Political liberals hold that the use of State coercive power is not justified unless each citizen has sufficient reason to endorse it.[[1]](#footnote-1) Natural law thinkers also agree that coercive power should be justified by reasons accessible to all members of the public. Yet they part ways insofar as liberals like John Rawls understand this requirement to imply that questions of right were “prior to” questions about the good. Political conceptions of the good, as justifications for coercive laws and policies must only draw on those elements that could be reasonably “shared by other citizens regarded as free and equal” and which “do not presuppose any particular [fully or partially] comprehensive doctrine.”[[2]](#footnote-2) The approach characteristic of public reason liberalism begins by determining a basis for agreement on constitutional fundamentals of justice that follow from a willingness to abide by fair and reciprocal terms for social cooperation, while explicitly bracketing many aspects of the good concerning either individuals or society as a secondary matter. Natural law does not. Natural law traditionally privileges a notion of a common good, those goods at which political life aims, as what constitutes appropriately justified grounds for proposing legislation or making public decisions.

In addition, a common perspective among public reason liberals is that members of society could reasonably reject any given comprehensive notion of the good. But, whereas for public reason liberals appeal to the good cannot serve as public reasons since there is widespread reasonable disagreement on the good, natural law appeals precisely to an account of goods as the basis for public decision-making. For this reason, the natural law approach crucially seems to involve significant, controversial ethical and metaphysical assumptions about human nature as the ground for determining what is good for human beings in society that puts it in opposition to public reason approaches to political justification.

In this paper, I aim to challenge this picture. I do not disagree that the nature of public justification in the mold of Rawls stands in tension to, if not contradiction with, fundamental assumptions of natural law theory. Natural law theory does not see itself as merely one comprehensive doctrine among an overlapping consensus of reasonable doctrines. Further, natural law theories do not bracket questions of the good when dealing with questions of the right. Nevertheless, natural law approaches to politics can support *similar* limitations on public reasoning as the liberal ‘public reason’ tradition does. Even if the good is prior to the right, there need not be anything controversial or inadmissible in the way that the natural thinker endorses such a claim, for the good can be conceived as appropriately non-parochial and as entailing the norms of procedural justice that regulate our public reasoning so as to be required to tolerate alternative reasonable conceptions of the good. What I will argue is specifically that there are overlooked possibilities within the natural law tradition for an account of *political rationality* that, while being in fundamental conflict with typical understandings of public reason liberalism, can capture and give a perfectionist grounding to those normative claims usually understood to be uniquely or typically liberal ones.

I aim to exhibit this possibility through dialectical engagement, responding to three objections which hold that natural law theory is intrinsically hostile to public reason theories of justification. The first two objections hold that the common good envisioned by a natural law politics must be parochial, based on problematic ‘comprehensive doctrines.’ I argue that this first set of objections fails to be sensitive to an important difference between natural law theories in ethics and politics. Natural law politics, I propose, is divorceable from natural law ethics and nothing about the position requires assuming significant, controversial theses about metaphysics or ethics.

A third objection calls into question the possibility of a natural law justification for the norms of procedural justice that would undergird liberal norms or institutions, which require respect for other reasonable conceptions of the good/right; giving citizens a veto over promotion of the common good is unreasonable. I will extend my response to the first set of objections and argue that there is no principled reason that natural law politics cannot be extended explicitly in the direction of public reason theories of justification. This extension involves conceiving the common good as constituted, in part, by norms resembling those endorsed by the public reason tradition. While the natural lawyer should reject anti-perfectionism and related views associated with public reason liberalism, one can modify natural law’s perfectionism along the lines of a convergence account of justification. Finally, I briefly highlight ways in which this development of natural law politics into ‘public reason naturalism’ might reinforce the weakness of both natural law politics and public reason liberalism.

**Contrasting Approaches: Public Reason Liberalism and Natural Law**

The foundational assumption of a natural law approach to politics is that there is no fundamental discontinuity between questions of what is reasonable for individuals to do and reasonability in political, group decision-making.[[3]](#footnote-3) Questions of right concern matters of what is right *by nature,* what is reasonable for us to do or not to do, given the kind of creatures that we are. What it is for a reasoner to be ‘practically reasonable’ inseparably includes *both* the way in which we arrive at decisions and what our decisions aim at achieving. Facts about reasonability are grounded in facts about what is good for human beings. In sum, natural law thinking is *perfectionist*. For this reason, the aim of the political processes and institutions is ultimately to improve the lives of citizens. Those processes and institutions are constitutively shaped by norms of practical reasonability, and practical reasonability consists in achieving our natural ends appropriately, and so too political processes aim at achieving our natural ends appropriately. Political life aims at living well together.

Public reason approaches to political justification rest on the intuition that “political rules that regulate our common life be, in some sense, justifiable or acceptable to all those persons over whom the rules purport to have authority.”[[4]](#footnote-4) This has sometimes been referred to as the Reasonable Acceptability Principle.[[5]](#footnote-5) At this level of abstraction, there is no conflict between natural law and public reason. Natural law *is* the philosophy of public reason, by its own lights, since the natural law consists in “political values everyone can reasonably be expected to endorse.”[[6]](#footnote-6) John Finnis has helpfully pointed out that the natural law tradition can capture four central aspects of that ‘public reason’ tradition deriving from Rawls: [1] political authority aims primarily “only to maintain peace and justice in interpersonal relationships” rather than every aspect of integral flourishing, [2] that legislators “are entitled to impose as requirements only those practical principles only those practical principles which are accessible to all people whatever their present religious beliefs or cultural practices,” [3] in the exemplar case of free government among equals, law aims at coordination and stability, where citizens are treated as “partners in public reason,” and [4] disputation in public reasoning with those that share no other common authoritative sources for their practical reasoning should proceed on the basis of naturally-accessible reasons.[[7]](#footnote-7)

Nevertheless, Finnis and other natural law thinkers reject key moves of the Rawlsian project of public reason. For example, many public reason liberals exclude in principle from public reason the appeal to what Rawls termed ‘comprehensive doctrines,’ including but not limited to philosophical and moral systems, or religious creeds. Wolfe and Finnis sees this as subverting ‘arbitrarily’ the appeal to moral norms in political discourse and justification; “[Rawls] attempts to put the grounds, and often the substance, of people’s deepest moral convictions off-limits in public discourse.”[[8]](#footnote-8) Some argue public reason liberalism involves an arbitrary cut-off concerningmoral considerations which are inaccessible to reasonable citizens. “Whether an argument is ‘publicly accessible’ certainly cannot be determined simply on the basis of whether people happen to agree with it (rendering it accessible) or disagree with it (leading to the conclusion that it is inaccessible).”[[9]](#footnote-9) Rawls’ arguments in *Political Liberalism* are not obviously more accessible to ordinary citizens than natural law arguments (indeed, some natural law arguments look *more* accessible). Citizens should not be expected to bracket their moral commitments on some issues merely because they are unpopular, such as in discussions around abortion. Rawls is not as foolish to rule out views that are merely ‘controversial’ among actual citizens, but those that are unreasonable to an idealized subset. His standards of reasonability, nevertheless, look arbitrary to many.

