

Religious Conviction, Respect, and the Doctrine of Restraint
in the Exclusionist-Inclusionist Debate

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Dissertation submitted in partial fulfillment of
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ABSTRACT

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Abstract

The principle of respect for other persons is commonly invoked in contemporary liberalism as justification for the claim that a conscientious citizen in a liberal democracy is morally obligated to refrain from supporting a coercive law for which he lacks suitable public justification. This view has been challenged by Christopher Eberle in *Religious Conviction in Liberal Politics*, who argues that although a citizen has an obligation to pursue a convincing secular rationale for a coercive law, he does not have an obligation to withhold support for a law for which he lacks such a rationale.

In this dissertation I attempt to develop a basic analytical framework which can be used to formulate a suitable conception of respect for persons in the public square. Only with such an underlying conception of respect in hand is it possible to adjudicate the competing claims concerning what the principle of respect for persons should be deemed to require of citizens in advocating and supporting coercive laws.

The framework I propose views respect for persons as a complex and variegated concept. It separately considers four different forms or notions of respect, and takes the attitude of respect as foundational and prior to the other forms of respect. I conclude that any conception of respect will entail commitment to a broader ethical theory or set of ethical principles. Accordingly, in the final chapter, I suggest that Robert Audi's "value-based Kantian intuitionism," with its emphasis on respect and the dignity of persons as a grounding property, may constitute an auspicious ethical theory to which appeal may plausibly be made in completing a conception of respect.

Dedication

I dedicate this dissertation to my loving and ever-patient wife, Angie McWatters, and to my three my children, Jessica, Tommy, and Zachary, each of whom I love dearly, and without whom I would have had neither the fortitude nor the strength to see it through to completion.

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On a more personal note, I wish to acknowledge the influence that my late father, Thomas A. McWatters, Jr., had on my writing of this dissertation. I spent many hours as a young man discussing with him the relationship between religion and politics – two topics of perennial interest to the both of us. I owe him much.

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Introduction

The role of religion in politics is a subject of considerable debate and controversy in contemporary liberalism. One aspect of the debate that has received particular attention is the extent to which (if at all) it is appropriate for a citizen to rely on religiously grounded moral beliefs in advocating or supporting favored policies or laws in the “public square”. Many contend that religious argument should have little or no place in decisions bearing on important political issues in a liberal democracy. This view, in one form or another, is widely accepted within the academy; many view it as a basic tenet of liberalism. Other theorists, however, urge a more inclusive view. They maintain that debate in a liberal democracy should remain free and open, and that religious argument should play an important part in that debate and in determining public policy and laws.

Theorists advocating an exclusivist account -- whether a *hard* form which demands complete privatization of religion, or a *soft* form which requires only articulation of some type of public justification in supporting a policy or law (and hence would still preclude a citizen from relying on religious conviction alone) -- invoke a number of different grounds in support of the claim that reliance on religious argument should be restricted (either in whole or in part) in politics. One such argument is what I shall refer to as the “argument from respect,” or “AR”. AR, though not advanced by all exclusionists, nevertheless constitutes one of the leading arguments invoked by theorists in support of the contention that religious conviction should have little or no place in the public square.

As one might expect, the argument from respect comes in a variety of forms, the exact nature of which depends on the theorist advocating it. Each version, however, argues toward the same conclusion: to rely on one's religious beliefs (either at all or in part) in advocating and deciding issues of public concern shows disrespect for one's fellow citizens who do not share the same religious convictions. The principle of respect is thus taken to provide a moral reason why a citizen should refrain from invoking religious argument in the public square.

Such accounts, it may be argued, generally suffer from two shortcomings. First, little attempt has been made to explain or justify in any detail what it is about the principle that we should have respect for others that requires citizens to refrain from relying on religiously based moral beliefs in advocating or supporting public policies or laws. Second, and more fundamentally, there has been virtually no attempt made to anchor the argument from respect to, or derive it in any fashion from, an underlying conception of respect for persons.

These two things – the entailment relationship between the principle of respect and restraint, and a conception of respect – are interconnected in at least the following way. The nature and scope of the entailment relationship – that is, whether and to what extent the duty to respect others imposes (or should impose) certain constraints on the reliance on religious conviction in the public square – will depend in turn on the nature, contour, and features of the underlying conception of respect from which it is derived. Thus, before one can convincingly establish what the principle of respect actually requires by way of constraint on the reliance of religious

conviction in supporting public policies or laws, it is first necessary to articulate an underlying conception of respect.

It is my intent in this dissertation to focus on the concept of respect for persons. More specifically, I shall attempt to articulate a basic framework which can be used to formulate a suitable conception of respect for persons in the public square. Only once such a conception of respect is formulated will it be possible to determine, with any confidence and certitude, what the principle of respect for persons may actually require of citizens participating in the public square.

In Chapter 1, I introduce the argument from respect in the context of the current debate over the legalization of same-sex marriage. One aspect which has made the issue so divisive is the underlying controversy over whether it is morally appropriate for citizens -- who in most states have now voted, through state-wide referenda or initiatives, to amend their state constitutions explicitly to proscribe same-gender marriages -- to rely on the religiously grounded moral belief that same-sex marriage is immoral in voting to legally ban such marriages. Appeal to the argument from respect by those opposing such laws is not uncommon.

Chapter 2 contains a detailed exegesis of Christopher Eberle's thought provoking book, *Religious Conviction in Liberal Politics*, published by Cambridge University Press in 2002. Eberle's central thesis is as follows:

A citizen has an obligation sincerely and conscientiously to pursue a widely convincing secular rationale for her favored coercive laws, but she doesn't have an obligation to withhold support from a coercive law for which she lacks a widely convincing secular rationale.¹

Eberle's position, as this excerpt manifests, may properly be described as being "soft-inclusivist". The second phrase constitutes a rejection of the exclusivist claim that absent a suitable "public justification," a citizen must refrain from supporting a policy or law. The first phrase requires, however, that a citizen make a good faith effort to pursue a public justification, and hence requires more of a citizen than do some inclusivist accounts.

My reason for providing a detailed summary of Eberle's account is essentially two-fold. First, it helps underwrite my claim that formulation of a conception of respect is necessary before it is possible to provide a reasoned account of the relationship between respect and restraint in the public square. It does so in two ways. First, Eberle's treatment of the issue demonstrates that the concept of respect is complex, and is deserving of more considered evaluation than it has previously been given. Second, Eberle's attack on the exclusivist's central notion of public justification is, in my view, a formidable one. To the extent Eberle is successful in calling the entailment relationship between respect and restraint (embodied, at least in part, in the concept of public justification) into question, the underlying concept of respect upon which the relationship has been based arguably constitutes an

¹ Christopher Eberle, *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002).

appropriate object for reevaluation. Only by probing below the surface and considering the concept of respect can the true nature and scope of the entailment relationship be determined.

The second reason for including a detailed summary of Eberle's account is to provide a starting point in beginning to think about the concept of respect. Unlike most theorists who have addressed the argument from respect, Eberle attempts to derive it from and anchor it to a basic underlying conception of respect. The manner in which he attempts to do so, is itself, instructive.

Eberle's conception of respect, however, or so I shall argue, turns out to be too thin to support his detailed and well-developed account of the entailment relationship between the notion of respect and restraint. Eberle's underdeveloped conception of respect leads to a number of potential problems with his treatment of the respect – restraint relationship.

These problems, I shall suggest, are largely traceable to the conception of respect which he adopts -- Stephen Darwall's "recognition respect" articulated by Darwall in his article, "Two Kinds of Respect".² Accordingly, in Chapter 3 I conduct a critical analysis of Darwall's notion of recognition respect. I use this analysis as a foil for identifying what I take to be a several of the salient features any conception of respect for persons should possess.

In Chapter 4, I attempt to formulate a framework for the development of a conception of respect for persons in the public square. I build on my analysis in the

² Stephen L. Darwall, "Two Kinds of Respect," *Ethics* 88, no. 1 (Oct. 1977), 36-49.

previous chapter, and attempt to articulate a framework that avoids the problems and pitfalls contained in the account advanced by Darwall and adopted by Eberle. The framework I sketch views the concept of respect as possessing four separate notions or forms of respect: (1) as an attitude; (2) instantiated in action; (3) the duty to respect; and (4) the entitlement of respect. Though the four forms of respect are each deeply interconnected to one another, my framework considers the attitude of respect to be foundational and prior to the other three forms of respect. Additionally, in contrast to Eberle's conception, it provides a more central and explicit role to human dignity.

In Chapter 5 I offer Robert Audi's "value-based Kantian intuitionism" for consideration as an auspicious ethical theory plausibly suitable for the development of a full-blown conception of respect for persons. I do not argue in support of Audi's theory. Rather, I attempt to show why, given its integration of (an interpretation of) Kant's categorical imperative with a modified Rossian intuitionism, along with its appeal to the notion of intrinsic value (of persons), it might possess the kinds of resources necessary to finish out and complete a conception of respect.

In the sixth and final chapter, I take stock of the extent to which my attempt to articulate a basic framework constitutes a helpful resource for probing the entailment relationship between respect and restraint. I suggest that it does so in two regards. First, it enumerates a number of essential features which any suitable conception of respect must contain. Second, it may be used to test potential theories of respect for persons, and identify those which may be defective.

Despite these positive attributes of the framework, it remains incomplete in two ways. It leaves open the identification of the proper features of persons which give rise to (or which are believed should give rise to) respect, and requires appeal to a broader set of ethical principles or theory. Given these unresolved issues, the framework falls short of constituting a full-blown conception of respect capable of being used to fully adjudicate between the inclusivist and exclusivist views regarding the nature of the entailment relationship.

I express some optimism that the framework can be further developed and thus used in a more robust fashion to consider the entailment relationship. I conclude, however, that if it cannot, appeal to respect as moral justification for the claim that a conscientious citizen in a liberal democracy ought not rely on religious reason alone in supporting a coercive law should be abandoned. If it is not possible to formulate a suitable conception of respect, it is hard to see how the concept of respect can be employed as moral justification for such a restraint.

1. Same-Sex Marriage And The Argument From Respect

1.0 Introduction

More than three decades have passed since the United States Supreme Court first ruled on the issue of a state's right to restrict a women's choice to have an abortion.¹ Notwithstanding this passage of time, the legal status of abortion continues to be an ongoing source of great public debate and controversy in the United States.²

A second contentious, and perhaps even more polarizing issue has rapidly gained national attention -- the legalization of same-sex marriage. One commentator recently observed the following concerning the controversy over same-sex marriage:

“[T]he uproar over same-sex marriage has been deafening. The issue has rocked every state capital and inflamed passions in Congress and presidential politics, as advocates of equal rights for gays and lesbians are pitted against religious and other socially conservative groups committed to protecting traditional marriage.”³

Unlike with the issue of abortion, which did not become nationally divisive until the Supreme Court ruled on it in 1973,⁴ the “uproar” over same-sex marriage

¹ See *Roe v. Wade*, 410 U.S. 113 (1973).

² Polls continue to show that the nation is deeply divided on the issue. Abortion consistently is a major issue in presidential (and many congressional) campaigns, and many state legislatures continue to pass legislation attempting to restrict abortion to the extent permitted by Supreme Court precedent. The Court itself, of course, also is divided over the issue. See, e.g., *Gonzales v. Carhart*, 550 U.S. 124 (2007) (upholding federal ban on partial birth abortion); *Stenberg v. Carhart*, 530 U.S. 914 (2000) (overturning Nebraska's state ban on partial birth abortion); *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) (upholding a woman's right to an abortion, but rejecting abortion as a fundamental right and *Roe's* trimester analysis). The Court's abortion jurisprudence now has even become one of the central areas of inquiry in Senate confirmation hearings of judicial nominees to the Supreme Court.

³ Christine Vestal, “Same-sex marriage ripe for decision in Cal. and Conn.” (March 1, 2007, updated March 6, 2008), Stateline.org., <http://www.statelin.org> (accessed February 5, 2010).

⁴ Justice Scalia has placed blame on the Supreme Court itself for making the issue such a nationally divisive one:

“Not only did *Roe* not, as the Court suggests, resolve the deeply divisive issue of abortion; it did more than anything else to nourish it, by elevating it to the national

began and thus far has occurred primarily at the state level. The principal state fora in which debate over same-sex marriage has occurred have been the state legislatures, which have passed statutes that ban or permit same-sex marriage and/or allow some form of civil unions or domestic partnerships; the highest courts of several states, which are split on the constitutionality of same-sex marriage; and a widespread citizen-led movement, through initiatives or petitions, to ward off “judicial tyranny” by amending state constitutions to explicitly ban same-sex marriage.⁵

The same-sex marriage controversy presents an auspicious context within which to introduce the general question with which I am interested in this dissertation:

What constraints, if any, does the principle of respect for others impose on a conscientious citizen in a liberal democracy, in supporting coercive laws where such support is based on religiously-grounded beliefs alone? (AR)

This is true for two reasons.

First, although there are many individuals, including sophisticated scholars across a wide spectrum of the academy, who oppose same-sex marriage on non-religious grounds, religious grounds or convictions appear to have played and will

level where it is infinitely more difficult to resolve. National politics were not plagued by abortion protests, national abortion lobbying, or abortion protests, or abortion marches on Congress, before *Roe v. Wade* was decided. Profound disagreement existed among our citizens over the issue – as it does over the other issues, such as the death penalty – but that disagreement was being worked out at the state level.”

Casey, 505 U.S. 833, 850 (1992)(Scalia, dissenting).

