all of them potential sources of (un)happiness – living in a state brings with it moral obligations that arise solely from the legal relationship between citizens and not from their individual predispositions. Rousseau's concern, then, is to work out a conception of happiness that is founded on this contractual relationship itself, rather than on our extra-political inclinations.<sup>4</sup>

The Enlightenment notion of public happiness has also served as an inspiration for the revolutions of the eighteenth century. A number of revolutionaries – most notably Jefferson and Adams in America and Robespierre and Saint-Just in France – explicitly endorsed public happiness as a specific kind of political freedom (Arendt 1963: pp.

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<sup>3</sup> This clearly shows Rousseau's influence on Kant. Consider: 'No generally valid principle of legislation can be based on happiness. For both the current circumstances and the highly conflicting and variable illusions as to what happiness is (and no one can prescribe to others how they should attain it) make all fixed principles impossible, so that happiness alone can never be a suitable principle of legislation' (Kant 1991: p. 80).

<sup>4</sup> There is a difference between the *moral contractualism* inaugurated by Rousseau and the *contractarianism* introduced by Hobbes. While Hobbes and modern-day contractarians, such as David Gauthier, view the social contract as a bargain based on rational self-interest, moral contractualists such as Rousseau, Kant, Rawls and Scanlon argue that the terms of the contract require normative justification, and that such justification cannot be reduced to the rational self-interest of individuals. (For a useful overview of this distinction, see the edited collection by Darwall 2003.) My own argument falls squarely within the moral contractualist camp.

114–117; Geuss 2002). As Hannah Arendt explains in her seminal analysis of the American and French Revolutions:

This freedom they called later [...] ‘public happiness’, and it consisted in the citizen's right of access to the public realm, in his share in public power [...] as distinct from the generally recognized rights of subjects to be protected by the government in the pursuit of private happiness even against public power, that is, distinct from rights which only tyrannical power would abolish (Arendt 1963: p. 123).<sup>5</sup>

The most important insight for our purposes is that being free from tyrannical rule and having one's rights protected by the government is not yet the freedom to participate in politics. Conversely, while a government might rule according to the laws of the realm and allow individuals to pursue their own happiness, it can still be tyrannical, if it arrogates all decision-making power to itself and insists that citizens ‘mind their own business’ (Arendt 1958: pp. 220–221; 1963: p. 126). Arendt further draws on Aristotle to argue that the term ‘tyranny’ does not only apply to the actual rule of the few over the many, but also to forms of democracy in which the citizens no longer operate as a plurality of individuals who have to establish laws by way of mutual agreement, but as an undifferentiated collective in which the ‘many’ have become ‘one’.<sup>6</sup> For Aristotle, a *demos* that recognises no formal, legal distinction between individuals, or between personal and public matters, has constituted itself as ‘monarch’ that has usurped all powers of decision and disregards the manifold judgements of the individual citizens (Arendt 1958: p. 221; Aristotle *Politics* 1292a 13). The signature feature of tyranny is therefore not that it deprives its subjects of personal happiness or well-being, but that it deprives citizens of the freedom to decide the laws under which they must live. This deprivation, in turn, can take the form of the deliberate exclusion of citizens from political participation, or as the reduction of such participation to the expression of a single viewpoint.

I offer this brief historical overview of the concept of public happiness in order to draw out four important features of the concept that will play a role in my own argument. In the first place, public happiness refers to the freedom of citizens to decide the laws that bind them. In the second place, this freedom is not merely the absence of tyranny or constraint; nor is it merely a means to happiness in our private lives – since, as we have seen, private happiness is compatible with tyrannical rule. For this reason – and this is the third feature – public happiness is itself predicated on the distinction between the private person and the citizen. Finally, public happiness is not a perfectionist ideal on which human beings naturally converge and which therefore

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<sup>5</sup> Arendt also claims, however, that both the American and the French Revolutions ultimately betrayed the public happiness that they had claimed to endorse – in the case of the Americans, by opting for representative rather than a more direct form of democracy; in the case of the French, by making the alleviation of suffering rather than the establishment of enduring political institutions their central concern (Arendt 1963: pp. 63, 79, 82–86).