These concerns might not seem fair to Rawls, since public reason is what is available as part of common political culture and not merely reasons with which citizens happen to agree. There are two related ways to develop a criticism that public reason involves an arbitrary standard of reasonability, however, in sophisticated directions. First, one potentially arbitrary cut-off in public reason accounts seems to lie in distinguishing ‘comprehensive’ from non-comprehensive doctrines. The public reason liberal might hold that their own arguments, while complex, are accessible because they require no ‘sectarian’ adherence to an overall philosophical approach to ethics, whereas natural law ethical argumentation would typically require adherence to assumptions about their moral framework as background that their arguments presume (an exemplar case might be ‘perverted faculty’ arguments). There are *some* arguments involving moral considerations that are publicly accessible and so can be proposed as public reasons, *as long as* these considerations do not involve appeal to or entail a comprehensive moral doctrine that is relevantly inaccessible to all parties. Second, what the natural law thinkers are gesturing toward is that the public reason account of Rawls and others following him is typically predicated upon an *anti-perfectionism,* where considerations of what is objectively good for citizens should not enter into political reasoning, at least concerning constitutional essentials*.*[[10]](#footnote-10)These two points are related because the latter anti-perfectionism aims to avoid state commitment to any comprehensive moral or religious doctrine. It thus presumes a possible standard for demarcation.

Whereas John Rawls takes the public reason thesis to be restricted to the justification of the ‘constitutional essentials,’ many of his contemporary followers do take public reason in a much broader spirit (e.g., Jonathan Quong). My approach will not strictly depend on construing public reason liberalism as essentially involving one or the other. Instead, I will cash out the anti-perfectionism by means of the broad claim that the State should be neutral among rival conceptions of the good. The ‘principle of state neutrality’ has been formulated in different ways, but this summarizes the ideal, broadly speaking: “the state should not justify what it does by appealing to conceptions of the good that are subject to reasonable disagreement. Nor should it promote neutral ends by aiming to promote some permissible conceptions of the good over others.”[[11]](#footnote-11)

Public reason liberals and natural law thinkers appear to part ways on state neutrality, since natural law politics appears to appeal to one permissible conception of the good as a basis for State action, thereby excluding other permissible conceptions of reasonable citizens. Nevertheless, I will argue that natural law thinkers can capture relevant features of state neutrality in their account, because natural law argumentation *does* come in different levels of epistemic accessibility. Yet, on this point, natural law politics differs from even the restricted Rawlsian thesis that comprehensive considerations should not be invoked in matters of constitutional essentials. Although Rawls would not see his project as ‘anti-perfectionist,’ and instead as neutral or silent on matters of perfection, the natural law politics does not accept any such principled limits, even in constitutional essentials, for invoking perfectionist considerations. To that extent, one may interpret my references to ‘anti-perfectionism’ in the public reason tradition stipulatively to encompass any such principled limitations on perfectionist considerations, merely on the basis that such considerations are perfectionist.

We therefore need to make a distinction. Natural law politics is perfectionist, and so incompatible with anti-perfectionist liberalism. But perfectionism need not entail that the State has unlimited power to pursue all manner of perfection or that there are no procedural limits on the way in which the State promotes perfection. If there are limits on State power in enforcing demands of the law that depend on accessibility to citizens, as Finnis has conceded, then there can be political conditions as to when the natural law might be enforced *when* whatthe natural law demands is publicly in dispute. This is what a conciliatory natural law approach to public reason consists in: demarcating *moral-political limits* to the extent to which the State can and ought to act on natural law moral reasons, where these limits involve a distinction between private and public reasons for action. In many ways, this conciliatory approach will resemble species of perfectionism that hold promotion of autonomy to be a key element of perfection (‘liberal perfectionism’), even though natural law thinkers will qualify the underlying notion of autonomy in terms of their overall account.

The natural law thinker rejects those justifications for State neutrality offered by public reason liberals which might appear to presuppose skepticism about arriving at truth in regard to comprehensive doctrines or which cut off, in principle, appeal to moral considerations in public reasoning.[[12]](#footnote-12) Nevertheless, nothing precludes natural law thinkers from giving an account of *reasonable disagreement* regarding controversial views of the demands made by natural law. If the state should refrain from intervening in reasonable disagreement, the principle of state neutrality can be upheld in a form that natural law thinkers endorse. I will build up to the conciliatory position in three steps, presented dialectically as responses to three objections that have been posed against natural law, or more broadly perfectionist, theories of political justification. I will argue, in each case, that natural law theory can be adapted or has the resources to respond to these criticisms.

**Objection 1 – Absolutism**

Aurelia Bardon argues that natural law theories are incompatible with those political values suitable for offering public justification, as natural law arguments rest “not on a reference to political values, common sense, logic, or science but on the reference to absolutist first principles.”[[13]](#footnote-13) She lays out three characteristics of such absolutist principles. First, she claims natural law arguments involve premises *prescriptive* in a tautological spirit: “We should do X because X is true and corresponds to the nature of things.” Second, these premises are “not dependent on the context, and [so are] are indisputable because there can be no rational argument for or against them.” Finally, these premises “cannot be derived exclusively from the framework of liberal democracy.”[[14]](#footnote-14) She contrasts the appeal to justice or equality favorably as in keeping with the liberal framework, whereas natural law arguments appeal to factors outside that framework.

Bardon attempts to clarify why such arguments are problematic. First, such absolutist principles do not give public justificatory reasons because, roughly, not everyone can consider them to be valid public arguments. Public arguments need not be convincing for all, but only such that other people can understand them; “a valid argument is such that we can all understand why *P* allows the realization of *G*, and we all agree that the realization of *G* is desirable. It is therefore possible to consider that an argument is valid without considering that it is convincing.”[[15]](#footnote-15) Her claim is that natural law arguments only make sense if one grants the premises. But the premises for natural law arguments “are not part of the set of liberal and democratic unarguable first principles that constitute the framework of political discussion”; consequently, natural law arguments are not *public* at all but instead occur outside of the framework of public discussions.[[16]](#footnote-16) Bardon therefore claims that natural law arguments are ‘conversation stoppers,’ in parallel with arguments of the sort that abortion cannot be permitted because it is against God’s will. An argument that abortion is against God’s will would not even get going with someone who does not believe in God. Such arguments shut down public discourse.

Bardon recognizes that natural law does not require explicit advertence to God’s will or religious belief. She nevertheless illustrates that natural law arguments are illegitimate by examining John Finnis’ argument that homosexual behavior is contrary to the common good of marriage. Finnis’s argument (in brief) relies on appeal to a normative concept of ‘nature,’ where human nature is actualized by pursuit of the goods of marriage. He argues that homosexuality divorces pursuit of sexual pleasure from a cooperative task that aims intrinsically at reproductive ends that thereby “enable the spouses to actualize and experience their intelligent commitment to share in […] genuine self-giving.”[[17]](#footnote-17) Bardon criticizes this argument variously as an ‘appeal to authority’ and as involving a concept of ‘nature’ which is “neither demonstrated by facts nor commonly shared in our societies….”[[18]](#footnote-18) She concludes that public justification within liberal democracies requires reasons that do not rely upon “the recognition of a supra-social source of moral validity.”[[19]](#footnote-19) What this seems to mean is simply that liberal democratic forms of public justification cannot include appeal to objective moral facts, and, even more strongly, that public justification possibly requires some form of constructivism to be true about morality.

Bardon’s claim for this conclusion seems to involve two sub-arguments, however, that are quite distinct and best kept apart. The first is that Finnis’ specific appeal to nature, in this normative vein and as entailing particular conclusions, is something which reasonable persons might dispute. Perhaps other citizens do not think human nature entails any moral norms at all (i.e., is not normative), or they do not agree that homosexuality is contrary to the natural law. Therefore, appeal to a normative concept of nature as a source for moral norms is illegitimate in public justification. Leaving aside whether Finnis’ argument is convincing, Bardon seems to employ a sectarian or controversial standard to rule out arguments that employ any ‘absolute’ moral considerations; I find these claims about ‘absolutes’ vague, but Bardon appears to implicitly presume that liberal values rule out appeal to *any* moral norms, or possibly even objective claims about moral truths – and this is certainly open to challenge even by liberals like Rawls. Similarly, while Bardon intimates that Finnis merely *asserts* and takes it as tautologically true that human nature has these particular normative ends, Finnis spends a great deal of time attempting to defend the account against objections and possible alternatives. He is not obviously engaging in argument from authority, or insulating his premises from reasonable criticism, even if his theories are false.