⁵ The divisiveness over the substantive issue of same-sex marriage has been substantially heightened by the underlying, inherent struggle between these three groups of lawmakers, and deeply-held views concerning the proper roles of the legislative and judicial branches of government. Ultimately, of course, as discussed below, the issue will be decided at the federal level – either by way of an amendment to the U.S. Constitution, or, more likely, by the Supreme Court.

likely continue to play a central and pronounced role in the current movement to ban same-sex marriage. The reliance on religiously-based moral beliefs as a basis for opposing same-sex marriage is most evident in the initiatives/referenda in which citizens in many states have voted at the polls to amend their state constitutions to proscribe same-sex marriage. Many citizens who have pulled the lever (or now, have pressed the right icon on the screen) at the voting booth to ban same-sex marriage have done so based on the religious conviction that God intended marriage to be between a man and a woman. This widespread voting by citizens against same-sex marriage, openly based as it has been in many instances, on religious reasons, has not surprisingly been widely opposed as an inappropriate imposition of religious views on same-sex couples desiring to marry. The debate over legalizing same-sex marriage thus places front and center the question whether it is ethically permissible for a citizen to vote to proscribe the conduct of a fellow citizen (in a liberal democracy) based on his or her religious convictions that such conduct is wrong or immoral. The notion of having respect for others, in turn, is appropriately raised as one possible means of addressing this important and controversial issue.

Second, introducing AR in the context of the same-sex marriage debate serves to underscore the practical nature of the project. Wrestling with whether one is ethically bound to refrain from relying on one's religious beliefs in casting one's vote at the polling booth is not simply an intellectual exercise. What one concludes on this issue can have a direct impact on how one votes, or should vote, on any number of matters, including, but not limited to, the issue of same-sex marriage.

My purpose, in this chapter, then, is to introduce AR as it arises within the context of the same-sex marriage controversy. I begin, in section 1.1, with a brief historical overview of the legal and political events leading up to the current controversy over the legal status of same-sex marriage. Underlying the debate about laws proscribing same-sex marriage are deeply rooted questions concerning the morality of such laws. In section 1.2, I consider two levels of moral inquiry: the moral status of the laws themselves, and the morality of voting for the laws. In addressing the second issue, I draw attention to four significant aspects of the grass-roots movement to amend state constitutions to limit marriage to being between one man and one woman. I suggest that there is substantial evidence to support the conclusion that many citizens who have voted to amend state constitutions to ban same-sex marriage have done so based substantially if not entirely on religious reason or conviction. In section 1.3 I introduce the argument from respect in a bit more detail, particularly as it arises in the context of contemporary discussions of the ethics of citizenship and the notion of public justification. I conclude by offering several reasons why it is necessary to explore the concept of respect for persons before the entailment relationship can be properly evaluated.

1.1 The Same-Sex Marriage Controversy

I shall consider the movement to legalize same-sex marriage in the United States (and responses thereto) as it has occurred in roughly three time periods: the early stage of the movement (1996-2002), the events leading up to and following

Massachusetts' legalization of same-sex marriage (2002- 2007), and the expansion of the legal right of same-sex marriage in 2008 and 2009.

1.1.1 Early Beginnings: 1996-2002

Controversy over the legal status of same-sex marriage began to percolate in the United States as early as 1996, in a somewhat unlikely place -- the state of Hawaii. In *Baehr v. Lewin*,⁶ a Hawaii trial court judge held that Hawaii's marriage laws violated the Equal Rights Amendment to the Hawaii State constitution.⁷ The Hawaii court was the first court to rule in favor of a same-sex couple. (Before the case reached the state's Supreme Court, the citizens of Hawaii voted in 1998 to amend their constitution to allow lawmakers the right to define marriage,⁸ who subsequently voted to proscribe same-sex marriages.⁹)

Responding to the events in Hawaii, in 1996 Congress passed, and President Clinton signed, the federal Defense of Marriage Act (DOMA).¹⁰ DOMA provides that for purposes of federal law, marriage means only a legal union between a man and a woman.¹¹ DOMA also authorizes states to deny recognition of same-sex marriages performed in other states.¹²

⁶ 74 Haw. 645, 852 P.2d 44, *reconsideration granted in part*, 64 Haw. 645, 875 P.2d 225 (1993).

⁷ The matter was on remand from the Hawaii Supreme Court, which had held that same-sex marriage was not a fundamental right, but that laws banning such marriages must satisfy a strict scrutiny test under the state's Equal Rights Amendment. *See ibid.*

⁸ Hawaii Constitution, art. I, sec. 23.

⁹ Hawaii Statutes sec. 572-1, 3.

¹⁰ Defense of Marriage Act of 1996, Pub. L. No. 104-199, U.S. Statutes at Large 110 (1996): 2419.

¹¹ Defense of Marriage Act, Pub. L. No. 104-199 sec. 1, U.S. Statutes at Large 110 (1996): 2419, codified at 1 U.S.C. § 7 (1997).

¹² Defense of Marriage Act, Pub. L. No. 104-199 sec. 2, U.S. Statutes at Large 110 (1996): 2419, codified at 28 U.S.C. § 1738(C) (1997).

In the several years immediately following Congress's adoption of DOMA, thirty-nine states followed the lead of the U.S. Congress and enacted legislation patterned after DOMA, limiting marriage to heterosexual couples.¹³ This brought the number of states with statutes banning same-sex marriage to forty-two; three other states – Maryland, New Hampshire, and Wyoming had enacted pre--DOMA laws limiting marriage to heterosexual couples. Additionally, the voters in three other states – Alaska in 1999,¹⁴ Nebraska in 2000,¹⁵ and Nevada in 2002¹⁶ – approved state constitutional amendments banning same-sex marriage.

Amidst this backlash against the legalization of same-sex marriage during this time period, two states – California and Vermont – acted favorably toward same-sex couples. In 1999, the California legislature enacted the first domestic partnership law, which granted same-sex couples some of the same benefits granted to married couples.¹⁷ More significantly, in late 1999, the Vermont Supreme Court held that the Vermont Constitution guaranteed same-sex couples the same right to marriage as opposite-sex couples, but left it up to the state legislature to decide how best to provide such rights and benefits to same-sex couples.¹⁸ In 2000, the Vermont

¹³ See generally Christine Vestal, “50-state rundown on gay marriage laws” (November 3, 2004, updated November 3, 2004), Stateline.org., <http://www.statelin.org> (accessed June 15, 2005).

¹⁴ Alaska Constitution, art. I., sec. 25.

¹⁵ Nebraska Constitution, art.I, sec. 29.

¹⁶ Nevada Constitution, art. I, sec. 21.

¹⁷ The California legislature passed AB 205 – “The Domestic Partners Rights and Responsibilities Act” in 2003 which grants the “same rights, protections, and benefits” of marriage to “registered domestic partners.

¹⁸ *Baker v. State*, 744 A.2d 864 (Vt. 1999).

legislature passed, and Governor Howard Dean signed, a civil union bill, making Vermont the first state to legally recognize same-sex couples.¹⁹

1.1.2 Goodrich And The National Response: 2003-2006

In 2003, two events occurred which, together, thrust the debate over the legal status of same-sex marriage onto the national stage. The first was the Supreme Court's decision in *Lawrence v. Texas*,²⁰ which struck down Texas's sodomy law. Reversing the Court's previous decision in *Bowers v. Hardwick*,²¹ decided in 1986, the plurality held that the promotion of moral principles was not a legitimate state interest under the Court's substantive due process jurisprudence. Although the case did not deal with same-sex marriage, the Court's ruling was viewed by many, including even some members of the Court, as undercutting one of the primary, and some have argued the exclusive, rationale justifying laws banning same-sex marriage.²²

It was the Massachusetts Supreme Judicial Court's decision in *Goodrich v. Department Of Public Health*²³ in November 2003, however, that ignited the "uproar"

¹⁹ As noted below, the Vermont legislature voted to legalize same-sex marriage in 2009.

²⁰ 539 U.S. 558 (2003).

²¹ 478 U.S. 186 (1986).

²² Justice Scalia's comments on this issue written in dissent are well-known:

[The majority's reasoning] leaves on pretty shaky grounds state laws limiting marriage to opposite-sex couples. . . . Today's opinion dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as formal recognition in marriage is concerned. If moral disapprobation of homosexual conduct is "no legitimate state interest" for purposes of proscribing that conduct, . . . what justification could there possibly be for denying the benefits of marriage to homosexual couples exercising "the liberty protected by the Constitution"

. . . .

539 U.S. 541-43.

²³ 440 Mass. 309, 798 N.E. 2d 941 (2003).

over the legalization of same-sex marriage. In *Goodrich*, the court ruled that limiting marriage rights to opposite-sex couples violated basic premises of individual liberty and equal protection embodied in the Massachusetts Constitution.²⁴ As a result of *Goodrich*, Massachusetts became the first state to legalize same-sex marriage. It began issuing licenses to same-sex couples on May 4, 2004.

The reaction to *Goodrich* was immediate and wide spread. Opponents of same-sex marriage quickly realized that the federal DOMA statute and the state statutes (which had been passed by a supermajority of 42 states) banning same-sex marriage could be trumped by holdings by state court judges that such laws violated certain rights granted by a state constitution. In 2004, the citizens of thirteen states voted to amend their state constitutions to define marriage as the union of one man and one woman, and thereby constitutionally ban same-sex marriage.²⁵ These constitutional amendments were designed to and effectively prevent state court judges from finding a right to same-sex marriage under a state constitution's more general provisions, as did the Massachusetts high court in *Goodrich*. In the next two years

²⁴ *Ibid.* at 342. *Goodrich* was a split, 4-3 decision. In response to *Goodrich*, the Massachusetts Senate drafted Senate No. 2175, which limited marriage to opposite-sex couples, but provided for civil unions for same-sex couples, and sought the court's opinion on the constitutionality of the bill. In *In Opinion of the Justices*, 440 Mass. 1201, 802 N.E.2d 565 (SJC-09163, February 4, 2004), again with three justices dissenting, the court informed the senate that the pending bill would not be constitutional under the Massachusetts state constitution. In January 2007, the Massachusetts Legislature approved a ballot measure that would constitutionally ban same-sex marriage. The lawmakers did not approve the measure again in 2007, and it thus did not go on a state-wide ballot in 2008.

²⁵ The thirteen states that adopted amendments in 2004 were: Arkansas, Georgia, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, North Dakota, Ohio, Oklahoma, Oregon, and Utah.

(2005-2006), the citizens of ten additional states voted to amend their constitutions in state-wide ballots to ban same-sex marriage.²⁶

Opponents of same-sex marriage also experienced three significant state court victories during this time period. In 2006, in New York, which had no statute or constitutional provision banning same-sex marriage, the New York Court of Appeals, the state's highest court, ruled that the New York state constitution does not guarantee same-sex couples equal access to the rights and privileges of marriage.²⁷ Later in 2006 the Washington Supreme Court, and in 2007 the Maryland Supreme Court, upheld their respective state's statutes limiting marriage to heterosexual couples against challenges under their state constitutions.²⁸

Notwithstanding the significant backlash against the legalization of same-sex marriage which occurred during *this* time period (primarily in response to the *Goodrich* decision), proponents of same-sex marriage were successful in making additional inroads in the movement toward expanding the rights of same-sex couples. In 2004, Maine enacted a domestic partnership law.²⁹ Connecticut, in 2005, enacted a statute creating civil unions for same-sex couples, making it just the second state to do so.³⁰ In 2006, the New Jersey Supreme Court ruled that the New Jersey state constitution guarantees same-sex couples all of the legal benefits of marriage, though

²⁶ Kansas and Texas approved constitutional amendments in 2005, and another eight states – Alabama, Colorado, Idaho, South Carolina, South Dakota, Tennessee, Virginia, and Wisconsin – did so in 2006.

²⁷ *Hernandez v. Robles*, 7 N.Y.3d 338, 855 N.E.2d 1, 821 N.Y.S.2d 770 (2006).

²⁸ *Anderson v. King County*, 158 Wn.2d 1, 138 P.3d 963 (2006); *Conway v. Deane*, 401 Md. 219, 932 A.2d 571 (2006).

²⁹ Maine Revised Statutes tit. 22, sec. 2710.

³⁰ As discussed below, the Connecticut legislature voted to legalize same-sex marriage.

it stopped short of finding a constitutional right to same-sex marriage.³¹ Later that year, New Jersey enacted a statute authorizing civil unions for same-sex couples.³² And finally, in 2007, New Hampshire enacted a civil union statute.³³

In sum, during this period, *Goodrich* constituted ground breaking success for proponents of same-sex marriage. Additionally, three states joined Vermont in allowing same-sex couples to enter into civil unions. As the response to *Goodrich* made evident, however, there remained strong national opposition throughout the country to same-sex marriage. By the end of 2006, 42 states had statutes banning same-sex marriage, 27 states had amended their state constitutions to ban such marriages,³⁴ and the highest courts in three states had rebuffed the reasoning in *Goodrich* and turned down challenges under state constitutions to laws limiting same sex marriage.

1.1.3 The Expansion of Same-Sex Marriage: 2008-2009

Beginning in 2008, and continuing through 2009, there was marked expansion of the legalization of same-sex marriage. A total of four states – two as a result of court decisions, and two through the adoption of statutes -- made same-sex marriage legal.

³¹ *Lewis v. Harris*, 188 N.J. 415, 908 A.2d 196 (N.J. 2006).

³² Additionally, in 2006, Arizona became the first (and thus far the only) state in which the citizens voted against a state constitutional amendment banning same-sex marriage. The measure failed by less than two percentage points, see DOMA Watch, "Marriage Amendment Summary," <http://www.domawatch.org/amendments/amendmentsummary.html> (accessed February 5, 2010). A more narrowly drafted amendment banning same-sex marriage was passed in November 2008.

³³ As discussed below, the New Hampshire legislature voted in 2009 to legalize same-sex marriage.