<sup>6</sup> It is for this reason that Arendt remains critical of Rousseau's notion of the general will, at least insofar as she understands the latter as a supra-individual will that is not the (unpredictable) result of mutual persuasion and justification between citizens who hold different opinions, but a collective will that precedes individual judgement (Arendt 1963: pp. 70–74). While I am sympathetic to Arendt's view, I also recognise that the concept of the general will is more ambiguous than she makes out. This is a moot point, however, as my own argument does not rely on the concept of the general will, however defined.

precedes or supersedes individual judgement and agreement. The task in the rest of the paper is to imbue these general features with positive content.

### **Public versus private, reasons versus pro-attitudes**

Before dealing with the distinction between public and private happiness in particular, it is important to make sense of the broader distinction between a personal, non-political sphere of life on the one hand, and a public, political sphere on the other. Feminist and communitarian thinkers often criticise this distinction for its ‘bifurcation’ of the self into ‘abstract citizens’ and ‘human beings’ (Okin 1994: p. 29). On this view, the distinction between the political and the personal that characterises social contract theory renders a politics stripped of our most deeply held personal concerns and commitments. Such a politics, so the argument goes, lacks a sufficiently rich conception of the person, and serves to perpetuate the oppression and exploitation of certain classes, races or genders precisely by labelling their concerns *merely* ‘personal’ rather than properly ‘political’, and hence amenable to political intervention. This criticism is animated, in turn, by what Charles Larmore (1987: p. 76) calls ‘political expressivism’ – that is, the belief that ‘our highest political ideal [must] be mirrored in our highest personal ideal’.<sup>7</sup> The guiding assumption here is that politics must in some way reflect the genuine personal concerns and commitments of individuals or groups if it is not to suffer from irrelevance or ideological blindness.

While I certainly do not want to defend oppression or domination of any kind, and while I recognise that a politics that is entirely disconnected from the actual motivations of citizens would lack all credibility, I nevertheless think that political expressivism is mistaken, and that there are good reasons for separating personal and political ideals. These reasons have to do, in turn, with the distinction between the ends that motivate us and the normative justification of these ends. This point becomes clearer when considered in light of Thomas Scanlon's distinction between desires and reasons. In Scanlon's account, having a desire is simply to have a pro-attitude towards some state of affairs. A particular pro-attitude can be an *explanation* for someone undertaking a certain action (e.g. ‘I am learning to play the flute because it makes me happy’, or ‘because it gives me pleasure’, or ‘because it makes my life go better’). The explanation on offer here can be termed the agent's ‘operative reason’ for undertaking action X, but this should be distinguished from any normative reason he or she might have for doing so (Scanlon 1998: p. 19). A normative reason is a reason that specifies why one *ought* (not) to do something; in other words, it is a *normative justification* for action X, and not merely an account of the considerations that have played a role in someone's decision to do X. Justification in the normative sense comes into play when we are not merely focused on our self-understanding, but when we seek to justify our judgements of right and wrong to others. To take something to be a reason in the normative sense

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<sup>7</sup> Theories of politics that can broadly be labelled expressivist include Elstain (1981), Pateman (1983, 1988), MacKinnon (1989), Okin (1989), Taylor (1989), Young (1990) and MacIntyre (2007). I am not claiming that any criticism of the distinction between the public and the private, or the political and the personal, is inevitably a form of political expressivism. My concern is with views that consider the very attempt to separate personal from political ideals to be morally and politically suspect.

entails a claim about reasons that others would have under similar circumstances (ibid.: p. 73). While our desires or pro-attitudes play an important part in our practical reasoning, these cannot be offered as reasons to others where we hope to secure their agreement about what *any of us* ought (not) to do. In other words, we are called upon to justify our judgements of right and wrong to others precisely to the extent that we seek their agreement on principles for the general regulation of behaviour.<sup>8</sup>

Scanlon argues further that such principles are only morally justified if they pass the test of reasonable rejectability; that is, if the principles on offer are such that those who similarly seek agreement on generally acceptable principles would have no reason to reject (ibid.: pp. 4, 153). ‘Reasonably reject’ here has the meaning of: rejecting for reasons that are not limited to how this affects my interests, but that also take into account how rejecting a particular reason would impact on others’ interests. While Scanlon does not say this explicitly, I suggest that this kind of mutual reason-giving is strongly recursive.<sup>9</sup> In other words, I test the reasons I offer to others against my sense of what it would be reasonable for them to reject; their reasons for accepting or rejecting my reasons are again tested against what it would be reasonable for those who are affected by such rejection to reject in turn, and so on and so forth.