Perhaps the core of Bardon’s argument is that appeal to a normative concept of nature is itself embedded within a comprehensive moral doctrine that is inaccessible to reasonable citizens. But it seems to me something further needs to be said why such an appeal to a normative concept of nature is inaccessible to other reasonable citizens. Finnis’ ‘new natural law’ theory is in fact posed to respond to this sort of worry, since Finnis takes no special theory of the normativity of human nature to be requisite for his arguments. As he puts it, “natural law theory is nothing other than the account of all the reasons-for-action which people ought to be able to accept, precisely because these are good, valid, and sound as reasons.”[[20]](#footnote-20) Thus, he thinks the arguments he offers are accessible to all because they operate from premises that are accessible to his interlocutors, what they take to be good reasons for action, and not from a set of metaphysical assumptions about the way in which natures ground normative facts (the rejection of needing any such metaphysics is, ironically, what sets apart Finnis’ natural law theory from classical theories[[21]](#footnote-21)).

The other reason Bardon advances is that objective morality is outsideof the framework of acceptable public justification, and this is harder to make sense of. Not even staunch defenders of the liberal tradition, such as Rawls, argue that appeal to objective moral facts would be incompatible with the public accessibility required for public justification, unless such appeal involves a *comprehensive theory* of morality which is not accessible to all reasonable citizens; there is no stipulation against metaethical objectivism baked into Rawls’ theory, as long as those objective claims derived from a comprehensive doctrine can be reframed in reasons shared by others. Rawls specifically cites Finnis’ appeal to the common good as one species of publicly-accessible argument that can be expressed “in terms of political values.”[[22]](#footnote-22) What I understand Rawls to propose constitutes an alternative way to conceive of the political framework of public reason, as opposed to Bardon. Appeal to moral facts in political discourse can be permissible when such moral facts are presented as pertaining to properly political values (such as the common good of society, justice, equality), and when they are accessible without appeal to comprehensive doctrines. There is nothing that makes moral facts *ipso facto* inaccessible to other citizens, as not all people need to share the same metaethical framework in order to understand or agree with a particular ethical judgment (e.g., that murder should be penalized because unjust and wrong).

The earlier point that natural law theory need not involve arguments inaccessible to reasonable citizens is clearer if we were to focus on natural law arguments along the lines understood by Rawls: proposing an account of what the common good requires and giving reasons for collective practical decision-making in terms of those requirements of the common good. Finnis’ argument that the government ought not to recognize homosexual marriage, for instance, does not end with the part of the argument Bardon highlights about homosexual unions failing to be self-giving. Finnis’ arguments about the difference in goods among reproductive and non-reproductive sexual unions is indeed moral, but the relation of that moral claim to the political comes later when he argues that the good of marriage is one that serves the common good of the community, and in which government has an interest, whereas homosexual unions are not suitable objects of such government attention because they serve no such common interest (and might even be properly be discouraged as undermining that common interest in marriage, as with adultery).[[23]](#footnote-23) Girgis, George, and Anderson offer a parallel argument that there are principled and prudential reasons for the State to regulate marriage, given that the State’s interest lies primarily in the familial aspects of marriage, and not to ‘revise’ its legal recognition to include same-sex marriages.[[24]](#footnote-24) One might disagree with these authors’ account of marriage or their account of State interest, for example, but these reasons are clearly phrased in terms of the ‘political values’ of fairness, equity, justice, the common interest, and so forth.

It is helpful, however, to make a distinction that we can see in the arguments of Girgis, George, and Anderson. These authors’ arguments explicitly include the possibility that marriage is ‘merely a socially useful fiction,’ so that even on this assumption they argue recognizing same-sex marriage would not be in the interest of the State. Nevertheless, they do also argue that marriage is a *pre-political* institution.[[25]](#footnote-25) If true, such an objective fact about the world is taken to constrain what could be in the common interest of the political community, for the existence and nature of marriage would not be dependent upon political society – consequently, its value would be independent of politics. And natural law theory appeals precisely to many such pre-political goods as what constitute good reasons for action within political contexts. Bardon’s implied position that non-political goods cannot be appealed to in public reason justification thus seems overly strong, as, again, Rawls himself motivates acceptance of the basic principles of justice within the original position by appeal to ‘primary goods.’ Such goods are characterized by Rawls as having pre-political value.[[26]](#footnote-26) While Rawls had intended this list to be merely a ‘thin’ theory of the good – means to achieve our ends, whatever they are, and thus independent of any comprehensive doctrine – it is nevertheless true that many such goods objectively constrain what is in the common interest. It would be far too strong to rule out *any* such constraints *a priori*. But, if there are some such constraints, there will be facts that delimit publicly reasonable theories of primary goods.[[27]](#footnote-27)

One can understand the natural law argument to be one on which family life and reproductive unions such as marriage are pre-political goods, which thereby justify State interest in them. There is nothing necessarily inaccessible about such arguments to reasonable citizens merely in virtue of the fact they invoke pre-political goods. Further, natural law political arguments (such as those above) do not merely appeal to such goods, but attempt to tie their pursuit to properly political aims. They argue that the *common good* and the means necessary for achieving it are constrained by these pre-political goods. Thus, the independent grounding for value in the pre-political goods does not thereby vitiate the ability to appeal to such value in the context of political arguments, as long as these kinds of goods are accepted by reasonable citizens. One can therefore be unconvinced by (or even find publicly unreasonable) Finnis’ and the others’ arguments that the State should discourage, and not recognize, same-sex marriages without thinking the appeal to pre-political values are what constitutes the problem.

Yet the public reason liberal aims to exclude perfectionist reasons and thereby affirms a distinction between *moral* justifications (justifications for action in lights of a conception of the good which is subject to reasonable disagreement) and those that are *political* in the right way. Natural law theories typically deny that there is any hard distinction between these two. Finnis, for example, objects to the distinction on the grounds that, “each person's reasons for choosing to perform some political act must be, or at least be based upon, reasons which for that person are ultimate/basic….”[[28]](#footnote-28) His argument against same-sex marriage involves appeal to moral norms and a definite theory of the good, in keeping with his conception of political reasoning, and therefore does not restrict its scope to mere appeal to liberal ‘political values.’ Finnis does appeal to his own account of the good in order to fix what is right – there is no hard distinction between those two realms.

**Objection 2 – Paternalism**

A second prominent species of objection to natural law politics argues that collapsing this distinction between moral reasons/values and political reasons/values justifies a ‘paternalistic’ state that denies the moral status of some citizens as equal. In short, if political justifications are identical with the moral justifications, reasonable citizens might disagree about what morality requires. Employing power based on one reasonable conception of what morality requires, contrary to other reasonable views, implies that other competing views are unreasonable and that citizens holding such views make no equal claim on governmental power. Quong thus argues against perfectionist liberaltheories of politics as implying a “negative judgment about the ability of others to run their own lives.” Subsequent exercise of political power to promote one permissible theory of the good in light of those judgments – paternalism – is “presumptively wrong because of the way it denies someone’s moral status as a free and equal citizen.”[[29]](#footnote-29) Quong’s account of paternalism involves two conditions:

1. Agent A attempts to improve the welfare, good, happiness, needs, interests, or values of agent B with regard to a particular decision or situation that B faces.