³⁴ As previously indicated in the text, in addition to the 23 states which passed constitutional amendments prohibiting same-sex marriage between 2004 and 2006, Alaska, Hawaii, Nevada, and Nebraska had passed similar constitutional amendments during the period 1999-2002.

In 2008, the Connecticut Supreme Court ruled, in a 4-3 decision, that the Connecticut state constitution guarantees same sex couples the right to marry.³⁵ Same-sex marriages began being performed on November 12, 2008, making it just the second state to allow such marriages. In 2009, the Iowa Supreme Court, in a 7-0 decision, over turned the state's statute limiting marriage to heterosexual couples, and held that the state constitution guarantees same-sex couples the right to marry.³⁶

In the spring of 2009, three state legislatures voted to enact legislation legalizing same-sex marriage. In April 2009, the Vermont legislature overrode the veto of governor Jim Douglas, and enacted the first voluntary statute permitting same sex marriages.³⁷ In May 2009, Maine Governor John Baldacci, and in June 2009 New Hampshire Governor John Lynch, signed legislation legalizing same-sex marriage in their respective states.³⁸

While the rights of same-sex couples expanded during this time period, primarily on the east coast, the citizens of three more states – Arizona, Florida, and California -- voted to amend their state constitutions to ban same sex-marriage. Of particular note was California's measure, Proposition 8,³⁹ which was passed in response to the California Supreme Court's decision in *In Re Marriage Cases*,⁴⁰ in which the court struck down the then existing state statute banning same-sex marriage

³⁵ *Kerrigan v. Comm. Of Publ. Health*, 289 Conn. 135, 980 A.2d 845 (2009).

³⁶ *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009).

³⁷ See Christine Vestal, "Gay marriage legal in six states" (April 8, 2009, updated June 4, 2009), Stateline.org., <http://www.statelin.org> (accessed June 27, 2009).

³⁸ *Ibid.* The Vermont and New Hampshire laws took effect, respectively, on September 1, 2009, and January 1, 2010.

³⁹ Proposition 8 amended section Article I, Section 7.5 of the California State Constitution to provide as follows: "Only marriage between a man and a woman is recognized." California Constitution art. I, sec. 7.5.

⁴⁰ 43 Cal.4th 757, 76 Cal.Rptr.3d 683 (2008).

under the state constitution. In approving Proposition 8, California became the first state to adopt a constitutional amendment to override a state's Supreme Court's decision finding a state constitutional right to same-sex marriage. The legitimacy of Proposition 8 was immediately challenged in state court, but was upheld by the California Supreme Court.⁴¹

Additionally, Maine became the first state in which a statute permitting same-sex marriage was overturned in a state-wide ballot. Before Maine's statute legalizing same-sex marriage (passed in May 2009) went into effect, the voters in Maine voted to overturn it in a referendum in the November 3, 2009, election.⁴²

1.1.4 Current Legal Status Of Same-Sex Marriage

Currently, there are five states in which same-sex marriage is legally authorized. One additional state -- New Jersey -- provides for civil unions.⁴³ There are 36 states with statutes banning same-sex marriage, and 30 states with constitutional amendments which proscribe such marriages. Three states -- New Mexico, New York, and Rhode Island -- have no statutes or constitutional provisions bearing on same-sex marriage. The federal DOMA law remains in effect at the federal level.

⁴¹ *Strauss v. Horton*, 46 Cal. 4th 364; 207 P.3d 48; 93 Cal. Rptr. 3d 591 (2009). As discussed in the next subsection, Proposition 8 has been challenged in a lawsuit filed in federal court in the Northern District of California on the grounds that it violates various provisions of the US Constitution.

⁴² The vote to overturn Maine's law permitting same-sex marriage was 53% - 47%. State of Maine General Election Tabulations, www.maine.gov. (accessed January 30, 2010). Maine's domestic partnership law, Maine Revised Statutes tit. 22, sec. 2710, remains in effect.

⁴³ There are six states with domestic partnership statutes, which provide varying levels of benefits to same-sex couples -- California, Oregon, Washington, Nevada, Hawaii, and Maine.

As discussed in the previous section, thus far the state courts have essentially split on the constitutionality (under state constitutions) of laws limiting marriage to opposite-sex couples. Although the initial litigation strategy of proponents of same-sex marriage has focused on states containing no constitutional proscription against such marriages, the focus is now shifting to challenges of state constitutional amendments (and state statutes) in federal courts under the U.S. Constitution. One of the first such lawsuits, *Perry v. Schwarzenegger*,⁴⁴ was filed in federal district court in the Northern District of California on May 22, 2009, the day after the California Supreme Court upheld California's Proposition 8. The Complaint in *Perry* argues that laws limiting marriage to heterosexual couples infringe upon the liberty interests of same-sex couples under the U.S. Supreme Court's substantive due process jurisprudence, and denies them equal protection, under the fourteenth amendment. *Perry* undoubtedly will have substantial influence on the national debate and legality of same-sex marriage.⁴⁵

⁴⁴ *Perry v. Schwarzenegger*, Federal Dist. Ct., N. Dist. Cal., Case No. CV09-2292.

⁴⁵ *Perry* is noteworthy for at least three reasons. First, it constitutes the first serious challenge to a state constitutional amendment banning same-sex marriage in federal court under the U.S. Constitution. Second, the action has "instant credibility" given that two of the plaintiffs' lead lawyers are experienced and respected practitioners before the U.S. Supreme Court -- Ted Olson and David Boes. Third, the federal court in which the action was brought lies within the jurisdiction of the Ninth U.S. Circuit Court of Appeals, which will hear the inevitable appeal of the lower court's decision. The Ninth Circuit is largely viewed as being one of, if not the, most liberal U.S. Courts of Appeal in the country, thus making it, for proponents of same-sex marriage, a favorable venue in which to bring such a lawsuit. Additionally, the Ninth Circuit is the largest of the U.S. Circuits, having jurisdiction over a total of nine western states, many of which have either statutes or constitutional provisions banning same-sex marriage. If the Ninth Circuit holds that the California constitutional provisional banning same-sex marriage violates the U.S. Constitution, such a holding would (unless overruled by the U.S. Supreme Court), render other similar state statutes and constitutional bans in the other states in its jurisdiction unconstitutional. Same-sex marriage would thus become legal in these states.

Ultimately, it seems clear, the status of same-sex marriage will be finally decided in either of one of two ways: by an amendment to the U.S. Constitution explicitly limiting marriage as being solely between a man and a women,⁴⁶ or more likely, on appeal to the U.S. Supreme Court in *Perry* or some other federal appellate court decision(s).

1.2 Moral Considerations

Laws regulating same-sex marriage raise a host of ethical issues. Moral considerations and deliberation, for instance, under gird and permeate constitutional analysis of laws banning same-sex marriage in a number of complex and interesting ways.⁴⁷ Additionally, laws banning same-sex marriage have been directly attacked as being immoral on their face (that is, regardless of whether they are constitutional). Finally, and more germane to my project here, many claim that voting for laws banning same-sex marriage violates one's ethical obligation towards one's fellow citizens. In this section I briefly consider the morality of laws banning same-sex marriage, and then introduce the claim that voting for such laws violates one's ethical obligations toward one's compatriots.

1.2.1 The Moral Status of Laws Banning Same-Sex Marriage

Moral arguments against laws banning same-sex marriage are obvious and by now well known, and closely parallel the legal arguments against such laws as

⁴⁶ Such attempts have thus far not made significant headway in the U.S. Congress.

⁴⁷ For a discussion of the manner in which moral considerations bear on constitutional analysis of laws banning same-sex marriage, see my paper, "Same-Sex Marriage And Constitutional Interpretive Theory" [in progress].

discussed above.⁴⁸ Opponents claim that banning same-sex marriage discriminates against same-sex couples who desire to get married, treating them, as the Massachusetts Supreme Judicial Court held, like “second-class citizens”.⁴⁹ Such laws, opponents further claim, interfere with the freedom of homosexuals and lesbians in one of the most intimate and important aspects of one’s life.⁵⁰

On the other hand, proponents of laws banning same-sex marriage, or of a constitutional amendment limiting marriage as being between a man and a woman only, argue in favor of such laws on two general grounds: (1) that such marriages are morally impermissible; and (2) that such marriages would have a detrimental impact on the culture, most particularly on children. By way of example of the first form of argument, Robert George of Princeton has presented several philosophical arguments in support of such laws.⁵¹ On a more popular scale, as discussed in further detail in the next section, many rely on a divine command theory model in arguing that God permits marriage only between a man and a woman. By way of illustration as to the second, consequentialist form of argument, a large number of family and legal academics joined forces in 2006 and published a “Statement of Principles”

⁴⁸ This connection is not surprising. As discussed in the previous subsection, the relevant constitutional provisions (equal protection clauses and substantive due process clauses) are themselves rooted in, and designed to safeguard against infringement of certain basic moral principles.

⁴⁹ *Goodridge v. Depart. of Public Health*, 440 Mass. 309, 798 N.E.2d 941, 948 (2003) (holding that the Massachusetts Constitution “affirms the dignity and equality of all individuals . . . [and] forbids the creation of second-class citizens”).

⁵⁰ On the negative moral implications of banning same-sex marriage, see generally Angela Bolte, “Do Wedding Dresses Come in Lavender?: The Prospects and Implications of Same-Sex Marriage,” *Social Policy and Practice* 24 (spring 1998), 1; Stephen Macedo, “Homosexuality and the Conservative Mind,” *Georgetown Law Journal* 84 (1995): 278.

⁵¹ See, e.g., Robert P. George, “‘Same-Sex Marriage’ and ‘Moral Neutrality,’” in *Homosexuality and American Public Life*, ed. Christopher Wolfe (Dallas, TX: Spence Publishing, 1999); “The 28th Amendment: It is Time to Protect Marriage, and Democracy, in America,” *National Review* (July 23, 2001).

challenging same-sex marriage on grounds that such marriages undermine the stability of family structure in American culture.⁵²

Recently, there has been a noticeable shift in emphasis by many conservative organizations promoting laws banning same-sex marriage from arguments of the first form to the more consequentialist based second form of argument. That is, since the beginning of the decade, such organizations, at least in the public square, have tended to focus more on bad consequences marriages between same gender couples would allegedly have on American society, rather than on arguments that such marriages are morally wrong.⁵³ It is likely that there a number of reasons for this shift in emphasis, but certainly it must at least in part be due to the Supreme Court's rejection in *Lawrence* of moral reasons as a rational basis for state regulation, and the now prevalent view that if a law does not result in palpable harm to others it is prima facie morally inappropriate.

This shift in emphasis arguably has occurred primarily among more sophisticated opponents of same-sex marriage. Some proponents of same gender marriage claim that the primary, if not the exclusive, rationale relied on by many who support and vote for laws banning same-sex marriage is the religiously-based view that same-sex marriage is immoral. They maintain that such religious arguments

⁵² See, e.g., *Marriage and the Law, A Statement of Principles (A Call to The Nation From Family and Legal Scholars* (Institute for American Values: 2006), whose 100 signatories include a number of highly regarded family and legal scholars. As discussed below, many who support laws banning same-sex marriage, including a federal constitutional amendment to that effect, rely, in whole or in part, on religious reasons in support of their views on this issue.

⁵³ Spokespersons for the political arm of James Dobson's conservative evangelical group Focus On The Family, for example, when discussing the issue in a public forum, now tend to focus on alleged potential harm allowing such marriages will cause society, most particularly children. Such arguments, of course, are contested by proponents of same gender marriage.

should not be pressed against those who do not agree with them. This line of argument does not contest the moral nature of the laws themselves, but rather takes issue with the bases for, or justification relied upon, in supporting or voting for such laws. It is to this issue that I now turn.

1.2.2 The Morality of Voting To Proscribe Same-Sex Marriage

One aspect of the national debate over the legalization of same-sex marriage which has made it so divisive is the view that religious convictions concerning the moral impropriety of same-sex marriage are substantially responsible for the movement to legally ban same-sex marriage. Proponents of same-sex marriage argue that those supporting laws banning same-sex marriage, regardless of their religious convictions, have an obligation to refrain from relying on religiously grounded moral beliefs in supporting and voting for the laws because they impair the liberty of those citizens who do not share similar religious beliefs.

This attack on the morality of relying on religious convictions in supporting or voting to ban same-sex marriage is significant, particularly given the following two factors or sets of circumstances: (1) the manner and degree to which same-sex marriage has been banned through adoption of state constitutional amendments; and (2) the role religiously-based moral beliefs actually appear to have played in the adoption of such laws. I consider each of these factors in turn.

1.2.2.1 The Citizen-Led Movement To Ban Same-Sex Marriage

As discussed in section 1.1, the citizens of 30 states have voted to amend their state constitutions to explicitly ban same-sex marriage. This widespread movement,

whereby citizens have directly voted to amend their state constitutions to preserve heterosexual marriage, is unprecedented in American politics, and remarkable in several regards. First, the amendments each seek to constrict, rather than broaden, the liberties of each state's citizenry. Historically, nearly all previous constitutional amendments, at least to the federal constitution, have been designed to increase and not limit the scope of liberty. This distinction is particularly significant given the fundamental nature of the right at issue – the ability to marry the partner of one's choice.

Second, and more important, the voters themselves adopted the amendments in state-wide ballots. Although in a number of states the amendments first had to be passed by the state legislatures in order to be placed on the ballot, in each instance the amendment ultimately was approved by the state's citizens in a state-wide election. The citizens themselves – and not the state legislatures – voted to constitutionally limit marriage to heterosexual couples.