Needless to say, these are not the only circumstances of morality: we also use ‘right’ and ‘wrong’ as terms of praise or criticism, which is not the same as offering normative justification for our actions or beliefs. There might also be other considerations besides mutual reason-giving that are relevant for determining moral obligation. I therefore do not claim that Scanlon’s moral contractualism holds for the entire domain of morality.<sup>10</sup> However, the distinction between reasons and desires or pro-attitudes *is* relevant in the political domain, precisely because here we *do* seek mutual agreement on collectively binding principles that can be codified into law. Of course, not every member of political society is motivated by a concern for such agreement. However, unless we think that politics can never be anything but the arbitrary exercise of power or a zero-sum game between competing interests, I do not see how we can get away from seeking general principles that we can justify to one another by way of mutual reasons. Since we cannot know how particular persons would be affected, these reasons would have to be so formulated that they can be reasonably accepted by (or, in Scanlon’s terminology, not reasonably rejected by) any citizen. They would therefore have to be *public* rather than purely personal reasons: that is, reasons that are both made public, and that are formulated from a public point of view, namely ‘the point of view of you and me’ (Rawls 1993: p. 98). Another way of putting this is to say that these reasons would have to be ‘other-centred’ rather than ‘agent-centred’. As

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<sup>8</sup> This leaves out of account what reasons can be offered to those who are not so motivated. We might just have to accept that there are no moral reasons that could persuade others who are indifferent or hostile to normative justification (cf. Scanlon 1998: p. 148). However, this is no argument against mutual reason-giving in cases where we *do* seek agreement on moral matters.

<sup>9</sup> A standard definition of ‘recursion’ is the repeated application of the same procedure within a nested structure, so that the procedure calls for the performance of this very procedure at every level; in other words, it is ‘a procedure that calls itself, or [ ... ] a constituent that contains a constituent of the same kind’ (Pinker & Jackendoff 2005: p. 203).

<sup>10</sup> To be fair, Scanlon himself does not claim that contractualism is the whole of morality. See Scanlon (1998: pp. 6–7).

Scanlon (1998: p. 202) points out, “‘others’ feature twice in this schema: as those to whom justification is owed, and as those who might or might not be able reasonably to reject certain principles’. However, it is not the mere fact of ‘otherness’ that is the source of moral obligation, but the fact that I am seeking agreement on normative principles that would be collectively binding on others who are not merely ‘other selves’, but persons in their own right, whose interests and ultimate commitments do not necessarily mirror my own. Under these circumstances, it is reasonable to bracket ‘the reason-giving force of some of [my] own interests [ ... ] and giving the interests of certain people or institutions a special place’ (ibid.: p. 53).

As I have stated above, I am not offering a wholesale defence of Scanlon's moral contractualism. I am relying on his argument insofar as it explains why personal ideals cannot provide us with an appropriate moral basis on which to establish the political relationship between citizens. Distinguishing between personal and political concerns then simply means refraining from taking personal pro-attitudes for normative reasons in the political domain. When understood in this way, the argument for the public/private, political/personal distinction is not an ideological manoeuvre aimed at protecting the private exercise of power from public scrutiny or keeping the legitimate claims of the vulnerable from being heard. Instead, it shows that the only moral justification for advancing a claim in favour of a particular political arrangement is that the reasons for this claim cannot reasonably be rejected by those to whom they apply.

Against this background, I now propose that we understand private happiness as pertaining to our personal pro-attitudes, and public happiness as pertaining to the normative justification of the laws that bind us as citizens. Of course, I might have a pro-attitude towards ensuring the happiness of others. However, the moral justification for any principles for the general regulation of behaviour would not depend on the mere fact that I happen to have such a pro-attitude, but on the *reasons* I can offer others for why they ought to be bound by the principles I propose. The claim ‘I have your happiness at heart’, taken by itself, is not a sufficient reason for someone to agree to be bound by the principles proposed, and the claim ‘This makes me unhappy’, taken by itself, is not a sufficient reason for rejecting such principles.

Still, there is nothing in the above argument to show that what starts out as a personal pro-attitude cannot be translated into normative reasons that could serve as a foundation for political agreement. Indeed, many theories of well-being are engaged in just such a translation project, whereby the descriptive conception of happiness is converted into an evaluative conception of the human good, which is then taken to provide an adequate normative foundation for law-making. While this might seem a promising strategy for linking personal and political ideals – and hence for relating public and private happiness – I think that there are particular features of well-being that militate against it being treated as a normative reason in the political domain.