2. As act is motivated by a *negative judgement* about B's ability (assuming B has the relevant information) to make the right decision or manage the particular situation in a way that will effectively advance B's welfare, good, happiness, needs, interests, or values.[[30]](#footnote-30)

Quong then argues that even if paternalism can be justified in those conditions where someone’s ability to make a decision is impaired, as with children or the mentally disabled, it is *prima facie* wrong when the government acts in treating a sane adult as if they were so impaired. Following Rawls, these abilities are the capacity for a sense of justice and for a sense of the good – ability to act rationally, revise, etc., from a perspective of what public justice requires or from what our rational good consists in. Citizens are free in virtue of their possession of these capacities and equal to the extent that they possess these capacities to a requisite minimum degree to function as members of society.[[31]](#footnote-31) Paternalism is wrong because it treats individuals as lacking such abilities when – in fact – they do not lack them. For example, Quong believes paternalistic state action treats individuals either as having inferior moral status (denying their equality) or as being unable to act rationally (denying their freedom).[[32]](#footnote-32)

Natural law theorists like Robert George and John Finnis resemble, for my purposes, the liberal perfectionists whom Quong criticizes. Like liberal perfectionists, natural law theorists of this kind can affirm that there are “significant moral reasons that preclude the state from using coercion against citizens for their own good.”[[33]](#footnote-33) Natural law theories can broadly agree that the state should not use coercion in order to promote the virtuous life. Finnis argues to a similar conclusion from his account of the way in which the common good of political community is instrumental for achieving other goods: “to secure the whole ensemble of material and other conditions, including forms of collaboration, that tend to favour, facilitate, and foster the realization by each individual [in that community] of his or her personal development.”[[34]](#footnote-34) While the State can promote what is truly worthwhile, such as moral virtue, and discourage vice, Finnis claims, this would not authorize the State “to direct people to virtue and deter them from vice by making even secret and truly consensual adult acts of vice a punishable offence against the state’s laws.”[[35]](#footnote-35)

Finnis thus draws a distinction between coercive authority directed at truly private acts and those which may be censored as affecting ‘public morality.’ George generally agrees with Finnis that the State aims to inculcate virtue primarily by supporting other subsidiary institutions in civil society – families, churches, etc. – rather than to aim at converting hearts and minds to what is truly valuable. The State’s claim only extends to cases where individual immoral activity affects the public interest, i.e., protecting ‘public morals.’ Legal limits on sale of pornography, or preventing exposure of minors to these materials, or on prostitution, are all such a justifiable exercise of State power to limit the effect of private immoral activity on the public good.[[36]](#footnote-36)

George, however, criticizes Finnis’ claim that the State should not prosecute private vice as conceding too much to liberalism, and instead embraces the conclusion that natural law theory is paternalistic. George argues, first, that while classical justifications have been given for the toleration of some vices by government (e.g., *Summa Theologiae* I-II, q. 96, a. 1), this is not enough to arrive at *principled* distinctions between private and public vice. “[I]t does not follow, or so it seems to me, from the instrumental nature of effective, the political common good that moral paternalism, where it can be is beyond the scope of that good.”[[37]](#footnote-37) Second, there is a slippery slope; “the concept of truly secret vices is…a very slippery and unsatisfactory one.”[[38]](#footnote-38) If the scope of government aims at promoting what Finnis claims (above) it promotes, then “virtually the entire range of traditional morals legislation can and would be justified on grounds that fit well within Finnis's conception of the scope of the police power to uphold public morals. Laws against intrinsic evils…are justified, in part, by a concern to protect the public environment in ways that Finnis's approach to the question does not exclude in principle.”[[39]](#footnote-39)

The natural law thinker can respond to both Quong and George, however. George (and, to a certain extent, Finnis himself) fails to draw an appropriate distinction between private and public reasons for action. George might be correct that no clear distinction between kinds of *objects* of State action can be drawn – every vice, to some extent, has public effects. Yet, one might draw a distinction within the scope of possible reasons for State action – that is, in terms of the common good and what is required to achieve it. George’s appeal to classical reasons for toleration of vice draw precisely such a distinction: if adultery is an intrinsically evil act, this is to say no individual has an adequate justifying reason to *commit* adultery; but this fact about what individual reasons there are to commit adultery does not determine whether we have a collectiveor public reason to *tolerate* adultery. Duties of individuals toward other people, similarly, are not the same as duties of groups toward their members. The reasons for the State to tolerate adultery are given in terms of the common good of the citizens; the State does not then commend adultery as worthwhile when it fails to prosecute it. The distinction is implicit in Finnis’ position that defense of public morality aims to repress activities which undermine the *social, public* conditions required for each individual to realize their personal development, rather than ‘truly private’ vices. The paternalist conception of natural law draws an overly rigid conception of how individual moral reasoning affects public reasoning: the reasons *we* act on in groups are not simply identical, even if they are grounded in, the reasons *I* or *you* act upon in the moral life.[[40]](#footnote-40)

The natural law critique can therefore simultaneously affirm that – on the one hand – the public reason liberal’s attempt to distinguish public from private reasons is too strict, cutting off pre-political moral reasoning from playing an appropriate role in political reasoning, without – on the other hand – denying the possibility that there is a relevant distinction of *some* kind between the two kinds of reasons. It can be admitted that the State repressing ‘public vice’ requires that there is a political reason embraced by all reasonable citizens for doing so in terms of public arguments that such vices undermine the public good. For example, if it can be shown that pornography or prostitution affect the abilities of other citizens to achieve their flourishing, affect just public order, there are very good *public* reasons to repress these activities, even if these public reasons might have some connection to pre-political moral reasons. Feminist arguments against pornography and prostitution seem to be examples of such public reasons.[[41]](#footnote-41) Similarly, the natural law politics can hold that a public reason can be *drawn* from pre-political values, as long as that reason is phrased in appropriately public values when presented as a reason for State action.[[42]](#footnote-42)

Instead of offering a particular account of necessary/sufficient conditions for counting as a ‘public reason,’ we can also illustrate that it would be possible, on the basis of such a distinction, for natural law thinkers to defend principled limits in the scope of government authority. For instance, Sinopoli criticizes George’s position as having only weak reasons to prefer limited government on the basis of prudential reasons that the methods of selecting leaders in modern society makes reliable exercise of power by such leaders for the common good questionable, whereas “a heartier perfectionist, such a denunciation might lead to a critique of our way of choosing leaders, perhaps of democracy itself.”[[43]](#footnote-43) Meritocratic perfectionists like Tongdong Bai argue that if there is a common good, then elites are the only reliable political agents; common people could not reasonably be expected to know it, nor would limited constitutional government be justified by perfectionist principles.[[44]](#footnote-44)

But there is nothing in the natural law account which requires that government be empoweredto repress all vices. As long as there is a moral justification for a division of power, such that government might be justifiably *limited* to enumerated powers*,* there might then be overriding reasons to limit government so that it cannot legitimately act paternalistically. There are distinct ways to do so. Finnis argues that the good achieved by the State is an ‘instrumental good,’ not one that aims at all elements of perfection, but rather facilitating the means for achieving basic goods.[[45]](#footnote-45) While Finnis’ instrumentalist understanding of the common good is controversial, one does not need to accept this picture in order to draw the distinction between public and private reasons for action. Jacques Maritain takes a distinct position on the common good from that of Finnis, taking the common good as a distinctive and irreducibly ‘common’ good, but also distinguishes politics and ethics as concerned with two distinct kinds of ends or reasons.