Third, the apparent scope of support for the amendments is quite broad. Thus far, thirty states have placed a constitutional amendment to proscribe same-sex marriage on a state-wide ballot. The voters in only one state which has considered a constitutional amendment to ban same-sex marriages have failed to pass such an amendment – Arizona in 2006.⁵⁴ As previously indicated, the citizens of Arizona voted to constitutionally proscribe same-sex marriage in the 2008 election. Even

⁵⁴ The measure failed by just two percentage points. See DOMA Watch, "Marriage Amendment Summary," <http://www.domawatch.org/amendments/amendmentsummary.html> (accessed February 5, 2010).

states such as Oregon, Wisconsin, and Michigan – whose voters are generally perceived to be more liberal – approved constitutional amendments limiting marriage to heterosexual couples.

Finally, support for amending state constitutions to proscribe same-sex marriage is not just broad, it also apparently runs quite deep.⁵⁵ The average passage rate of the amendments is 67.31%. In nineteen of the thirty states, 2/3 or more of the voters approved the amendments. The rate ranges from 52% in South Dakota and California, to 86% in Mississippi.

This citizen-led movement to amend state constitutions to ban same-sex marriage is thus a remarkable and unprecedented event (or series of events) in American politics – never has such a large number of citizens of so many states acted directly, by voting themselves, to proscribe certain conduct with which they do not agree. A majority of the electorate (and in a number of cases a supermajority), in nearly two-thirds of the states, have personally voted to constitutionally limit marriage to heterosexual couples and prohibit same-sex couples from marrying.

1.2.2.2 Religious Conviction And Laws Banning Same-Sex Marriage

The question naturally arises – why has such a large proportion of the electorate in such a wide number of states been so exercised to enjoin same-gender couples desiring to marry from doing so? Politically speaking, as previously discussed, the citizen initiatives and petitions have been a direct response to what happened in Massachusetts, and designed to preclude state judges from finding a right

⁵⁵ See *ibid.* for a list of the dates each amendment passed, the percentage of each vote, and the average passage rate, both including and excluding Arizona's 2006 election.

to same-sex marriage under state constitutions. The question still remains, however, why such a large portion of the electorate in so many states desire to legally prohibit same-sex marriage.

It is impossible, of course, to determine what motivated each and every voter who supported the proscriptive measures. Nevertheless, that much of the current popular support in the United States for laws banning same-sex marriage is substantially driven by religious views about the immorality of such unions seems relatively clear. Exit interviews of voters supporting the amendments following the 2004 general election, for example, confirmed wide-spread reliance on religious beliefs as a basis for voting for the amendments. According to one report, Josie Beverly, of Portland, Oregon, who stood in the drizzling rain to hand in her ballot, stated: “I vote the Bible. That’s why I’m here. Gay marriage stinks in the nostrils of God.”⁵⁶ Numerous other accounts of voters invoking religious beliefs about the immorality of same-sex unions in supporting laws banning same-sex marriage have been reported.⁵⁷

More recently, shortly after the Indianapolis Colts won the 2007 Super Bowl, it was reported that head coach Tony Dungy (an outspoken Christian) spoke strongly in favor of traditional marriage while receiving an award from the Indiana Family

⁵⁶ Associated Press, “Oregonians approve ban on gay marriage,” *USA Today*, November 2, 2004, www.usatoday.com (accessed June 16, 2005).

⁵⁷ See, e.g., Associated Press, “Amendment [Mississippi] banning gay marriage passes,” *USA Today*, November 2, 2004, www.usatoday.com (accessed June 16, 2005) (“I think marriage is sacred between a man and a woman . . . [t]hat’s what my Bible tells me”); Associated Press, “Ohio voters bar legal equity for unmarried couples,” *USA Today*, November 2, 2004, www.usatoday.com (accessed June 16, 2005) (“That’s the way God ordained it.”).

Institute (IFI), which opposes same-sex marriage. Dungy told an audience of 700 that: “I appreciate the stance they [the IFI] are taking, and I support that stance”.⁵⁸

Perhaps the view expressed by the Reverend Mark Howell, a pastor of a Baptist church in Little Rock Arkansas, shortly before the 2004 general election, constitutes an appropriate summary of the view shared by many of citizens who have voted in favor of the constitutional amendments:

“I think that churches must take stands on issues to which the Bible speaks . . . The Bible makes it very clear that marriage is one man and one woman. There is no ambiguity in the Scripture over that. That’s fundamental for human existence. We need to be able to vote God.”⁵⁹

In short, it would be an inappropriate generalization to suggest that each citizen who voted to constitutionally ban same-sex marriage in the thirty states which have voted to do so did so on purely religious reasons alone. It nevertheless appears that there is strong evidence from which it may be concluded that the claim made by supporters of same-sex marriage are correct -- many citizens who have voted in favor of constitutional amendments banning same-sex marriage appear to have done so based on the religiously-based view that such marriages are immoral.

1.2.2.3 Religious Conviction In The Public Square

The following simple conclusion may be drawn from the discussion in the previous subsections: a large number of citizens in thirty states have directly voted to legally ban same-sex marriages, and they have done so substantially based on the religious conviction that such marriages are immoral. The unprecedented voter-led

⁵⁸ Associated Press, “Dungy’s comments draws support, criticism,” <http://nbcsports.msnbc.com/id/17556414/> (accessed February 5, 2010).

⁵⁹ Rob Moritz, “Gay marriage a top issue with most Arkansans,” *Arkansas News Bureau*, October 24, 2004, www.arkansasnews.com. (accessed June 15, 2005).

movement to ban same-sex marriage thus presents what arguably is the most striking case study yet available for considering the proper role of religion in the support of public laws and rules which restrict the conduct of other citizens.

On the one hand, the vast majority of electorate in the country has voted to prevent same-gender couples from marrying, and they have done so based substantially on religiously-based moral conviction. Presumably such votes have been premised on the underlying belief that one is ethically within one's rights as a citizen in voting based on one's religious convictions. On the other hand, advocates of same-sex marriage contend that it is morally inappropriate to vote to restrict the behavior of others based entirely or in substantial part on religious convictions not shared by those wishing to engage in the prohibited conduct.

It would be a mistake, I think it has now become clear, to think that proponents of the laws banning same-sex unions are unique in their willingness to support their favored laws on the basis of their religious convictions. To the contrary, religious convictions have frequently motivated citizens to support or oppose laws or public policy from the very founding of the country up through the present. As Christopher Eberle has recently argued: "[t]he history of the United States is pervaded by the actions of citizens who were motivated by their religious convictions to support or oppose proposed laws, many of them extremely controversial."⁶⁰ Such historical instances, like the movement to abolish slavery, and the civil rights movement in the 1960s, have been well-documented by Eberle and others, and need

⁶⁰ Christopher Eberle, *Religious Convictions In Liberal Politics* (Cambridge: Cambridge University Press, 2002), 5.

not be repeated here. Reliance on one's religious beliefs as a proper basis for supporting or opposing a particular law or policy, a practice imbedded in the nation's history, remains a common and widespread practice today. Presently, for example, many citizens willingly invoke religious convictions in staking out positions on some of the most controversial political issues of the day, such as the distribution of wealth, abortion, and euthanasia.

This historical perspective notwithstanding, the separate normative question still remains: *Should* citizens forbear from relying on their religious convictions in deciding whether to support the constitutional amendments banning same-sex marriage? It is one thing that citizens have in the past and may continue to invoke religious convictions in supporting certain laws and policies, it is quite another whether doing so is morally appropriate. It is the latter question with which I am interested in this dissertation.

1.3 Religious Conviction And Ethics of Citizenship

It seems reasonable that if citizens are to be asked to refrain from relying on their religious beliefs in supporting public policies and laws, that they be provided a reasonable explanation why they should do so. A primary source of this intuition, I believe, is the well-ensconced notion in this country that when one steps into the polling place and pulls the curtain, one has the right and perhaps even the duty to vote "one's conscience". Indeed, this notion is one of the hallmarks of American democracy, with deep roots. As William Kymlicka has observed:

In much of the post-war period, democracy was understood almost exclusively in terms of voting. Citizens were assumed to have a set of

preferences, fixed prior to and independent of the political process, and the function of voting was simply to provide a fair decision-making procedure or aggregation mechanism for translating these pre-existing preferences into public decisions, either about which to elect (in standard elections) or about what laws to adopt (in issue-specific referenda).⁶¹

Although Kymlicka speaks of the notion of voting as the hallmark of democracy in the past tense, I believe that for a majority of the American population, this still holds true, particularly when the notion is coupled with the sense of voting with the idea of the promotion of the common good in mind. Those voting in favor of the constitutional amendments to ban same-sex marriage, for example, may be assumed to have voted based on their own view that such marriages would not be in the best interest of the country.

Nevertheless, Kymlicka is certainly right, at least as far as the academy is concerned, that there has been a shift in contemporary democratic theory away from the “vote-centric” or “aggregative” conception of democracy, to one which focuses more on the deliberative process about the social good. This focus on the “deliberative process” is, at least in substantial part, a product of (and can be understood in terms of) the renewed interest in civic virtue generally, and in political virtue more specifically.

1.3.1 Public Justification As A Political Virtue

Beginning in the early 1990s, there occurred a tremendous resurgence of interest in citizenship theory or “civic virtue” among political and other theorists.

⁶¹Will Kymlicka, *Contemporary Political Philosophy* (Oxford: Oxford University Press, 2002), 284.

Kymlicka has observed that the explosion in interest in the concept of citizenship was, in certain regards, an inevitable next stage in the liberal individualism – communitarianism debate.

[Citizenship] provides a concept that can mediate the debate between liberals and communitarians. . . . [It] is intimately linked to liberal ideas of individual rights and entitlements on the one hand, and to communitarian ideas of membership in and attachment to a particular community on the other.⁶²

The hope of addressing this void left by the individualism – communitarianism debate, along with several other historical/theoretical developments, has led, in the last decade and a half, to the publishing of numerous writings on citizenship and the civic virtues.

William Galston has identified four types of civic virtues necessary for a flourishing democracy: (1) general virtues (*e.g.*, courage and law abidingness); (2) social virtues (*e.g.*, open mindedness and civility); (3) economic virtues (*e.g.*, work ethic and the willingness to delay self-gratification); and (4) political virtues (*e.g.*, willingness to evaluate those in office).⁶³ Of particular interest for our purposes here are the political virtues.

Citizens of a liberal democracy, unlike “subjects” of an authoritarian government, play an important part in governing. They vote directly on referenda and issues, they elect representatives at multiple levels of government, and participate in countless other ways in the political process. The political virtues consist in certain

⁶² *Ibid.*, 290.

⁶³ William Galston, *Liberal Purposes: Goods, Virtues, and Duties in the Liberal State* (Cambridge: Cambridge University Press, 1991), 221-224.

duties and responsibilities that a citizen possesses in this political role in a liberal democracy.

By way of example, two fairly uncontroversial political virtues are voting in public elections and the willingness to evaluate elected officials (example from above). These virtues are seen, as are the other virtues, as being necessary for the basic proper functioning of a democracy, and (as with other political virtues specifically) their instrumental role in sustaining just institutions.

Many argue on behalf of a political virtue pertaining to the *manner* in which one engages in the political process oneself, that is, as a citizen. Kymlicka refers to this virtue as “public reasonableness”. The virtue of public reasonableness, as Kymlicka presents it, possesses essentially two primary elements. The first has to do with the deliberative process. It rejects the “vote-centric” approach referenced below, and emphasizes the need for citizens to engage in a dialogue about political matters. Citizens should provide reasons for their views, and not merely state preferences; they must be willing to listen to others. Kymlicka likens it to a conversation.

“It . . . involves the willingness to engage in a conversation: to listen as well as to speak, to seek to understand what others say, and to respond respectfully to the views of others, so as to continue the conversation.”⁶⁴

The second aspect has to do with the limits on the kind of reasons one may employ in the deliberative process, that is, in engaging in political “conversation”. Given that this restraint is the focus of AR, Kymlicka’s brief explanation of the nature of the restraint bears quoting in full:

⁶⁴ Kymlicka, 289.

“[T]hese reasons must be ‘public’ reasons, in the sense they are capable of being understood and accepted by people of different faiths and cultures. Hence it is not enough to invoke Scripture or tradition. Liberal citizens must justify their political demands in terms that fellow citizens can understand and accept as consistent with their status as free and equal citizens. It requires a conscientious effort to distinguish those beliefs which are matters of private faith from those which are capable of public defense, and so see how issues look from the point of view of those with differing religious commitments and cultural backgrounds.”⁶⁵

Although not entirely clear, the view advanced in this excerpt would appear to be that: (1) one must attempt to justify one’s support of a favored law by non-religious reasons which can be understood and accepted by all (excluding reliance on religious reasons particular to a given faith); and (2) if such justification cannot be provided, then one should (must?) refrain from supporting the particular law.

This restriction in the kinds of reasons one can provide in public discourse and rely on in voting is thus perceived as one element of the public virtues a conscientious citizen is deemed obliged to follow in a liberal democracy. The notion that one should “vote one’s conscience” at the poll both is thus revised to the extent that one’s conscience is guided by reasons which others cannot “understand and accept,” including one’s religious convictions not shared by (all?) one’s fellow citizens.

1.3.2 Respect And Public Reason/Justification

The demand that citizens limit the kinds of reasons they rely on in supporting favored policies and laws in the public square (as discussed above) is advanced as a normative requirement. It is one of the political virtues; if one is to be a virtuous

⁶⁵*Ibid.*

citizen, one has a duty (ought) to restrict the kinds of reasons one offers and relies upon in the public square.

The question remains, however – “Why ought one to do so”? That is, why is restricting one’s reasons offered and relied upon in the public square a virtue that ought to be pursued in the first place? What is the warrant for this normative requirement?