### **Reasons versus well-being**

For present purposes, I take happiness to be a *descriptive* term for a particular state of affairs – whether a mental state or a set of objective circumstances – and well-being to be a normative or evaluative term that defines a particular state of affairs as *good* in

some sense. ‘Good’ here can mean ‘prudentially good’, in the sense of being ‘good for’ or beneficial to the person who experiences it, or ‘morally good’ in some way, irrespective of whether or not it is prudentially valuable. It is also possible to consider something to be morally good precisely insofar as it is prudentially good, and vice versa. In the final instance, however, well-being is taken to be a perfectionist ideal that we *ought* to realise if we could, either because it is beneficial for us, or because it is morally good, or both simultaneously.<sup>11</sup>

It is tempting to think that considerations of well-being – understood as a conception of the human good – could provide sufficient normative justification for a particular politico-legal order (e.g. Nussbaum 1988, 1992, 2000: p. 116; Sumner 1996). Now, most of us surely care about our own well-being, and it is hard to see how any genuine moral concern for others could exclude a concern for their well-being. Nevertheless, these two facts, taken together, do not provide sufficient support for political expressivism. To recall: political expressivism refers to the view that our highest political ideals must be an extension of our highest personal ideals. Thus, if we take well-being to be the ultimate end of human life, expressivists would consider the promotion of human well-being to provide sufficient normative justification for political decisions. Contrary to the expressivists, I think that well-being – however highly we might value it – cannot be translated into collectively binding principles for law-making in the political domain. Given my characterisation of public happiness as the freedom to participate in just such law-making, this also means that well-being cannot be the source of public happiness. There are at least three features of the notion of well-being that support this view.

Let us start by assuming, for argument's sake, that it is possible for all members of a polity to converge on a single conception of well-being. Why would not this be a sufficient reason for us to adopt personal well-being as a political principle? Because, for one thing, universal or near-universal agreement on the content of well-being does not yet make well-being into a ‘master-value’, in the sense that all other values derive their value from the fact that they contribute to human well-being (Scanlon 1998: pp. 107–109). It is not the case that in attaching value to anything, we are always making a meta-level calculation of how this would affect our overall well-being. Instead, we value objects, actions, people, books, experiences, beliefs, principles, and so forth for different reasons, some of which may – subjectively or objectively – have to do with our well-being, and others not. We also do not consider well-being a master-value when we try to work out our obligations to others. As Scanlon argues:

The fact that someone would be willing to forgo a decent diet in order to build a monument to his god does not mean that his claim for aid in his project has the same strength as a claim for aid in obtaining enough to eat (even assuming that the sacrifices required on others would be the same) (Scanlon 1975: pp. 659–660).

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<sup>11</sup> This distinction between happiness (as a descriptive concept) and well-being (as a normative concept) largely derives from Haybron (2008). It is important to understand, however, that my argument does not depend on the distinction between well-being and happiness, or on their definitional content, but on the fact that both happiness and well-being are personal ends rather than normative reasons.



The point here is that we are constantly called upon to decide between satisfying different values that compete for our allegiance. Deciding which value ought to apply in a particular instance – bread or faith, honesty or kindness, love or justice – involves a ranking of these values, and this, in turn, involves a weighing-up of the reasons in favour of satisfying each of them. That a particular course of action would contribute to well-being (my own or that of another) might be one such reason, but it is not the only one, and it will not win out in every case. There simply is no master-principle for ranking all reasons in advance.<sup>12</sup> We might think, perhaps, that satisfying certain needs or informed preferences, or promoting certain capabilities, must always outweigh other kinds of reasons, precisely because they do contribute to well-being in ways that other values do not. However, in selecting certain needs, preferences or capabilities over others, we have already passed them through a ‘moral filter’ that has rendered the kind of needs, preferences or capabilities that we think *ought* to be satisfied (Wolff 2003: p. 343). This ‘ought’ is not derived from a conception of well-being; instead, it *prescribes* the conception of well-being that we think can be morally justified. Opting for a particular conception of well-being, or for particular values that ought to be satisfied with reference to such a conception, depends on prior normative reasons, and not on the mere fact of having such a conception to begin with.