Maritain’s position thus stands in opposition to Finnis’ instrumentalism, but still would allow us to invoke different orders of normativity on the following basis:

… human life has two ultimate ends, the one subordinate to the other: an ultimate end *in a given order*, which is the terrestrial common good, or the *bonum vitae civilis*; and an absolute ultimate end, which is the transcendent, eternal common good. And individual ethics takes into account the subordinate ultimate end, but *directly aims* at the absolute ultimate one; whereas political ethics takes into account the absolute ultimate end, but its *direct aim* is the subordinate ultimate end, the good of the rational nature in its temporal achievement. Hence a specific difference of perspective…[[46]](#footnote-46)

It is on this basis – that ethics and politics have distinct ends and so distinct reasons – that Maritain draws further conclusions about normative agreement or disagreement. The common good of society might demand that we justly do not require agreement, in many cases, on our own comprehensive justification (from wider moral or religious doctrines) on a point of policy or what is right, in favor of agreement on the ‘practical conclusion’ about what justice requires – which was illustrated in Maritain’s support of the *Universal Declaration of Human Rights*.[[47]](#footnote-47)

Maritain does not deny that justifications for social claims about the common good and human rights involve truth, and are grounded ultimately in truths about human nature, but argues that what is essential to the pursuit of societal common goods with other citizens is adherence to a vision of what the common good consists in – the ‘democratic charter’ of modern society – rather than to all elements of the philosophical justification of that charter.[[48]](#footnote-48) I think Maritain’s point is more clearly illustrated by noting that, in agreement on what justice requires, the basic distinction is quite simple: citizens can agree *that* something is true (what justice requires is *x*) without agreeing *why* it is true (why justice requires *x*). One need not agree in many respects as to *why* justice requires *x* in order to promote the common good of society.

A different strategy for defending a similar conclusion is to justify a practical separation between all comprehensive matters of individual morality and those specific matters over which the State has enumerated jurisdiction. Natural law defenses of originalism in legal interpretation appeal to moral justifications for limited government. Alicea gives a justification for limitations on government power that has two steps. First, because “political authority is necessary to achieve the common good, it is vested in whoever has responsibility to achieve the common good, and as Aquinas points out, everyone in a society has a responsibility to achieve the common good.”[[49]](#footnote-49) The American Constitution thus gains its moral justification from the fact that, by that instrument, citizens designate their leaders with authority to act in their stead for the common good.

Second, if citizens have good moral reasons for that Constitution involving a separation of powers and limitations of government authority (that is, as long as the Constitution limits government power for reasons of promoting the common good), then one can hold that the State is not empowered to determine many questions of what natural law has to say about individual morality. Specifically, in the event of a possible conflict between written positive law and the natural law of morality, judges might not be *empowered* to remedy such a conflict.[[50]](#footnote-50) The common good of society might give us strong moral justifications to limit the power of judges so that they cannot act upon their private notions of what morality requires for individuals.[[51]](#footnote-51) And, in the same way, natural law politics in general might argue that moral justifications for government being limited *in principle* not to prosecute all matters of immorality – but only those that affect just public order – can be justified by the requirements of the common good in a properly-constituted State.[[52]](#footnote-52)

Conversely, the natural law politics can respond to Quong’s worry that perfectionist politics are inherently paternalistic because they treat some citizens as having inferior moral status or as irrational. If lives that are valuable are ones in which one properly exercises *free self-determination*, as in the liberal perfectionist model, then I see no principled reason that State promotion of valuable living needs to treat citizens as inferior or as irrational. It is possible, Quong himself admits, for the State to treat citizens non-paternalistically by *making public arguments* or *persuading* people to embrace better lives.[[53]](#footnote-53) Natural law politics insists on such means for effecting moral change, giving the State a unique political imperative that a public reason liberal lacks. Beyond merely providing public justification for State action, the State can and ought to provide public means for education and investigation of valuable modes of State action.[[54]](#footnote-54) Similarly, promotion of cultural goods by State-sponsorship does not seem to undermine anyone’s moral standing. Quong’s arguments do not seem to argue as much either. Instead, he only seems to argue that promotion of cultural goods treats individuals as irrational, because they would not use their money to support these goods on their own by paying for museums purely voluntarily as individuals, or so the perfectionist State seems to presume. State promotion of cultural goods thus treats individuals are unable to use their money rationally in support of valuable goods, such as art.[[55]](#footnote-55) And many of these natural-law-supported legal norms can be justified, too, considering failures of rationality that happen to be broadly socially distributed. For instance, legal obligations to pay into social security or personal health savings accounts are in one sense paternalistic but can be justified considering general facts about human shortsightedness.[[56]](#footnote-56)

Yet there might be coordination problems that make it unfeasible for such goods to be preserved by individuals; it might be reasonable for the State to promote language education, give grants for preserving historical architecture, and run art or history museums, without (*pace* Quong) implying anything about individuals making irrational decisions. A plausible aspect of the common good aimed for in having a State is to resolve these coordination problems about, for example, cultural goods, just as the State does for coordinating transportation and military services. If State provision of public services constituted treating individuals as irrational, then the charge of paternalism would apply to far more than perfectionist models. And, State monies are controlled by the people who then can make public decisions to use that money in support of cultural preservation. The State might be treating individuals paternalistically if it restricted control over what cultural goods to promote to a certain segment of the population, but the public accountability and justification involved in State-sponsored museums, historical societies, etc., seems to tell against any *de jure* connection between promoting valuable cultural goods and treating a segment of the population as of inferior status.

Much then depends on Quong’s presuppositions about the *means* that the State uses to promote those lives it takes to be valuable. Natural law politics might adhere to the liberal perfectionist view that coercion need not be employed against other *publicly reasonable* kinds of lives – lives that do not undermine the requirements of justice and the common good. Nevertheless, there is a jump: from the view that State coercion should not be used to discourage some ways of life by coercive means, to the view that one would be treating any individuals as inferior moral agents or lacking equal standing merely in virtue of the State’s *failure to promote* some forms of life or behavior. Mere omission to promote some ways of life does not constitute a fault unless the State has duties positively to promote all forms of life equally.

The State surely cannot promote all forms of life *equally* for simply logistical reasons. There are indefinitely many (reasonable) ways to live, and the State does not seem *able* to promote all of them at once. What might be a reasonable desideratum is that State promotion of valuable ways of life be publicly accountable and justified, as with the earlier question about promotion of cultural goods, and therefore *fair* in its general treatment of reasonable ways of life and in the specific selection of the ways of life it decides to use its limited resources to promote.[[57]](#footnote-57) Clearly, even if there are publicly unreasonable conceptions of the good which the State has no reason to facilitate, and even if the State also has no authority to repress reasonable conceptions of the good, the natural law political position does not require unfairness in the processes by which the State selects among reasonable ways of life or goods to promote.