There is, of course, no shortage of proposed answers to this question in the literature. As I believe Christopher Eberle has helpfully demonstrated, however, proposed justifications for restricting or prohibiting the reliance on religious reasons in supporting public policies or laws generally tend to fall into one of two categories: (1) those that are primarily deontologically based; and (2) those that are more consequentialist in nature.

Those accounts which fall into the latter category maintain that restricting the kinds of reasons one relies on is necessary to accomplish some result, or avoid some undesirable consequence. Thus, for example, in Klymicka’s account of public virtue summarized above, the basis of the moral obligation to restrict the reasons one relies on is presented in terms of its instrumental value to a liberal democracy – that is, as constituting a virtue necessary for the proper functioning of a democracy and in sustaining just institutions.⁶⁶

Accounts falling into the first category do not focus on achieving a desired result or avoiding an undesired result as a basis for the normative obligation to restrict

⁶⁶ I take Rawls’s notion of public reason, which constitutes a central component of his political liberalism, to be a primarily consequentialist driven account.

the reasons relied on, but stress instead the duty as something that a citizen simply ought to perform. Just as we have certain moral obligations to other persons in other relations, such as our children, or our spouse, so too we have a moral obligation to act in certain ways toward our fellow citizens.⁶⁷

One of the primary (though not the only) strategies relied upon by advocates of a non-consequentialist duty-based obligation to restrict one's reasons relied upon in the public square is to find such an obligation as part of the duty to respect others. Beginning with the uncontested view that we have a moral obligation to respect others, it is contended that respect for others entails limiting those reasons offered to justify certain laws to reasons which in some way can be understood and accepted by others. It would be inappropriate, so the argument goes, to vote to ban same-sex marriage where the reasons for doing so, including religious ones, are not ones that others understand and accept.

Does it follow from the duty to respect others that we have an obligation to engage in the kind of public justification/reason restriction that Klymka suggests? Although theorists frequently employ the argument from respect as a means of justifying restraint on reliance on religious conviction in the public square, surprisingly little attention has been given in the literature to what the notion of

⁶⁷ Chris Eberle, for example, maintains that the issue is about the moral obligations associated with the "social role of a citizen in a liberal democracy". He compares this role to other social roles we play (such as being a father), with which we associate certain rights, duties, and responsibilities. So too, he argues, the social role of citizen has such rights, duties, and responsibilities. Significantly, the basis of these moral obligations for Eberle is not, as often is the case in standard discussions concerning the civil virtues, presented in terms of their instrumental value to a liberal democracy – that is, as constituting a virtue necessary for the proper functioning of a democracy and in sustaining just institutions. Rather, Eberle invokes more traditional normative principles viewed as relevant independently of any benefit to the flourishing of a liberal democracy. *See* Eberle, 6-8.

respect actually entails, and how it relates to or requires public justification. I believe the lack of sustained treatment of the concept of respect and its interrelatedness to the public square is in large part explainable by two facts. First, the concept of respect for other persons is a familiar one in contemporary liberal democracies. Second, what might be referred to as the “principle of respect,” that is the notion that we owe a duty of respect to other persons, is taken as a given and undisputed.

The concept of respect, however, is deceptively complex. For example, though we often talk of respect for others as consisting of a single notion, the concept of respect actually entails four separate, complexly interconnected notions – the attitude of respect, respect instantiated in actions, the principle or duty of respect, and the right to respect. Additionally, respect for persons (understood as an attitude or an action) come in different forms – one form, for example, is said to be merited, another form of respect is said to be one to which all persons are entitled. I shall describe in some detail at the outset of Chapter 3 these as well as other features of the concept of respect which give to its complex nature. The two examples just cited, however, sufficiently demonstrate that there is more to the concept of respect than first appears on the surface.

If I am correct concerning the level of complexity of the concept of respect, before it is possible to determine whether respect for others actually entails the kind of public justification discussed above (of whatever brand), it is first necessary to give some consideration to the concept of respect for other persons itself. Only upon first deriving a suitable conception of respect for persons will it then be possible to

determine what respect for persons may demand by way of justification in the public square.

There is a second factor, aside from the complexity of the concept of respect, which warrants closer examination of the concept. Even on a broad understanding of the principle of respect, does the principle *obviously* entail that a citizen refrain from relying on religious conviction in the public square? That is, does respect for other persons require that a citizen succeed in providing public justification? As I discuss in detail in the next chapter, Christopher Eberle mounts a sustained (and not completely unpersuasive) argument in *Religious Convictions in Liberal Politics* that while respect for others may require citizens in a liberal democracy to *pursue* public justification, it does not require citizens to refrain from relying on religious convictions if they attempt but are unable to *provide* a satisfactory public justification. It thus may not be as clear, as theorists have contended, that respect for persons automatically entails the requirement of public justification.

I am not interested, in this dissertation, in the final adjudication of this issue (what respect actually requires). I mention Eberle's account only to show that the issue is open to reasonable debate. That this is so further substantiates my contention that the concept of respect may be more complex than typically thought, and thus is in need of substantial development before it properly can be invoked as a normative principle in the public square.

1.4 Conclusion

I have introduced the principle of respect for others, which is the primary focus of this dissertation, in the context of the current controversy in the United States over the legalization of same-sex marriage. It cannot be disputed that many of the citizens who voted to constitutionally ban same-sex marriage in the unprecedented political movement in the last decade have done so based primarily, if not exclusively, on the religious conviction that such marriages are immoral.

Many opponents of laws banning same-sex marriage maintain that the personal views of those voting for such laws are irrelevant, and that proponents of laws limiting marriage act unethically in voting to proscribe the conduct of others based on religious convictions not shared by those whose conduct they seek to restrain. Consistent with this line of thinking, many theorists have advanced various accounts of “public justification” which, although differ in various regards, nevertheless share the commitment to the view that citizens have an obligation to attempt to justify support for certain laws with reasons that all can understand and accept (which do not include religious conviction or reasons), and to refrain from supporting laws for which they cannot provide such public justification.

Finally, I have suggested that many accounts of public justification assume, with little or no argument, that public justification is entailed by the broader duty to respect others. Such accounts fail to provide an account of the actual entailment relationship between respect and public justification, a relationship which Eberle’s critique of public justification has brought into question. Such accounts also fail,

more fundamentally, to provide any reasoned conception of respect for persons. The concept of respect must therefore be further examined and explored to determine what kind of constraints, if any, may be derived from the notion of respect which would restrict reliance on religious conviction in the public square.

2. Respect And The Doctrine of Restraint

2.0 Introduction

At the end of the previous chapter I provided two reasons why development of a more thorough conception of respect, insofar as the principle of respect is invoked as a basis for restraining reliance on religious conviction in the public square, is warranted. First, I maintained that the concept of respect is deceptively complex. Second, I suggested that Eberle's recent attack on what he refers to as the "doctrine of restraint" in his book *Religious Conviction In Liberal Politics* seriously calls into question the traditional exclusionist view that respect for others entails restraint.

My primary intent in this chapter is to attempt to further demonstrate why these two bases justify the call for a more detailed examination of the concept of respect for persons in the public square. I shall attempt to do so by providing a detailed overview of the core arguments advanced by Eberle against the doctrine of restraint, and, more specifically, the argument that respect entails restraint. Consideration of Eberle's account is fitting for at least two reasons. First, my assertion that Eberle's attack on the doctrine of restraint calls into question the widely accepted view that respect entails restraint, and, more importantly, our basic underlying assumptions about the concept of respect, is a serious one. It is accordingly appropriate that Eberle's account be placed under detailed scrutiny. Second, Eberle's treatment of the argument from respect, and the relationship between respect and restraint in the public square, helpfully demonstrates that the concept of respect is indeed a complex concept.

Exegesis of Eberle's core arguments in *Religious Conviction* will serve a second, important purpose. It will help to identify some of the possible features a concept of respect should (and, for that matter, should not) possess. Although Eberle rejects respect as a means of justifying the doctrine of restraint, he endorses respect as an appropriate justification of other, more modest constraints on reasons which may be employed in the public square. In doing so, he attempts to provide an underlying basic concept of respect. Although, as I shall argue in subsequent chapters, his concept of respect is far too thin, and also deficient in a number of regards, his articulation and development of the concept nevertheless provides valuable insight which may prove helpful in formulating a more satisfactory account of the concept of respect.

I begin this chapter (section 2.1) with a brief overview of Eberle's two-pronged thesis in *Religious Conviction* – the claims that citizens in a liberal democracy have an obligation (out of respect for others) to employ principles of constraint contained in the “ideal of conscientious engagement,” but that they are not required to refrain from relying on religious conviction if they have pursued, but cannot obtain, public justification for such convictions. I further suggest that Eberle's thesis is presented in essentially four argumentative stages. I devote separate sections (sections 2.2, 2.3, 2.4, and 2.5) to each of these stages.

I conclude this introductory section with a bit of a warning and an apology. This chapter is unduly, though I believe not unnecessarily, long. Extensive consideration of Eberle's account of respect and the doctrine of restraint is

appropriate, in my estimation, because it presents a credible attack on a view widely accepted by theorists and the general public that respect requires restraint, and justification for my claim that the concept of respect for persons (in the public square) is in need of reevaluation.¹

2.1 Eberle's Central Thesis And Attack on Justificatory Liberalism

Eberle describes his thesis in *Religious Conviction* in summary fashion as follows:

[A] citizen has an obligation sincerely and conscientiously to pursue a widely convincing secular rationale for her favored coercive laws, but she doesn't have an obligation to withhold support from a coercive law for which she lacks a widely convincing secular rationale.²

As this summary makes clear, Eberle's thesis contains two separate but closely related claims. The first states the view that a responsible citizen has an obligation to conscientiously attempt to articulate a plausible, secular rationale for any coercive

¹I wish to provide two disclaimers concerning my treatment of *Religious Conviction* in this chapter. First, with limited exceptions, my consideration of the book is almost entirely exegetical. The absence of critical analysis should not be interpreted as endorsement of each of Eberle's arguments. Thus, for example, as I shall argue in subsequent chapters, I believe his concept of respect is much too thin (and otherwise deficient in a number of regards) for the amount of heavy lifting it is required to do in underwriting his "ideal of conscientious engagement," and as a basis for rejecting respect for others as justification for the doctrine of restraint. My purpose in presenting such a detailed overview of Eberle's account is primarily to lay bear the major components of his argument as a means of demonstrating the challenge which I believe his book presents to the prevailing view of the role of respect in the public square.

Second, although Eberle's thesis is quite narrow, the philosophical terrain over which he traverses is quite broad. This no doubt subjects his central thesis to attack on a number of various philosophical fronts. Nevertheless, I believe that, given the nature of the issue, it is impossible to address it without making certain commitments on a number of philosophical concepts, each of which may be the subject of its own extended philosophical debate. Indeed, as I shall argue at the end of the fourth chapter, some skepticism concerning the possibility of formulating a suitable framework for developing a conception of respect may be in order because ultimately, any conception may entail commitment to one ethical theory or another. In any event, in my own view there is much to learn concerning the concept of respect from Eberle's work which will prove helpful in considering the concept of respect for persons in the public square.

² *Ibid.*, 10.

law she supports. Although this first claim is important to Eberle's overall thesis, his principal focus is on the second claim. Specifically, his primary goal is to defend the view that a responsible citizen in a liberal democracy may support (or reject) a coercive law on the basis of his religious convictions alone. Such support is permissible, according to Eberle, even if one attempts, but is unable, to provide a sufficient secular rationale.

Eberle recognizes that his central thesis that a citizen is not morally criticizable for supporting or opposing a coercive law on the basis of religious convictions alone is rejected by a number of leading theorists, such as John Rawls, Charles Larmore, Bruce Ackerman, Robert Audi, Amy Gutmann, Thomas Nagel, Lawrence Solum, and Gerald Gaus. Eberle maintains that each such theorist is committed to rejecting his central thesis because each adheres to his or her own blend of what Eberle refers to as "justificatory liberalism" ("JL"). Eberle accordingly devotes much of the book to the defense of his central thesis against the claims of the "ideal" of justificatory liberalism.

Eberle develops and defends his two-pronged thesis in *Religious Conviction* in what amounts to four stages. First, he articulates an "ideal" of justificatory liberalism, drawing from the above and other prominent theorists. Second, he attempts to establish the first element of his thesis – that a citizen does have an obligation to pursue a widely convincing secular rationale for a favored coercive law. Drawing on philosopher Stephen Darwall's concept of "recognition respect," Eberle develops six principles which comprise what he describes as an "Ideal of

Conscientious Engagement”. These principles (and hence the first element of Eberle’s thesis) are largely consistent with justificatory liberalism’s demand for pursuit of public justification.

Eberle then turns, in the final two argumentative stages of the book, to the defense of the second and central part of his thesis. He maintains that justificatory liberalism cannot discharge two central argumentative burdens necessary to defeat his claim that a conscientious citizen need not refrain from endorsing or rejecting a coercive law based solely on religious reasons.

First, he argues that the justificatory liberal cannot satisfactorily establish why a citizen *morally ought* to commit to a policy of withholding his support from any coercive law for which he lacks a public justification. Eberle considers and rejects what he presents as the three most prominent arguments advanced by the justificatory liberal in support of the demand for constraint, including, most importantly, the argument from respect.

Second, Eberle argues that the justificatory liberal must also, but cannot, provide a convincing answer to the question, “What is public justification?” Even assuming that it can be shown that a citizen has a moral responsibility to abide by the doctrine of restraint and provide public justification for a coercive law, it is incumbent on the justificatory liberal to provide some conception of what public justification consists in and what counts as public justification. Eberle argues, at considerable length, that the justificatory liberal has failed to articulate a conception of public justification that provides principled grounds for the claim that a citizen

ought to exercise restraint regarding his religious commitments, on the one hand, but not regarding other sorts of grounds that the justificatory liberal regards as appropriate bases for a citizen's favored laws.