The second feature of well-being that militates against it being employed as a principle of politics is that our conception of well-being, like all our values, is itself structured by the socio-political order under which we happen to live. As Rawls (1971: p. 249) points out: ‘[T]he social system shapes the wants and aspirations that its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are’. The point here is not that well-being is *in fact* whatever the social system happens to prescribe or allow, but that we cannot deal with the question of well-being without reflecting on the system of law in which it is embedded, since it is this very system that defines people’s legitimate expectations. We cannot derive the normative validity of the principles of law from a conception of well-being that is a function of these very principles. Rather, the moral justification of any conception of well-being as a perfectionist ideal depends on the prior moral justification of the system of right within which such an ideal is to be realised.

The third difficulty with taking well-being as a normative political principle has to do with the way in which we conceive of the unity of the person. There are two ways of conceiving of such a unity: on the one hand, we can think of being a person as having multiple aims, values, characteristics, etc., which one tries to fashion into a unity over the course of a life. Alternatively, we can think of the person as a *given* unity in which all aims, all aspects of one’s personality, are already subjected to one dominant aim (cf. Rawls 1981: p. 563). On the former conception, human commitments and values are variable within and between persons and subject to human judgement. If we do not assume that there is an ultimate end at which the self cannot help but aim, we are free to

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<sup>12</sup> As Rawls points out, a single, rational method of choice for ranking our values would have to specify ‘(1) a first-person procedure which is (2) generally applicable and (3) guaranteed to lead to the best result (at least under favorable conditions and given the ability to calculate). We have no procedure for meeting these conditions’ (Rawls 1971: p. 552).

evaluate – and if necessary, revise – the ends and values we do in fact choose (taking into account, of course, that the range of values and ends that are available to be chosen is itself enabled and/or constrained by the socio-political order, which again turns our attention to the justification of this order itself). If, on the other hand, we posit a single, unchosen end for human life, the self is treated as independent of any antecedent moral structure. Contrary to the usual assumption that a conception of well-being renders an enriched conception of the person, conceiving of well-being outside of any prior moral framework leaves us with nothing more than ‘a bare person’, who is assumed to have certain given ends, but not the means to reflect on the morality of these ends (Rawls 1999b: p. 384).<sup>13</sup> This view of the self renders an equally impoverished conception of politics, insofar as the latter would be primarily occupied with enabling bare persons to realise whatever it is they aim for, rather than with the antecedent moral structure of the society that shapes how we conceive of our values and our ends. On the other hand, a view that recognises that the aims of the self are heterogeneous and not subject to a master value, also recognises that persons value different things for different reasons, and that these reasons are themselves amenable to moral judgement. Instead of a mere rational calculator or an unreflective pursuer of a pre-existing end, we are presented with a conception of the self as a moral being, capable of critical self-reflection and of giving and accepting reasons that might legitimately constrain one's ends. It is precisely this richer conception of the self that allows us to see that there might be different reasons for valuing particular ends for our own sake and for justifying these to others with whom we share a polity.

Proponents of well-being are likely to argue that they do not hold a conception of the ‘bare self’ outside of any moral reasoning, since moral reasoning is itself constitutive of human well-being.<sup>14</sup> However, this so-called ‘thicker’ conception of well-being or human flourishing does not convince. For one thing, even if we considered moral reasoning to be part of the human good, this would still imply that we ought to value the exercise of such reason simply because it is something that we happen to be or to value, or cannot help being or valuing. This does not allow us to subject our moral reasoning itself to critical scrutiny, or to relate it to what we owe one another as citizens. For another, the claim that well-being can only be realised by virtue of the exercise of a particular kind of moral reasoning – as opposed to through violence, for instance – simply means that the conception of well-being has already been passed through an antecedent moral filter; it does not show that well-being is itself a normative reason.

To summarise, there are at least three characteristics of the notion of well-being, understood as an evaluative conception of personal happiness, that make it an unsuitable foundation for public happiness: (1) well-being is not a master value, and we therefore cannot assume that our political arrangements (i.e. the focal point of public happiness) must aim at the realisation of this value; (2) starting from a conception of well-being

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<sup>13</sup> Rawls's criticism here is aimed at utilitarianism. However, insofar as his target is the assumption of an ultimate end from which all aspects of the self derive their value, irrespective of any antecedent system of right, his criticism holds for any conception of well-being.