The morally problematic paternalism implicit in perfectionist government is portrayed by Quong as involving an implicit judgment of superiority. However, it has been argued – I think rightly – that morally objectionable paternalism involves no such assumption or judgments. Rather, plausibly, paternalism merely involves treating a person as being incapable of acting responsibly in their own interest (e.g., as not perceiving the good or pursuing it), when those persons actually are so capable.[[58]](#footnote-58) Paternalism is then unreasonable because this treatment does not fit with the reality of the other agent. But perfectionist government does not involve such a judgment of necessity. If the public judges that we have reason to promote a certain set of goods, such as public art education, on the basis of the fact that such goods are better promoted by society rather than by individuals, and there is no injustice in it, e.g., it was decided using fair procedures, without using coercion to punish or disadvantage citizens who do not share these views of these goods, then it does not seem we have any reason to think that State promotion of certain ways of life involves any judgments that certain citizens are incapable of acting in their own interest. It only involves a judgment that such goods might be better promoted by the State than by individuals, that is, that it is in the common good to promote those goods. And this kind of justification is an ordinary kind we use to justify most government policies, just as Quong permits that some controversial conceptions of justice (his own liberal ones) might be enforced by the State. So, I conclude, morally objectionable paternalism is not a necessary feature of perfectionist natural law politics.

Natural law politics avoids, I have argued, two charges. Natural law politics does not necessarily rest on claims about morality or justice that are any more ‘absolute’ or inaccessible to other citizens than those of public reason liberalism, nor does perfectionist politics of the natural law kind necessarily involve implicit morally objectionable paternalistic judgments about citizens being incapable of acting for their own good. These objections simply fail to be sensitive to the existence of the distinction between common goods and individual or basic human goods as reasons for action, which is part and parcel of natural law political foundations. While natural law theory holds that the facts about the common good *supervene upon* the facts about basic human goods, these two are not identical. When we perceive that these goods are distinct goods, rather than (for example) conceiving the common good as mere aggregate of individual goods,[[59]](#footnote-59) we can distinguish those norms of natural law *politics* from distinct norms of practical reasoning in natural law *ethics*. There are simply distinct reasons employed in collective reasoning and in individual reasoning about what to do, even as those norms are *metaphysically* related. Once this distinction is introduced, however, the natural lawyer has the resources to respond to both objections. Natural lawyers can agree (as does Finnis) that only those reasons that are appropriately related to the common good count as acceptable public reasons, which then allows the possibility that the State may have principled limits in the sort of actions it can justifiably undertake.

**Objection 3 – Baros**

A final objection is the most important for constructing a positive account of natural law as public reason. This objection is that natural law traditions reject or necessarily entail a conflict with a key principle at the heart of the public reason tradition: that the use of government power must be justifiable to its citizens. The natural law tradition might appear to operate on different assumptions about government action as promoting the common good, in such a way that merely acting in promoting the (actual) good would be a sufficient justification for State action. The limitation that the State only acts to promote the common good, rather than the private good, is irrelevant to this concern. Instead, the objection is that there is no principled restriction to government authority in promoting the common good arising from what citizens find reasonable, if the task of the government is just to promote that good. Recent conflicts among natural lawyers concerning the existence of subjective rights witnesses to this same debate.[[60]](#footnote-60) Clarifying this objection shows it to involve problematic assumptions which have always been rejected by natural law thinkers. Indeed, natural law politics *would be incoherent* if it rejected the demands for public justification. Yet, it is true that its account of public reasonability differs in notable ways from typical Rawlsian public reason liberalism. I will conclude by arguing that the natural law formulation is, in fact, superior.

Jiri Baros argues that natural law politics should reject the project of public reason liberalism, which aims to understand the justification of coercive laws and policies “if and only if each of its members has sufficient reason(s) to endorse it.”[[61]](#footnote-61) He contrasts two different account of public reason liberalism: consensus and convergence accounts. Consensus accounts hold that coercive laws and policies can only be publicly justified when each reasonable member of the public has the same sub-set of reasons to endorse it – in Rawls’ terms, only if there is an ‘overlapping consensus’ among all reasonable citizens. Convergence accounts reject this requirement and hold instead that coercive laws and policies can be publicly justified when each member of the public has a reason which justifies that law or policy for that person. As Vallier put it, on convergence accounts, “all suitably idealized members of the public can see as a reason for the person who offers it according to that person’s own evaluative standards.”[[62]](#footnote-62) Baros offers reasons that neither of these accounts of justification is compatible with natural law theories.

Baros presents two reasons that natural law thinkers should reject consensus accounts. The first is that natural law thinkers will inevitably appeal to reasons whose status as publicly reasonable will be contestable by public reason liberals. Natural lawyers and public reason liberals do not share evaluative standards for determining what reasons are publicly accessible. Why should a natural law proponent accept the need to restrict their reasons to those shared by all citizens? “If it is not shown that these reasons are wrong, there is no principled objection to promoting laws based on them.”[[63]](#footnote-63) Baros further argues that natural law reasons are not relevantly like ‘public’ reasons. Natural law rejects the liberal picture of society as “a fair system of cooperation among free and equal citizens [with] recognition of reasonable pluralism,” and instead holds that society aims at “not just flourishing individuals but a flourishing community as a whole.”[[64]](#footnote-64) There might be reasonable disagreement on inferences about basic goods, such as their respective weight in various circumstances, but not the basic goods themselves. “Sooner or later public and natural law reasons conflict in a way which is mutually exclusive,”[[65]](#footnote-65) because of the communitarian view of the common good held by natural lawyers and rejected by public reason liberals.

For liberals, citizens have veto power over the laws and policies of the government, and so many policies that promote the common good will be vetoed merely because some citizens have ‘intelligible defeaters’ for endorsing those policies.[[66]](#footnote-66) Baros argues that these requirements of justification are in conflict with the natural law view that the common good is the ultimate justification for all laws and policies. “If a citizen refers to her intelligible reasons against coercive rules, this cannot lead to the suspension of judgment and measures of political authority; the common good cannot cease to provide its directing role.”[[67]](#footnote-67) Promotion of the common good is not limited by facts of what reasons are accessible to all members of the public, Baros argues.

Yet Baros’ objection straightforwardly involves a fundamental misconception of natural law theory. On a natural law account of the basic human goods, *practical reasonableness* is an important such good*.* This good of reasonableness is what sets apart natural law ethics from a straightforward utilitarianism that would require maximizing the promotion of all the basic goods.[[68]](#footnote-68) Further, it is an independently implausible account of ‘reasonability’ which holds that one is practically reasonable only when one is acting upon truths about the world. One can be blamelessly in error, for example, and still acting reasonably given one’s information. And our beliefs are often mixed with error. We should not hold that almost everyone is acting unreasonably. Yet, once we introduce a distinction between public and individual reasons for action – common vs. private goods – then it will be true that a reason for promoting the common good has a metaphysical connection to the basic human goods, but not that any basic good is *ipso facto* a reason to promote a given political policy. It is plausible, instead, that there is a good of *public reasonableness* that is a component of the common good of society.

What has gone wrong, in sum, is that Baros confuses the natural law claims about *metaphysical supervenience* of the common good upon facts about individual goods with the perspective that the common good *consists in nothing more than* the (effective promotion of) individual goods. But to collapse these is to deny implicitly that the common good is distinctive in kind from private goods. Although the natural law political position I am proposing can be distinguished from debates about whether the common good is a distinctive good or an aggregate of goods (which I have only incidentally referenced), the view taken here about distinct orders of normativity (private/public) is friendlier to the distinctive approach to the common good that would be traditional in natural law politics, such on the views of Charles de Koninck, Yves Simon, or Jacques Maritain. If public reasonableness is constitutive of the common good, the common good is not an aggregate of other goods *plus* reasonableness, but the distinctive achievement of those other goods *by means of* reasonable public action.