Having concluded that the justificatory liberal cannot provide a satisfactory explanation as to why a citizen should refrain from relying on religious convictions absent justification for a coercive law, or provide a principled conception of public justification, Eberle maintains that rejection of his central thesis by JL is not warranted.

In the remaining sections of this chapter, I shall attempt, *seriatim*, to provide a more detailed summary of each of Eberle's primary four argumentative stages outlined above.

2.2 Justificatory Liberalism

Eberle attempts to establish and defend his two-pronged thesis by articulating and evaluating the primary arguments advanced in support of an "ideal" justificatory liberalism ("JL"). Accordingly, as a preliminary matter, he attempts to formulate an ideal JL by distilling what he takes to be the common concerns and commitments of JL from a number of heterogeneous texts.³ In doing so, his central focus is to identify JL's "principled grounds for the claim that a citizen ought to withhold support from any coercive law for which he has only religious grounds."⁴

³ Eberle voices an appropriate note of caution in attempting to develop an "ideal" JL. Although his intent is to try to "articulate a fair and sympathetic representation" of JL, he recognizes that it is difficult to "capture with complete accuracy the details of each theorist's formulation of the commitments that define" JL. *Ibid.*, 48-49. He thus offers an apology, in advance, to the extent he misunderstands or mischaracterizes any theorist's position upon which his ideal of JL is drawn.

⁴ *Ibid.*, 71.

2.2.1 Liberalism, Public Justification, And Respect For Persons

Liberalism

Eberle's ideal of justificatory liberalism entails, first of all, as the name suggests, a commitment to certain contemporary liberal principles and practices. Eberle cites such examples as the belief that the power of the state over citizens should be severely constrained; the notion that each citizen enjoys certain familiar rights and freedoms such as freedom of religion, conscience, and association, and the right to own private property; that laws should be publicly promulgated before they are enforced; and the right of citizens to participate in the selection of political representatives. Adherence to justificatory liberalism entails adherence to such substantive claims.⁵

Adherence to such basic substantive claims of liberalism does not distinguish justificatory liberalism from other forms of liberalism. What does distinguish it is adherence to two additional related commitments: to public justification and to respect for others.

Public Justification

Eberle provides the following statement of justificatory liberalism's basic conception of "public justification":

Each citizen ought to support only those coercive laws that articulate in an appropriate way with the very different points of view of the other members of the public. And what way is that? The reasons on the basis of which a citizen supports her favored laws ought to be

⁵ Eberle makes clear that he does not take issue with this aspect of JL, and to the contrary endorses these as well as other principles of liberalism. He is careful to point out that one can reject, as he does, *justificatory* liberalism, without rejecting *mere* liberalism.

convincing, not just to her, given her distinctive point of view, but to other citizens – the members of the public – given their respective points of view.⁶

Public justification, Eberle emphasizes, is not a commitment to particular policies, but rather to a “set of normative constraints that govern the rationale citizens should be able to provide for their favored policies.”⁷ He provides examples of endorsements of this notion of public justification by various theorists. Following are two by Stephen Macedo and Charles Larmore, respectively:

“[T]he moral core of [a liberal] order is a commitment to public justification: the application of power should be accompanied with reasons that all reasonable people should be able to accept.”⁸

“A natural notion to describe the essential character of liberalism is that of *neutrality*”, the pursuit of which expresses a “moral commitment to find terms of political association that can be the object of reasonable agreement.”⁹

William Kylmicka’s representation of public justification, quoted and discussed in the previous chapter, constitutes another example of the common commitment among theorists to the concept of public justification.

Respect For Persons

JL’s commitment to public justification, Eberle maintains, arises out of, or is a direct result of, its related commitment to the principle of respect for persons. The notion of respect provides *moral* justification for the public justification. Because

⁶ *Ibid.*, 58-59.

⁷ *Ibid.*, 52.

⁸ *Ibid.*, 51 (quoting Stephen Macedo, *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990), 40-41).

⁹ *Ibid.*, 51-52 (quoting Charles Larmore, “Political Liberalism,” *Morals of Modernity* (Cambridge: Cambridge University Press, 1996), 125).

each citizen *ought* to respect his fellow citizens, each citizen *ought* to pursue public justification. Somewhat more formally, Eberle states:

[T]he norm of respect imposes on each citizen an obligation to discipline herself in such a way that she resolutely refrains from supporting any coercive law for which she cannot provide the requisite public justification.¹⁰

As with the commitment to public justification, Eberle provides by way of example a number of excerpts from prominent theorists who argue in favor of public justification based on the imperative that citizens must demonstrate respect for their fellow citizens. Following are two by Macedo and Lawrence Solum, respectively:

In a liberal society, coercive political arrangements require the support of articulable reasons capable of meeting objections and being fairly applied. This is, in part, because people really do disagree, and because we owe reasonable people the form of respect embodied in public justification.¹¹

Respect for the freedom and equality of citizens requires that decisions be made on the basis of public reason.¹²

Other theorists cited by Eberle in support of the view that respect for others provides moral warrant for public justification include Rawls, Paul Weithman, and Audi.

In short, for JL (on Eberle's view), public justification is required by the duty to respect others. According to Eberle, the notion that "[r]espect for others requires justification of coercion" is central to JL – indeed, it is the “clarion call of justificatory liberalism”.¹³

¹⁰ *Ibid.*, 12.

¹¹ *Ibid.*, 53 (quoting Macedo, 249).

¹² *Ibid.*, (quoting Lawrence Solum, “Faith and Justice,” *DePaul Law Review* 39 (1990): 1086-1097, 1095).

¹³ *Ibid.*, 54.

2.2.2 *Public Justification And Restraint*

Crucial to Eberle's development of his two-pronged thesis, and to his attack on JL, is the distinction he draws between what he refers to as the "principle of pursuit" and the "doctrine of restraint". He states each succinctly as follows:

The principle of pursuit: a citizen should pursue public justification for his favored coercive laws.

The doctrine of restraint: a citizen should not support any coercive law for which he lacks a public justification.¹⁴

Eberle maintains that, in claiming that "respect for persons requires public justification," the justificatory liberal often fails to identify which of the two principles (principle of pursuit/doctrine of restraint) he is advocating.

Eberle makes three observations concerning the two principles. First, he maintains that the two principles are distinct. The doctrine of restraint lays down a constraint on those coercive laws a citizen can support. A citizen can support a law only if she can provide public justification for the law. The principle of pursuit, by contrast, enjoins a citizen to do what she can do to provide her fellow citizens with adequate reason to accept her favored policies. It says nothing about what happens if such efforts fail. The claim is distinct from the claim that a citizen ought to pursue public justification, and thus requires additional argumentation.

Second, Eberle argues that not only are the two principles distinct, but that the principle of pursuit does not entail the doctrine of restraint. That it is, it does not follow from the requirement that one pursue public justification for a coercive law

¹⁴ *Ibid.*, 68.

that, if one cannot achieve it, one must refrain from supporting such a law. One can certainly pursue public justification without being committed to the doctrine of restraint. There is nothing in the principle of pursuit which requires constraint.

Finally, the relationship of entailment does exist in the other direction. That is, it is plausible to argue that the doctrine of restraint requires that one first attempt to obtain public justification. If a citizen should do her best to refrain from supporting a coercive law which lacks public justification, it seems to follow that she must attempt to pursue public justification for her favored policies.

These logical relations between the principle of pursuit and the doctrine of restraint are crucial to Eberle in at least two ways. First, it underwrites the two-pronged nature of Eberle's thesis. On the one hand, he wants to argue in favor of the obligation to pursue public justification (hence he endorses the principle of pursuit). On the other hand, he is committed to opposition of the doctrine of restraint – his central (second part of his) thesis is that a person is morally entitled to rely on religious reason alone in supporting a coercive law, and a religious reason is the paradigmatic example of reason which is not capable of (according to JL) of public justification.

Second, one of Eberle's central attacks on JL is that arguments in support of JL often inappropriately slide from advocacy of the principle of pursuit to adoption, without argumentation, of the doctrine of restraint. The success of this attack depends on the viability of the entailment argument outlined above -- namely, that the principle of pursuit does not entail the doctrine of restraint. That is, there is nothing

inherent in the principle of pursuit that requires, upon the failure of the pursuit, restraint. The doctrine of restraint, therefore, Eberle wants to argue, requires separate argumentation if it is to be accepted.

2.2.3 Justificatory Liberalism and Religion

Having established the defining commitments of JL (that public justification is required by the duty to respect others), and having distinguished between the principle of pursuit of public justification and the doctrine of restraint, it remains to be shown what the exact relationship is between religious argument and JL. To this end, Eberle addresses what it means to rely on religious reason alone in supporting a coercive law, and how doing so bears on, or is affected by, JL.

Religiously Grounded Support

Eberle understands a religious ground in simple terms: “as any ground that has *theistic content*.” He cites as examples of religious grounds “a putative experience of God as affirming racial harmony, the claim that God has revealed in the Bible that homosexual relations are morally forbidden, [and] the testimony of a religious authority that God abhors despoliation of the environment.”¹⁵

Based on this view of what constitutes a religious argument, he then answers the question “what does it mean to rely on religious reason alone” by way of the following counterfactual:

[W]hether a citizen supports a given law on the basis of his religious convictions alone depends on the answer to a counterfactual question: would that citizen continue to regard moral claim C (on the basis of

¹⁵ *Ibid.*, 71.

which he supports a proposed law) as sufficient reason for that law if he didn't believe that theistic claim T constitutes adequate reason for C?¹⁶

If the answer to this question is “yes,” this indicates that there is some other, secular rationale, that would be sufficient to support moral claim C and C would not be based on theistic claim T alone. Moral claim C thus would not be based on a religious ground alone. If the answer to the question is “no,” then there would not be an independent secular ground sufficient to support the law, and moral claim C would be supported by religious ground alone.

Religious Convictions and Public Justification

Based on this understanding by Eberle of the conditions pursuant to which a citizen is said to support a coercive law based on a religious ground alone, the relation between such reliance on religious reason and JL's demand for public justification is clear. Religious ground, according to JL, does not constitute public justification. Indeed, Eberle argues, religious ground is, without exception for those theorists which adhere to JL, a paradigmatic example of a nonpublic or personal form of justification.

Eberle maintains that supporters of JL advocate the paradigmatic status of religious reason in one of two ways. Some do so forthrightly, such as Amy Gutmann and Dennis Thompson, who claim that “religious controversy has traditionally been regarded as the paradigm of moral conflict that does not belong on the political

¹⁶ *Ibid.*, 73.

agenda, and it continues to play that role in much of recent liberal theory,”¹⁷ and

Stephen Holmes, who writes:

No issue is more frequently classified as “worth of avoiding” than religion. Sectarianism is understandably considered to be divisive, a serious threat to communal cooperation. Religious disputes it is said, cannot always be resolved politically, or even rationally. On this premise, many communities have decided to draw a “line” between the public and the private – to consign religious attachments to the nonpolitical sphere.¹⁸

Others, according to Eberle, do so less overtly: “[W]hen justificatory liberals attempt to exemplify their position, and when they wish to render intuitively plausible the constraints that they want to citizens to obey, they almost invariably do so by appealing to religious convictions.”¹⁹

Given this described relation between religious grounds and the notion of public justification inherent in the ideal of JL, it is clear why Eberle, in advancing his central thesis that a citizen is morally entitled to support a coercive law on religious grounds alone, is dedicated to undermining JL (or at least the doctrine of restraint). Religious convictions/reason/grounds are, on all accounts of JL, automatically eliminated as possible forms of public justification.

¹⁷ *Ibid.*, 73-74 (quoting Amy Gutmann and Dennis Thompson, “Moral Conflict and Political Consensus,” *Ethics* 101 (October, 1990) 70, 75).

¹⁸ *Ibid.*, 74 (quoting Stephen Holmes, “Gag Rules of the Politics of Omission,” in *Constitutionalism and Democracy*, ed. Jon Elster and Rune Slagstad (Cambridge: Cambridge University Press, 1988), 23).

¹⁹ *Ibid.*, 74.

2.2.4 *Two Final Distinctions*

Two final distinctions are important to Eberle's central thesis and his attack on JL: (1) rational justification vs. public justification; and (2) the concept of public justification vs. conceptions of public justification. I will briefly discuss each one.

Rational and Public Justification

Whether a citizen is rationally justified in adhering to a particular belief is a function, first, of the *manner* in which he forms his beliefs. A rational citizen:

1. Attempts to form his beliefs on the basis of the best available evidence.
2. Is willing to pursue evidence when it is not easily available.
3. Is willing to subject his own convictions to criticism.
4. Is willing to change his convictions when the evidence seems to point definitively to the contrary.

Whether a citizen rationally adheres to a belief is also a function of his *evidential set* -- the fund of beliefs and experiences he assume to be true or reliable in evaluating a belief. Thus, for example, Socrates might have been rational in accepting a Ptolemaic understanding of the solar system given his evidential set, but it would not be rational for us to do so today given our current stock of beliefs about the solar system.

Rational justification is a perspectival phenomenon. Whether a person is rationally justified in adhering to a belief turns at least in part on the person's own point of view, which includes such things as the evidence available to him, his assumptions, etc.

Rational justification must be distinguished from soundness. It is certainly possible for a person to adhere to a belief rationally, yet the belief might be unsound. Socrates's beliefs about the solar system may have been rational given his evidential set, yet such beliefs were unsound.

Moreover, it follows that, in determining whether another person rationally adheres to a particular belief, we cannot judge such rationality on the basis of whether we think the argument is sound, but must look at least in part at the evidential set of the other person.