<sup>14</sup> This view is explicitly endorsed by Nussbaum (1988, 1992) and Badhwar (2014).

does not take sufficient account of the way in which the politico-legal order shapes our values and aims, and (3) well-being operates with an impoverished conception of the self as independent of any antecedent moral structure (or subjects our preferences and aims to an antecedent moral filter for which it provides no argument). None of these criticisms implies that we should *not* consider human well-being when devising laws and policies. What the criticisms do show, however, is that well-being does not belong to the *structure of justification* of the laws that bind us. I have argued throughout that such justification depends on mutual reason-giving between citizens rather than on their personal happiness or well-being, even if these ends are widely endorsed. I have also claimed that our public happiness as citizens is bound up with just such mutual justification of the system of right – i.e. the formal laws and rules – that governs our pursuit of our ends. In the final part of the paper, I now turn my attention to what such public justification could entail.

### **Public happiness and public justification**

Why does normative reason-giving matter in the political domain, and how does it relate to public happiness? As a first step towards answering these questions, consider the difference between those areas of life where we think that people can be legally forced to comply with moral norms, and those domains of human activity that we do not think should be subject to legal sanction, even if, when left to their own devices, people sometimes (even often) do wrong (cf. Larmore 1990: p. 348). Of course, there have been many historical shifts in our views about where the law should and should not apply, and it is entirely possible that matters that currently fall outside the sphere of the law might in future become matters for legal sanction, and vice versa. In other words, the distinction between the personal and the political is itself a matter of political judgement and not ontology.<sup>15</sup> Nevertheless, this does not invalidate the point that a constitutional state is founded upon a distinction between moral principles that can be legitimately enforced by law, and other moral principles, perhaps belonging to a more comprehensive moral vision, with which people cannot legally be forced to comply. Laws coerce in a way that general moral norms do not, since the law represents the joint power of all the citizens to impose certain duties upon one another.<sup>16</sup> Precisely because the law, unlike more general moral norms or beliefs, binds all members of a political society equally, the law must be justifiable to each of them. It is unhelpful to say that the law could only be justified if it did not coerce. This assumes that human beings could live together on a large scale without anyone ever being compelled to do what they do not want to do, or to refrain from doing what they would like to do. Apart from this assumption being at odds with lived experience, it does not resolve the question of

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<sup>15</sup> For the argument that the distinction between the political (subject to legal sanction) and the personal (not subject to legal sanction) is itself a *political* distinction requiring public justification, see Brettschneider (2007).

<sup>16</sup> I do not mean to imply that non-legal norms do not coerce. My claim has to do with the nature and the source of the coercion. There is a difference between following a norm due to pressure by one's family and/or associates, and following a norm because one is legally compelled to do so. Moreover, since the former type of coercion is often a consequence of the latter, it is especially important to ensure that legal coercion is, in fact, morally justified.

what would legitimise any kind of legal sanction if at any point the interests, aims, beliefs or commitments of the members of a society *did* diverge. However, legitimacy versus coercion is a false dichotomy. We are not faced with a choice between an impossible co-existence beyond the law and domination under the law, but with the task of working out the conditions for the legitimate exercise of the collective power of all over each.

I have argued that the primary condition in this regard is the mutual reason-giving between citizens, rather than a conception of well-being or some other common end. Since the law applies to all, the reasons in defence or criticism of these laws must appeal to sufficiently general principles rather than being tied to particular ends or social roles. Moreover, these have to be normative reasons that cannot reasonably be rejected by those to whom they apply. This kind of recursive reason-giving matters apart from the specific outcomes achieved, since the *kind* of reasons citizens offer to one another impacts on how they view themselves *vis-à-vis* their fellows. Stated differently, the reasons we offer to others in justification of any law or political arrangement express a particular attitude on the part of the reason-giver towards the recipient: respect, if one treats others as if they are deserving of reasons that they can themselves endorse on reasonable grounds, or contempt, if one expects others to accept reasons that they cannot reasonably be expected to endorse.<sup>17</sup> What is at issue here is not the assurance that the reasons presented will be *accepted*, but the consideration of the kind of reasons that may legitimately be *offered* to others to begin with. It is an expression of contempt to present others with reasons the acceptance of which would require them to also accept that they are less deserving of moral regard than the reason-giver or their fellow citizens at large – even if they are free to reject these reasons. (Their acceptance of these reasons would not mitigate the wrong either. There is nothing laudable about persuading others to concur with the contempt one has for them.)