Thus, if the common good is distinctive in being above-and-beyond a mere aggregate of individual goods, then it is plausible part of what constitutes such a good as more than an aggregate is that it involves elements affecting public deliberation leading to its achievement (e.g., ‘procedural’ justice), just as individual practical reasoning involves not only attention to basic goods, but the reasonability involved in our conduct towards them.[[69]](#footnote-69) Rhonheimer has thus noted that there might be not merely onenotion of ‘reasonability’ involved on natural law theories, *but two*. While the *full* reasonableness of a public reason requires conformity to the moral truths, being among those truths is not sufficient for constituting a public reason, because such reasons need to be related to the common good appropriately as *publicly* reasonable.[[70]](#footnote-70) If so, there is a basis for natural lawyers to resist Baros’ claim that adopting this stance toward public reasonability is inconsistent.

**Conclusion**

The underlying metaphysics is one on which (in Aristotelian or other versions of ethical naturalism) facts about what is good for society – the ‘common good’ – supervene upon facts about what is good for individuals. Call such views which also embrace constraints of public reasonability ‘public reason naturalism.’ I highlight the relation of supervenience in order to show that this relation among individual and group reasons is supposed to be *metaphysical,* as this claim is what allows public reason naturalism to differ from public reason liberalism. Public reason naturalism holds that there are mind-independent facts about the common good, which are determined by discovering whether human beings have reasons to engage in collective political deliberation.I mentioned at the start that the foundational assumption of a natural law approach to politics is that there is no fundamental discontinuity between questions of what is reasonable for individuals to do and reasonability in political, group decision-making.

What I have argued, in part, is that this metaphysical fact about reasons does not straightforwardly entail that all reasons accessible to individuals are therefore always accessible to or available for group practical reasoning. The reasons for political action, despite deriving metaphysically from reasons for individual action, pertain to a different kind of good and so a different order of normative justification. The kinds of justifications involved in public reason naturalism are theoretically distinct from and do not by themselves entail embracing a comprehensive natural law theory of morality. The merit of noting a distinction between the metaphysics and epistemology of public reasons is that public reason naturalism can affirm the existence of a metaphysical ‘substrate’ for public reasons while bracketing much regarding the metaphysical and ethical content. What is most directly relevant to public reasoning concerns only a subset of those facts, the epistemic accessibility of those reasons, and their pertinence to particular (political) issues as they pertain to the common good.

Public reason naturalism’s exploration of standards of public reasonability will require returning to a classical debate within the Catholic moral theological tradition. The debate among ‘probabilists’ and other schools of moral theology addressed the limits of permissible action in the context of a moral dispute where, when ethical authorities disagree about the application of norms, individuals are not always obliged in conscience to follow any particular interpretation of those norms.[[71]](#footnote-71) Public reason naturalists will have to assess these theories in order to draw their own account of the *political limits* of reasonable disagreement, which will undoubtedly differ from those of the liberal tradition. Public reason naturalism will reject the any principled limits to the appeal to perfectionist reasons, or comprehensive doctrines, in matters of constitutional essentials, and instead insist upon there being no good way to draw distinctions around public reasonability without appeal to some such standards. Nevertheless, it constitutes – on the one hand – an appealing possible way for natural law politics to *capture* what is appealing or intuitive within public reason liberalism. And I think this possibility should not be ignored, as it might – on the other hand – constitute an appealing position that allows a response to many criticisms of both traditions. Developing ‘public reason naturalism’, thus, might reinforce the natural law and public reason traditions in ways that remedy the potential defects of both.

First, public reason naturalism allows an alternative characterization of what it is to be a ‘reasonable’ citizen which avoids charges that public reasoning is overly idealized. The limits of reasonability can be more epistemically fluid than those of the public reason tradition, but the naturalist can nevertheless identify certain formal features associated with practical reasonability that ensure a principled distinction among reasonable and unreasonable public deliberators. Second, many have argued that there is no good way to arrive at ideologically ‘neutral’ public reasoning or use of government power. By contrast, public reason naturalism does not aim in principle at secular neutrality, but at commitment to moral norms of fairness that can be shared by many comprehensive perspectives, resembling a convergence rather than a consensus account of public justification. Finally, public reason naturalism has the potential to offer a distinctive account of civic virtues, richer and more substantive than those offered by public reason liberals, undermining criticisms of public reasoning as necessarily destructive of culture or community. In this latter regard, public reason naturalism can offer a ground on which to develop a ‘virtue politics’ that is compatible with the liberal institutions of free modern countries while nevertheless finding a place for promotion of values represented by traditions such as classical republicanism, Confucianism, Islam, or Christianity.[[72]](#footnote-72)