There is a difference, Eberle argues, in being rationally justified in assenting to a belief, and being able rationally to justify the same belief to another. One can be rationally justified in adhering to a belief *p* without having to do anything. But to rationally justify *p*, one must offer an argument the conclusion of which is *p*.

Given this distinction, it is possible that a person could be rationally justified in assenting to a belief, yet be in a position of not being able to rationally justify the belief to another person. This is because the subject's belief in *p* may be based in an evidential set, the beliefs and assumptions of which are not accepted by the other person. A person can thus find herself in the position of being *justified* in believing *p*, but not be able to *justify* *p* to her compatriots.

Public justification for a belief *p* requires more than just that a person be rationally justified (which is a function both of one's evidential set and the manner in which one employs the available evidence), but requires an appropriate relation

between the rationale and another person's particular point of view. It must be convincing to the other person given their own parochial point of view.

More formally, Eberle defines public justification in the following way:

[A] citizen enjoys a public justification for p only if she is able to justify to her compatriots that p merits their support, a process that, in turn, requires her to articulate explicitly some arguments for p that her compatriots actually find compelling, or more weakly, that they can find compelling in the appropriately specified circumstances.²⁰

This explication of public justification has two important implications for Eberle. First, it cannot be determined whether a person is publicly justified in supporting some coercive law by reference to her perspective on the world alone. She must consult the points of view of her compatriots. Second, as with rational justification, public justification and soundness are independent of one another. It is certainly possible for one to provide public justification for a coercive law (it is convincing to others), yet the proffered justification be unsound. Just as soundness is insufficient for rational justification, so too it is insufficient for public justification.

The Concept and Conceptions of Public Justification

I have quoted above Eberle's definition of the concept of public justification. It consists, in short, of a rationale that articulates in some appropriate way with the points of view of one's compatriots, and thus enables one to justify a particular law or policy to one's compatriots.

Although this basic description is sufficient to distinguish public justification from rational justification, it is critical to the justificatory liberal's project that she

²⁰ Eberle, 64.

specify more clearly what constitutes an appropriate articulation. If the justificatory liberal wishes to require public justification, she must describe just how a rationale must be convincing to others to qualify as constituting public justification. These more specific versions or accounts of the concept of public justification are what Eberle refers to as particular conceptions of public justification.

While all justificatory liberals endorse the *concept* of public justification, there is no one unanimously agreed upon *conception* of public justification. Rather, there are numerous conceptions of public justification on offer by justificatory liberals. As discussed in detail below, Eberle maintains that conceptions of public justification typically fall into one of two broad categories: (1) populist conceptions, pursuant to which a public justification is a rationale that is actually acceptable to the public (suitably construed); and (2) epistemic conceptions, pursuant to which “a public justification is a rationale that has some epistemic desideratum that facilitates the acceptance or interpersonal evaluation of that rationale.”²¹ In short, while justificatory liberals all endorse the concept of public justification, there are numerous conceptions of public justification.

This distinction which Eberle draws between the concept and conceptions of public justification is of particular importance to Eberle’s attack on the doctrine of restraint. The second of his two basic arguments against the doctrine of restraint is that the *concept* of public justification must be rejected because justificatory liberals have failed to provide any satisfactory *conceptions* of public justification.

²¹ *Ibid.*, 67.

2.3 Respect And The Principles of Conscientious Engagement

The first component of Eberle's two-pronged thesis is the claim that "a citizen has an obligation sincerely and conscientiously to pursue a widely convincing secular rationale for her favored coercive laws". Eberle argues that this obligation arises from a citizen's duty to respect one's compatriots. Eberle thus agrees with JL's principle of pursuit, which holds that since a citizen has an obligation to respect her fellow citizens, she has an obligation to pursue public justification in supporting a coercive law.²²

Eberle argues, however, that the duty to respect others imposes a variety of additional constraints, beyond the mere pursuit of public justification, on the reasons a citizen properly employs as a basis for supporting a coercive laws. Eberle develops a total of six such constraints which combine to form what he refers to as the "ideal of conscientious engagement".

I begin this section by discussing Eberle's conception of respect from which he develops the constraints contained in the ideal of conscientious engagement (subsection 2.3.1). I then summarize his means of deriving the principles of constraint from his notion of respect (subsections 2.3.2, 2.3.3, and 2.3.4). I conclude with a brief statement of the six principles and their relationship to each other (2.3.5).

²² Although Eberle concurs with the principle of pursuit, by virtue of his central thesis, as discussed in detail below, he is committed to the rejection of JL's doctrine of restraint. Accordingly to Eberle, a citizen is not morally criticizable for supporting a coercive law based on religious reason alone, and hence absent public justification. Thus, on Eberle's view, although a citizen has a moral responsibility to pursue public justification (in accordance with the principle of pursuit), she need not refrain from supporting a coercive law if she cannot provide such justification (contrary to the doctrine of restraint).

2.3.1 Eberle's Conception of Respect

Eberle draws heavily on philosopher Stephen Darwall's article "Two Kinds of Respect" in developing his conception of respect from which he derives his principles of constraint. I shall reserve for the following chapter detailed analysis of Darwall's article and view of respect for persons; here I shall be concerned only with presenting Eberle's own conception. I refer to Darwall only to the extent it is relevant to Eberle's conception.

2.3.1.1 Appraisal And Recognition Respect

Eberle rejects as a possible conception of respect what Darwall refers to as "appraisal" respect. Appraisal respect is a "positive appraisal of an individual made with regard to certain features that are excellences of a person". Thus, for example, we praise the virtues manifested by Mother Theresa, but the despicable character of Joseph Stalin does not command our admiration. Since Eberle intends the central component of the ideal of conscientious engagement – the obligation to pursue public justification – to extend to all people, and not just certain persons who merit respect because of individual characteristics, he concludes that a persuasive argument from respect to public justification cannot employ the notion of appraisal respect.

Instead, Eberle adopts the form or kind of respect Darwall refers to as "recognition" respect. Eberle's presentation/derivation of Darwall's recognition respect proceeds in roughly the following linear manner:

1. A citizen has recognition respect for her compatriots as persons just in case she accords due moral weight in her deliberations to the fact that her compatriots are persons.

2. A citizen accords due moral weight to the fact that her compatriots are persons if she “regards that fact as itself placing restrictions on what it is [morally] permissible for [her] to do.”
3. A citizen regards some fact (such as that one’s compatriots are persons) as placing restrictions on what it is morally permissible for her to do if, at the very least, she recognizes that that fact ought to make a difference regarding how one ought to act: to accord due weight to some fact is to allow one’s understanding of what one ought to do to be *sensitive* to that fact.²³

The idea seems to be that a citizen has recognition respect for another citizen only in so far as she recognizes that the fact of another’s personhood places certain moral restrictions on how she may act (in ways which affect the other person).

By way of example, Eberle maintains that to have recognition respect for his son, he must recognize that the fact that a certain boy is his son makes a moral difference; it requires him to treat the boy differently -- to clothe him, educate him, etc., as opposed to doing these things for a boy who is not his son. If he fails to recognize the fact that a certain boy is his son makes a difference, he fails to have recognition respect for his son.

Thus, in order to respect some fact (in the recognitional sense), one has to give due weight to that fact. The question arises, however, how one is to determine what weight to attribute to a given fact? The answer, Eberle, indicates, is that one must have recourse to the moral truths that bear on the particular fact. In order to identify what moral constraints are imposed on Eberle by virtue of the fact that a certain boy is his son, one must resort to the moral principles which bear on a how a father is to treat his own son.

²³ *Ibid.*, 85.

In sum then, according to the conception of respect that Eberle employs in articulating the ideal of conscientious engagement, “a citizen respects his compatriots as persons only if he accords due moral weight to the fact that they are persons, which in turn requires this fact to make a moral difference to the way he acts.”²⁴

2.3.1.2 Relevant Facts of Personhood: Mattering And Self-Reflection

Eberle wants to show that the fact that a citizen's compatriots are persons places certain constraints on the manner in which she supports coercive laws which impact her compatriots. To do so, Eberle identifies what he considers to be two important characteristics (facts) of personhood: (1) mattering; and (2) the capacity for self-reflection.

First, unlike rocks and other inanimate objects, a person cares about what happens. More specifically, a person has a set of concerns and commitments which can either be fulfilled or frustrated. Certain outcomes count as better or worse from his perspective. This is not true with a rock. It cannot rank outcomes as better or worse, and so nothing that happens matters to it. Thus, for persons, unlike inanimate objects, mattering matters. And, the fact that mattering matters to persons and not to a rock is at least one fact to which a citizen ought to give moral weight.

Eberle identifies his second feature of personhood – the capacity for self-reflection – by considering a basic difference between persons and animals. Although mattering distinguishes persons from inanimate objects, it does not distinguish persons from animals. Animals, like persons, have a set of cares and

²⁴ *Ibid.*, 86.

concerns in virtue of which certain outcomes rank as better or worse. However, animals differ from persons in ways that oblige persons to treat other persons differently from the way they treat animals. What accounts for this difference? A crucial part of the answer, Eberle maintains, is “*reflective* mattering.” A person, unlike an animal, can form “higher-level” desires, beliefs, and cares about his “lower level” desires, beliefs, and cares. This allows a person to exercise some degree of “reflective influence” over his lower level cares and commitments. By contrast, an animal lacks the capacity to “alter, modify, and correct its (lower-level) cares and commitments.”²⁵

Persons thus not only have a perspective on the world in virtue of which things matter to them, they also have the capacity to exercise reflective control over that perspective. Eberle relies on both features in deriving the core moral constraints contained in his ideal of conscientious engagement.

2.3.2 Respect And Rational Justification

Eberle maintains that a person who adheres to the norm of recognition respect will abide by the six constraints which together comprise the ideal of conscientious engagement. He derives the first two, core constraints from the fact that mattering matters to persons.

Eberle begins with the baseline proposition, established in the manner above, that if a citizen has an obligation to respect her compatriots as persons, at least one of the facts which a citizen ought to accord due weight is that certain states of affairs

²⁵ *Ibid.*, 87.

matter to persons (“mattering matters”). From this baseline proposition Eberle reasons that in order to give due weight to the fact that mattering matters, one must give due weight to what actually matters to the other person. If Jack wants to give due weight to the fact that Jill cares about money, he must determine, best he can, *how* it matters to her. That is, does she wish to accumulate it or give it away? Only by knowing this can he determine how he ought to act – to give her money or take it away.

More formally, Eberle states this first proposition as follows:

- (1) If a citizen ought to respect her compatriots as persons, then she ought to accord due weight, not just to the fact that various states of affair matter to her compatriots, but also to *what* matters to her compatriots.²⁶

From this proposition, Eberle then argues that one of the things that surely matters to all persons is being coerced. All persons have an aversion to being coerced.²⁷ Thus:

- (2) If a citizen ought to accord due weight to what matters to her compatriots (1), then she ought to accord due weight to the fact that her compatriots are legitimately and deeply adverse to being coerced.²⁸

Application of (2) requires recourse to whatever truths bear on the fact that one’s compatriots are legitimately and deeply adverse to being coerced. That is, if a person aspires to respect another person, one will constrain one’s actions in a way that accords due weight to the fact that others are adverse to being coerced. Further,

²⁶ *Ibid.*, 88.

²⁷ Eberle recognizes that some aversion to coercion can be unreasonable, and assumes, per Robert Adams, that we are “legitimately adverse to coercion because coercion tends to violate our agency”. *Ibid.*, 90 (quoting Robert Adams, *Finite and Infinite Goods* (Oxford: Oxford University Press, 1999), 326).

²⁸ *Ibid.*, 89.

one can only determine how to accord due weight to this fact by recourse to the moral truths which bear on this fact.

Eberle summarizes the relevant moral truth that bears on the fact that persons are adverse to coercion as follows:

[W]hen some course of action affects another person and that person legitimately resents that course of action, then I have a prima facie obligation to refrain from pursuing that course of action.²⁹

Thus, just as there exists, in most instances, a presumption that we ought not lie, torture others, or steal, so too there is a presumption that in most instances we ought not pursue a course of action which is legitimately resented by others. The fact that citizens are adverse to some sort of coercive action has the effect of serving as a presumptive veto on that course of action. And, since a coercive law leads to a form of indirect coercion, there is a moral presumption against support of that law.

Eberle summarizes this application of (2) as follows:

(3) If a citizen ought to accord due weight to the fact that her compatriots are legitimately averse to being coerced (2), then she has a prima facie moral obligation to refrain from coercing her compatriots.³⁰

Eberle emphasizes that the obligation to refrain from coercing one's compatriots is a prima facie one. Just as there are exceptional circumstances when it might be acceptable to steal, so too the prima facie obligation not to coerce others is defeasible. If there are sufficient countervailing circumstances, the prima facie obligation not to coerce others may be overridden. Thus:

²⁹ *Ibid.*, 90.

³⁰ *Ibid.*

- (4) If a citizen has a prima facie moral obligation to refrain from coercing her compatriots, then she ought not coerce them unless coercing them is morally appropriate, all things considered.³¹

Finally, Eberle addresses the epistemic standard he contends must be applied in determining whether coercion is appropriate in a particular situation, all things considered. He argues that a conscientious citizen “will employ his cognitive resources in accord with the canons of rationality in determining whether the coercive laws he supports are morally appropriate, all things considered.”³² By way of contrast, a citizen who attempts to determine whether a coercive law is morally appropriate, all things considered, by using the “rock, paper, scissors” method fails to obey the canons of rationality, and shows disrespect to his compatriots’ aversion to being coerced.

Eberle summarizes this commitment to the “canons of rationality” in moral inquiry concerning the propriety of coercive laws as follows:

- (5) If a citizen should not coerce her compatriots unless coercing them is morally appropriate, all things considered, then she ought to pursue rational justification for the claim that her coercive actions are morally appropriate, all things considered.³³

Such rational justification, Eberle maintains, must be substantial. Given that the “more important a decision, the higher our epistemic standards should be for the rationale on which we make that decision,”³⁴ and the fact that persons are highly

³¹ *Ibid.*, 91.