There is a direct link between this kind of recursive reason-giving and the conception of public happiness that I have defended throughout. It is by virtue of their mutual reason-giving that citizens treat one another as equally competent decision-makers rather than as beneficiaries, and thus grant each other a share in political affairs (Ottonelli 2012: p. 202). However, *treating* each other as equally competent decision-makers does not have to follow from an initial sincere *belief* in equal competence. What matters for the political relationship between citizens is respect in the performative sense rather than as an expression of an authentic belief (ibid.). Needless to say, this claim runs counter to the tenets of political expressivism, which requires that our political ideals must be an extension of our genuinely held personal beliefs and commitments. However, while it may be true that not all citizens are equally endowed with the ability to make competent decisions or to give and understand reasons, this is not yet an argument against treating them as such. In the first place, we cannot know who does or does not have such competence in advance; we therefore have no option but to proceed *as if* everyone is an equally competent judge of reasons. In the second place, as I have already shown, the offering of reasons does not depend on the guarantee that the other party will accept them. The suspicion that someone is not a competent

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<sup>17</sup> For a more extensive treatment of the attitudinal quality of reasons, see Schemmel (2011).

judge of reasons therefore does not relieve the reason-giver from the moral requirement to present the recipient with reasons that would pass the test of reasonable rejectability. Finally, while we may not all start out as equally competent decision-makers, the only way of learning how to make competent decisions is by being exposed to the standards of reason-giving required for making such decisions; that is to say, 'being treated as an equally competent agent is a preliminary condition for becoming one' (ibid.: p. 214).<sup>18</sup>

In light of the above, we can now say that the necessary conditions for public happiness are (1) that persons conceive of themselves as citizens related through the system of law that specifies their rights and obligations and (2) that they conceive of the law as justified by normative reasons which they mutually endorse. Ultimately, what is at issue here is the *quality of the relation* between citizens as givers and receivers of reasons. The relation itself is a contractual one, insofar as it involves mutual obligations specified by law, and depends on the distinction between personal ends and the system of right that circumscribes those ends. This contractualist view of our civic bond does not assume the existence of an actual contract; instead, the idea of the contract is a standard against which to judge the moral worth of our existing political arrangements. The contract so understood is not a *bargain*, in which each party tries to push their self-interest until someone pushes back, but a normative framework of law that constrains the claims that citizens may advance *vis-à-vis* one another. Of course, insofar as justification of the law depends on recursive reason-giving, in which the reasons I present to you are in turn accepted in light of reasons that I (and others) cannot reasonably reject, and so on, it means that the law is always only provisionally justified. But that is as it should be: history has shown all too clearly the price we pay for mistaking human laws for transcendent authority.

The final question I want to address concerns the relationship between public and private happiness. From what has gone before, it might appear that I have set up public and private happiness in opposition to one another and, moreover, that I have privileged the former over the latter. In that case, wouldn't we have to consider a society in which everyone endorses the law, but whose members are personally unhappy or deficient in well-being, as morally better than a society with higher levels of personal happiness/well-being, but less political freedom? I concede that some such conclusion is entailed by my argument, since I do not think that the measured or reported levels of happiness or well-being in the population can provide the final moral justification for the social order as a whole (although, of course, I do not claim that public endorsement of the law can provide such final justification either). To see the point, imagine a society in which all members are maximally happy according to their preferred definition of

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<sup>18</sup> One might be tempted to criticise this view for failing to account for the distorting effect of unequal power relations in society. In that case, what counts as legitimate reasons would be decided by those with the most power. I cannot fully address this objection here. Suffice it to say that (1) the existence of such unequal power relations must itself be proven by argument; it cannot simply be posited as an article of faith; (2) the fact that inequality in power distorts reason-giving is not an argument against reason-giving, but against a social structure in which power crowds out reasons (or in which power is not justified by reasons), and (3) to the extent that the violation of the norms of equal respect and reciprocity is first encoded at the level of the normative framework for law-making, it is precisely this framework that must be subjected to the test of mutual justification.

happiness, but in which they are so due to the voluntary benevolence of a benign dictator, who arranges everything with a view to the well-being of all its members. Now compare this to a society whose members are as happy as it is possible for them to be within the framework of the system of law in which they are co-decision-makers rather than recipients of benevolence. The difference between these two (admittedly counterfactual) societies is that, in the first case, the citizens consent to external rule for the sake of having their existing preferences or conception of the good satisfied, and the happiness of each is granted through the goodwill of the ruler. In the second case, citizens rule themselves, and their conception of the good and its satisfaction are constrained by the requirement for mutual justification – precisely because there is no higher authority to which they can appeal.<sup>19</sup> In this case, citizens grant *each other* happiness within normative constraints that they themselves endorse. We can say, therefore, that their public happiness consists precisely in the freedom to decide the system of right that constrains their private happiness.