1. Gerald Gauss, *Order of Public Reason* (Cambridge: Cambridge University Press, 2011), 263f. [↑](#footnote-ref-1)
2. John Rawls, *Political Liberalism,* expanded edition (New York: Columbia University Press, 2005), 176. See further 173-211; also, John Rawls, *A Theory of Justice,* revised edition (Cambridge, MA: The Belknap Press of Harvard University Press, 1999), esp. 348-350. [↑](#footnote-ref-2)
3. Wall, “Liberalism, Perfectionism, and Restraint” [↑](#footnote-ref-3)
4. Jonathan Quong, "Public Reason", The Stanford Encyclopedia of Philosophy (Summer 2022 Edition), Edward N. Zalta (ed.), forthcoming URL = <https://plato.stanford.edu/archives/sum2022/entries/public-reason/>. [↑](#footnote-ref-4)
5. See Paul Billingham and Anthony Taylor, “A framework for analyzing public reason theories,” *European Journal of Political Theory*, Vol. 21, 4 (2022): 671–691. [↑](#footnote-ref-5)
6. Christopher Wolfe, *Natural Law Liberalism* (Cambridge: Cambridge University Press, 2006), 27. [↑](#footnote-ref-6)
7. John Finnis, “’Public Reason’ and Moral Debate,” in *Reason in Action* (Oxford University Press, 2011), 258-259. [↑](#footnote-ref-7)
8. Wolfe, *Natural Law Liberalism,* 28; see also Finnis, “’Public Reason’ and Moral Debate,” 265. [↑](#footnote-ref-8)
9. Christopher Wolfe and Robert George, “Natural Law and Public Reason,” in *Natural Law and Public Reason,* eds. R. George and C. Wolfe (Washington, DC: Georgetown University Press, 2000), 54. [↑](#footnote-ref-9)
10. Jonathan Quong, "Public Reason", The Stanford Encyclopedia of Philosophy (Summer 2022 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/sum2022/entries/public-reason/>. [↑](#footnote-ref-10)
11. Steven Wall, "Perfectionism in Moral and Political Philosophy", The Stanford Encyclopedia of Philosophy (Fall 2021 Edition), Edward N. Zalta (ed.), URL = https://plato.stanford.edu/archives/fall2021/entries/perfectionism-moral/, sec. 8.6. [↑](#footnote-ref-11)
12. *pace* Rawls, *Political Liberalism,* 54-58, 62-63. [↑](#footnote-ref-12)
13. Aurelia Bardon, “Religious Arguments and Public Justification,” in *Religion, Secularism, and Constitutional Democracy*, eds. J. Cohen and C. Laborde (New York: Columbia University Press, 2015), 282. [↑](#footnote-ref-13)
14. Ibid., 282-283. [↑](#footnote-ref-14)
15. Ibid., 283. [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. John Finnis, “Law, Morality, and ‘Sexual Orientation,’” *Notre Dame Law Review* 69 (1994): 1069. [↑](#footnote-ref-17)
18. Bardon, 287. [↑](#footnote-ref-18)
19. Ibid., 289. [↑](#footnote-ref-19)
20. John Finnis, “Liberalism and Natural Law Theory,” *Mercer Law Review* 45 (1994): 701. [↑](#footnote-ref-20)
21. Cf., Russell Hittinger, *Critique of the New Natural Law Theory* (South Bend, IN: University of Notre Dame Press, 1988). [↑](#footnote-ref-21)
22. Rawls, *Political Liberalism*, 452, see further fn. 29 and 480. [↑](#footnote-ref-22)
23. Finnis, “Law, Morality, and ‘Sexual Orientation,’” 1070. [↑](#footnote-ref-23)
24. Sherif Girgis, Robert George, and Ryan Anderson, “What is Marriage?” *Harvard Journal of Law and Public Policy*, Vol. 34, No. 1 (Winter 2010): 245-287. [↑](#footnote-ref-24)
25. Ibid., esp. 274-275. [↑](#footnote-ref-25)
26. Rawls, *A Theory of Justice,* 54-55, 127. [↑](#footnote-ref-26)
27. Thanks to an anonymous reviewer for helping develop this point. [↑](#footnote-ref-27)
28. Finnis, “Liberalism and Natural Law Theory,” 699. [↑](#footnote-ref-28)
29. Jonathan Quong, *Liberalism without Perfection* (Oxford: Oxford University Press, 2010), Kindle edition, loc. 1120-1121. [↑](#footnote-ref-29)
30. Quong, loc. 1200-1202. [↑](#footnote-ref-30)
31. Rawls, *Political Liberalism*, 19. [↑](#footnote-ref-31)
32. Quong, loc. 1496-1509. [↑](#footnote-ref-32)
33. Quong, loc. 1245. [↑](#footnote-ref-33)
34. Finnis, *Natural Law and Natural Rights,* 147. See also John Finnis, “Limited Government,” in *Human Rights and the Common Good* (Oxford: Oxford University Press, 2011)*,* 87-94. [↑](#footnote-ref-34)
35. Finnis, “Limited Government,” 93. [↑](#footnote-ref-35)
36. Robert George, “On the Concept of Public Morality,” *American Journal of Jurisprudence,* Vol. 45, Iss. 1 (2000): 17-31. [↑](#footnote-ref-36)
37. Ibid., 31. [↑](#footnote-ref-37)
38. Ibid.. [↑](#footnote-ref-38)
39. Ibid., 30. [↑](#footnote-ref-39)
40. Margaret Gilbert, “Shared Intention and Personal Intention”, *Philosophical Studies*, 144 (2009): 167–187; Abraham Sesshu Roth, "Shared Agency", The Stanford Encyclopedia of Philosophy (Summer 2017 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/sum2017/entries/shared-agency/>. [↑](#footnote-ref-40)
41. Christie Hartley, “Public Reason and Prostitution,” in *Equal Citizenship and Public Reason,* eds. C. Hartley and L. Watson (Oxford: Oxford University Press, 2018), 163-188. [↑](#footnote-ref-41)
42. Rawls, *Political Liberalism,* 241-244. [↑](#footnote-ref-42)
43. Richard C. Sinopoli, “Review of Robert George, *Making Men Moral,*” *The American Political Science Review*, Vol. 88, No. 3 (Sep., 1994): 735. [↑](#footnote-ref-43)
44. Tongdong Bai, *Against Political Equality* (Princeton University Press, 2019). [↑](#footnote-ref-44)
45. John Finnis, *Natural Law and Natural Right,* 154-156. See also Mark Murphy, *Natural Law in Jurisprudence and Politics* (Cambridge: Cambridge University Press, 2006), 61-90. [↑](#footnote-ref-45)
46. Jacques Maritain, *Man and the State* (University of Chicago Press, 1951)*,* 62. [↑](#footnote-ref-46)
47. Ibid., 78-79. [↑](#footnote-ref-47)
48. Ibid., 111-112. [↑](#footnote-ref-48)
49. J. Joel Alicea, “The Moral Authority of Original Meaning,” *Notre Dame Law Review,* 98, 1 (forthcoming 2022): 7, http://dx.doi.org/10.2139/ssrn.4049069 [↑](#footnote-ref-49)
50. Ibid., 52. [↑](#footnote-ref-50)
51. Ibid., 53. [↑](#footnote-ref-51)
52. See also Martin Rhonheimer, “St. Thomas Aquinas and the Idea of Limited Government,” *Journal of Markets & Morality,* Vol. 22, No. 2 (Fall 2019): 439-455. [↑](#footnote-ref-52)
53. Quong, *Liberalism without Perfection*, loc. 1423. [↑](#footnote-ref-53)
54. See Maritain, 119-126. [↑](#footnote-ref-54)
55. Quong, *Liberalism Without Perfection,* loc. 1393. >>>??? [↑](#footnote-ref-55)
56. Again, I owe this helpful point to an anonymous reviewer. [↑](#footnote-ref-56)
57. See Kevin Vallier, “Public Justification versus Public Deliberation: The Case for Divorce,” *Canadian Journal of Philosophy* 45, 2 (2015): 139-158. [↑](#footnote-ref-57)
58. Chrisoula Andreou, “Paternalism and presumed superiority,” Analysis (online first, 2022): 1–7, doi: https://doi.org/10.1093/analys/anac047. [↑](#footnote-ref-58)
59. Mark Murphy, “The Common Good,” *Review of Metaphysics*, Vol. 59, No. 1 (Sept. 2005): 133-164. [↑](#footnote-ref-59)
60. Brian Tierney, *The Idea of Natural Rights* (Wm. B. Eerdmans Publishing Co, 1997); Dominic Legge, “Do Thomists Have Rights?” *Nova et Vetera* 17, 1 (2019): 127-147; John Finnis, “Aquinas on ius and Hart on Rights: A Response to Tierney,” *Review of Politics,* Vol. 64, No. 3 (Summer 2002): 407-410. [↑](#footnote-ref-60)
61. Jiri Baros, “Whose Public Reason? Which Justification of Laws? A Natural Law Response,” *Revue Metaphysique* (2021): 508, 509. [↑](#footnote-ref-61)
62. Kevin Vallier, “In Defence of Intelligible Reasons In Public Justification,” *The Philosophical Quarterly,* Vol. 66, No. 264 (2016): 596-616, citing the abstract. [↑](#footnote-ref-62)
63. Baros, 514-515. [↑](#footnote-ref-63)
64. Ibid., 516. [↑](#footnote-ref-64)
65. Ibid., 516. [↑](#footnote-ref-65)
66. Baros, 519. [↑](#footnote-ref-66)
67. Ibid., 521. [↑](#footnote-ref-67)
68. Jonathan Crowe, “Intelligibility, practical reason and the common good,” in Research Handbook on Natural Law Theory, eds. J. Crowe and C. Y. Lee (Cheltenham: Edward Elgar Publishing Limited, 2019), 296–303; Finnis, *Natural Law and Natural Rights,* 88-89, 100-133. [↑](#footnote-ref-68)
69. *pace* Murphy’s aggregative conception of the common good, op. cit. [↑](#footnote-ref-69)
70. Rhonheimer, esp. 50-51. [↑](#footnote-ref-70)
71. J. Harty, *Probabilism*. In The Catholic Encyclopedia. New York: Robert Appleton Company. Retrieved December 5, 2022 from New Advent: http://www.newadvent.org/cathen/12441a.htm. [↑](#footnote-ref-71)
72. For a particular instance, see further James Dominic Rooney, “Liberal Arts and the Failures of Liberalism,” in *Beyond Classical Liberalism: Freedom and the Good,* eds. J. Rooney and P. Zoll (Routledge, forthcoming). [↑](#footnote-ref-72)