This is not the final word on the matter, however. After all, we are both citizens with a stake in law-giving *and* flesh-and-blood human beings concerned with our own ends. To demand that we sacrifice our own happiness for the sake of a merely formal civic relationship seems both unrealistic and unreasonable. Hence, rather than a straight-up choice between public and private happiness, I propose that we aim for reflective equilibrium between happiness from a first-person point of view and happiness from the point of view of the citizen, analogous to Rawls's suggested procedure for reconciling our comprehensive moral views with the political conception of justice (Rawls 1971: pp. 19–21, 48–51; 1993: p. 28ff.; 1999a: p. 288ff.). While I cannot provide a full account of this procedure here, it would entail working back-and-forth between our personal conceptions of happiness, whatever these might be, and the reasons we can offer our fellow must be subjected to the test of mutual justification.

citizens for the system of law that shapes our values and our ends, refashioning each in light of the other, until the point at which they cohere.<sup>20</sup> Thus, I start out with the things I happen to value (e.g. wealth, status, power, employment, love, pleasure, security, etc.) and my operative reasons for valuing them (because they contribute to my happiness or well-being), and then ask: what normative reasons – i.e. reasons that pass the test of reasonable rejectability – can I offer my fellow citizens in justification of a particular law that would enable me to realise these ends? Clearly, the mere fact that I happen to have these ends could not do the work, nor could any reasons that would require others to sacrifice their happiness/well-being in service of my own. It would be a different matter, though, if I could show that my achieving a particular end would enhance the capability of others to do the same – not only for them to achieve what *I* happen to value, but to achieve what *they* might value. Moreover, others' acceptance or rejection of the reasons I offer them would have to take into account how their rejection or acceptance would affect everyone to whom the proposed policy or law is meant to

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<sup>19</sup> While I cannot pursue this here, there are obvious correlations between this argument and the 'neorepublicanism' advocated by Philip Pettit and others. See, for example, Pettit (1997) and Lovett & Pettit (2009).

<sup>20</sup> For an extensive treatment of reflective equilibrium, see Daniels (1996).

apply. Reflective equilibrium between private and public happiness would then entail that we revise our conceptions of the kind of happiness to which we may aspire in light of normative reasons for law-making in the political domain, and revise our laws so as to take into account the many sources of private happiness.

Of course, this is an ideal model. Realistically speaking, perfect coherence between private and public happiness is likely to remain out of reach. Nevertheless, an ideal does not have to be fully realisable in the world for it to be action-guiding. Why should we not do the best we can to justify our personal conceptions of happiness to those with whom we share a polity, even if neither we nor they are perfect moral agents? More to the point: what reasons can we give each other for not doing our best in this regard?

## **Conclusion**

I have defended a conception of public happiness as the freedom (understood as both a right and a practice) of citizens to decide on the laws that define their rights and duties as citizens. It should be clear from my argument that this does not have to involve actual law-making – although the point would hold for this case as well – but concerns the mutual justification of such laws. This justification, in turn, requires a recursive process of normative reason-giving, whereby citizens are able to conceive of themselves as co-decision-makers in the political domain. I have argued that public happiness so defined differs from happiness understood from a first-person perspective; that is, it is not a matter of what we happen to feel, want, need, prefer, aim for, desire, believe or value, but of our freedom to decide on the laws under which we must live. This freedom is not granted to us by any higher authority; rather, it is what citizens grant one another when they reason together about the laws that bind them. The object of this reasoning process is not the realisation of any particular human end, but the mutual justification of the framework of law in which our many ends are conceived and pursued. Finally, public happiness in this sense should not be conceived in opposition to private or personal happiness. Instead, I have suggested that we ought to strive for a reflective equilibrium between private and public happiness, so that we neither reduce the world we share with others to our privately owned place within it, nor blithely sacrifice the desires, commitments and ends that give our lives both substance and depth.

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