³² *Ibid.*, 92.

³³ *Ibid.*, 91.

³⁴ *Ibid.*, 93.

adverse to being coerced, Eberle argues that one should pursue a high degree of rationality for the claim a coercive law is morally appropriate, all things considered.

What happens if a person pursues a high degree of rationality for the overall moral propriety of a coercive law but fails to acquire a sufficiently powerful (rational) justification for that law? Eberle maintains that pursuant to (4) above, the citizen must refrain from supporting the law. Accordingly to (4) a citizen must refrain from supporting a coercive law unless such coercion is morally appropriate, all things considered. This determination, if not met under the “high degree of rationality” epistemic standard (per (5)), requires that the law not be supported.

Eberle, in this fashion, thus arrives at his first two principles contained in his ideal of conscientious engagement. According to these two principles of constraint, a conscientious citizen will:

1. [P]ursue a high degree of rational justification for the claim that a favored coercive policy is morally appropriate.
2. [W]ithhold support from a given coercive policy if she cannot acquire a sufficiently high degree of rational justification for the claim that the policy is morally appropriate.³⁵

The first constraint, of course, is essentially a restatement of (5) above, while the second constraint follows from (4).

2.3.3 Respect And The Pursuit Of Public Justification

Eberle derives the second and third principles of constraint of his ideal of conscientious engagement from the second important fact about personhood previously identified -- the capacity for self-reflection. A citizen who respects his

³⁵ *Ibid.*, 104.

compatriots will not only give due weight to what matters to them, but also to the fact that his compatriots are able to reflect about their cares and concerns and alter what matters to them. Giving moral weight to the fact that a person has the capacity for self-reflection imposes on a citizen the obligation to inform his compatriots of the reasons why he supports a coercive law, and to attempt to articulate a rationale in support of a coercive law that he supports that will be convincing to his compatriots. I will briefly discuss each of these obligations in turn.

Obligation To Inform

Eberle advances two arguments in support of the claim that respecting the fact that a person has the capacity for self reflection requires that a citizen inform his compatriots of the reasons for supporting a coercive law. First, each compatriot inhabits a unique point of view, and each point of view is valuable. Such unique and valuable points of view should be encouraged to flourish, and not be discouraged or undermined. To coerce one's fellow citizens, however, without communicating to them the reasons for coercing them would be "unnecessarily to circumvent their capacity to understand the world from their respective points of view and thus is to disrespect them."³⁶

Second, coercing one's compatriots causes them distress, and one ought to do what one can to mitigate the stress caused others. One can mitigate this distress by communicating one's reasons for supporting a coercive law.

[A citizen's] willing to address his compatriots manifests his recognition that each has her own distinctive point of view and that it is of sufficient

³⁶ *Ibid.*, 97.

value that he is compelled to explain himself. By recognizing that his compatriots have their own points of view and by allowing his recognition of that fact to motivate him to address his compatriots, he communicates to them that he recognizes the very great significance of their ability to form their own opinion regarding his actions – in spite of the fact that he happens to disagree with them in this case – and thus mitigates to some degree the distress generated by his coercive ways.³⁷

Thus, a citizen who communicates her reasons for supporting a coercive law not only encourages her compatriots to develop capacities that have great value, but conveys the high regard in which she holds their agency and thus mitigates the stress caused by the coercive laws she supports.

Articulation Of A Convincing Rationale

Eberle rejects the view, held by certain inclusionists, that it is sufficient for a citizen to communicate only his own reasons for supporting a coercive law. Rather, he maintains, respect for others requires that a citizen attempt to inhabit the mindset of his compatriots and attempt to provide a rationale that others will find convincing. This is true, Eberle argues, because of the prima facie obligation to avoid treating others in ways to which they are adverse. If a citizen has a prima facie obligation to avoid causing his compatriots stress, then he must also have an obligation to minimize stress in circumstances where the prima facie obligation not to cause it are overridden. A citizen who supports a coercive law can ameliorate the stress caused by supporting such a law by inhabiting the mind of his compatriots, and attempting to offer a rationale which they will find convincing. Thus, Eberle writes, respect does indeed require the pursuit of public justification.

³⁷ *Ibid.*

Berele provides three notes to this conclusion. First, the argument that one ought to pursue public justification does not require commitment to any one particular conception of public justification, of which there are many, although his argument articulates best with a “populist” conception (see section 2.4 below). Further, Eberle recognizes that it is possible that attempts to advance public justification may fail.

Second, pursuit of public justification does not require that a citizen attempt to present a single argument that will be convincing to all. Since the aim is to ameliorate distress of those coerced, a citizen supporting a coercive law may advance a number of arguments in pursuit of public justification, though it would be better to articulate a small selection of widely convincing arguments.

Third, since the goal is to ameliorate the stress of those to be coerced by the law a citizen supports, it is not necessary that the rationale advanced in pursuit of providing public justification need be one that the citizen supporting the coercive law finds compelling. It is preferable, however, that the citizen view as sound at least one of the widely convincing arguments he offers in order to avoid the appearance that he is attempting to manipulate his compatriots.

Third And Fourth Principles of Constraint

According to the third and fourth principles of constraint thus articulated, a conscientious citizen will:

3. [A]ttempt to communicate to her compatriots her reasons for coercing them.
4. [P]ursue public justification for her favored coercive policies.³⁸

³⁸ *Ibid.*, 104-105.

2.3.4 Respect, Mutual Criticism, And Dignity

Eberle develops the final two principles of constraint in the ideal of conscientious engagement based on the notions of respect, mutual criticism, and human dignity.

Respect and Mutual Criticism

Eberle argues that a citizen who respects her compatriots will be fallibilist about her commitment in supporting a coercive law, and should accordingly be willing to listen to opposing views held by her compatriots. The requirement that she be fallibilist and be willing to listen to others' views follows from the fact that respect for others requires that a citizen withhold support from morally inappropriate laws, a given citizen might be wrong about the moral propriety of her favored laws, and other citizens have the capacity to enlighten her about the impropriety of her favored coercive laws.

Eberle interprets the fallibility requirement narrowly to apply only to one's political commitments and the grounds that bear directly on one's political commitments. It does not apply to one's deeper, more remote convictions, whether they are morally or theologically based.³⁹

Respect and Dignity

Finally, Eberle maintains that respect for others requires that a citizen not support a law which denies the personhood of another. This is true even if a citizen

³⁹ “[I]t would be too onerous a burden to impose on citizens the expectation that they ought to take seriously the possibility that the convictions that define their respective moral identities might be false (whether those commitments are basic moral claims, such that torture is prima facie morally wrong or theological claims, such as that God exists.)” *Ibid.*, 103.

complies with each of the first five principles of constraint. Thus, for example, a Nazi could never offer as a reason for a law the fact that a Jew is not a person, even if he complied with the other five constraints.

Fifth And Sixth Principles of Constraint

Eberle's fifth and sixth principles of constraint comprising his ideal of conscientious engagement thus require the following of a conscientious citizen:

5. She will listen to her compatriots' evaluation of her reasons for her favored coercive policies with the intention of learning from them about the moral (im)propriety of those policies.
6. She will not support any policy on the basis of a rationale that denies the dignity of her compatriots.⁴⁰

2.3.5 The Ideal Of Conscientious Engagement

By way of summary, Eberle maintains that the norm of respect requires that a citizen abide by at least the following six constraints on the reasons a citizen employs in political decision making and advocacy:

1. She will pursue a high degree of rational justification for the claim that a favored coercive policy is morally appropriate.
2. She will withhold support from a given coercive policy if she cannot acquire a sufficiently high degree of rational justification for the claim that the policy is morally appropriate.
3. She will attempt to communicate to her compatriots her reasons for coercing them.
4. She will pursue public justification for her favored coercive policies.
5. She will listen to her compatriots' evaluation of her reasons for her favored coercive policies with the intention of learning from them

⁴⁰*Ibid.*, 105.

about the moral (im)propriety of those policies.

6. She will not support any policy on the basis of a rationale that denies the dignity of her compatriots.⁴¹

These six constraints together comprise Eberle's idea of conscientious engagement which he maintains ought to govern the manner in which a conscientious citizen in a liberal democracy supports her favored coercive laws.

Employing the first two constraints, in deciding whether to support a coercive law, a citizen should evaluate the law in accord with the canons of rational belief formation (1), and, if she cannot acquire a high degree of justification for the claim that the law is morally appropriate, she should refrain from supporting it (2). Eberle emphasizes: "[E]pistemic conscientiousness in the way a citizen supports her favored coercive laws is essential to her arriving at conclusions of conscience that manifest respect for her compatriots."⁴²

Should the citizen conclude, with a high degree of rational justification, that the coercive law under consideration is morally appropriate, she must supplement her conscientious pursuit of rational justification by engaging her compatriots. That is, she must share her reasons for supporting the coercive law with them (3), and be willing to listen to critique of her reasons (5). If she persists in believing that her reasons for supporting the coercive law are rationally justified to a high degree, she must then attempt to offer a widely convincing rationale to her compatriots (4).

⁴¹*Ibid.*, 104-105.

⁴²*Ibid.*, 106.

Eberle thus concludes: “In short, deliberative and persuasive engagement with others regarding the coercive laws a citizen supports is essential to her manifesting the appropriate respect for her compatriots.”⁴³

2.4 Respect And The Doctrine Of Restraint

In what I have referred to as Eberle’s final two argumentative stages in *Religious Conviction*, Eberle defends his central thesis of the book: the claim that a citizen does not have an obligation to withhold support from a coercive law for which she lacks a widely convincing secular rationale. This claim constitutes a rejection of JL’s doctrine of restraint, which holds that a citizen should not support any coercive law for which she lacks a public justification. Thus, although as discussed in the previous section Eberle endorses JL’s principle of pursuit (a citizen should pursue justification for her favored coercive laws), he wants to undermine the doctrine of restraint and establish why it should be rejected.

As indicated in subsection 2.3.1, Eberle argues that the justificatory liberal cannot discharge two argumentative burdens necessary to defeat his claim that a conscientious citizen need not refrain from endorsing or rejecting a coercive law based solely on religious reasons. According to Eberle, JL can neither establish why a citizen morally ought to abide by the doctrine of restraint, nor provide a principled conception of public justification. I will address the first of these two claims in this section, and address the second claim in the following section.

⁴³*Ibid.*

Eberle articulates and evaluates what he takes to be JL's three most prominent and powerful arguments in support of the claim that a conscientious citizen morally ought to abide by the doctrine of restraint: (1) the argument from respect; (2) the "argument from Bosnia"; and (3) the "argument from divisiveness". He concludes that none of these arguments constitutes a sufficient basis for adopting the doctrine of restraint. I will discuss each in turn, focusing primarily on the first because of its relevance to this dissertation.

2.4.1 The Argument From Respect

Eberle maintains that although the duty to respect others requires that one abide by the constraints contained in the ideal of conscientious engagement, the duty of respect does not require that one also obey the doctrine of restraint. In advancing this latter claim, he attempts to show why the claim that respect requires restraint is intuitively implausible, evaluates several arguments designed to overcome this intuitive implausibility, and offers an argument against the doctrine of restraint based on Rawls's own strains of commitment.

2.4.1.1 The Intuitive Implausibility Of The Argument From Respect

Eberle maintains that the claim that respect requires restraint strikes justificatory liberals as intuitively plausible, and that this intuition drives various attempts to articulate arguments in support of the claim, even when such arguments are shown to be fallacious. The intuitive plausibility of the claim is illusory; it arises from *rhetoric* that often accompanies affirmation of the doctrine of restraint rather than the inherent plausibility of the claim itself. By piercing through the rhetoric,

Eberle argues that the intuitive appeal of the claim that respect requires restraint will lose its luster.

Eberle suggests that there are at least three factors which although distinct from the refusal to exercise constraint, are often confused with it, and thus lead to the mistaken intuition that respect requires restraint. First, it is easy to allow the revulsion which many may feel to laws they deem *substantively unjust*, such as laws banning same-sex marriage, to elide into revulsion at the laws' supporters unwillingness to exercise restraint in supporting the laws. One's conclusion that a law is unjust leads, improperly, to the conclusion that respect requires restraint in supporting it.

Second, distaste for those who refuse to exercise restraint can easily elide into a distaste for their refusal to exercise restraint. Eberle uses as an example the movement of evangelicalism which he claims is unpopular with academics:

I don't think it an exaggeration to claim that the evangelical or fundamentalist, particularly one who advocates policies that are unpopular among academics, serves as the most common whipping boy for the justificatory liberal. And I surmise that a great deal of the intuitive plausibility of the doctrine of restraint is a consequence of the subterranean association of religious "fanatics" . . . with the refusal to exercise restraint.⁴⁴

Third, the most likely confusion that leads to the conclusion that refusal to exercise restraint is disrespectful is the unwillingness to abide by the constraints constitutive of the ideal of conscientious engagement, most particularly the principle of pursuit. As discussed in the previous section, the failure to pursue public

⁴⁴ *Ibid.*, 111.

justification demonstrates a callous indifference to the fact that one's compatriots are deeply adverse to laws which coerce them. The citizen's failure to pursue public justification, and to comply with the other constraints in the ideal of conscientious engagement, constitutes legitimate grounds for imputing disrespect to that citizen. Eberle argues, however, that it is JL's failure to distinguish between the principle of pursuit and the doctrine of restraint which leads to the false intuition that respect requires restraint. It does not follow from the fact that it is disrespectful to fail to pursue public justification, that it is disrespectful to fail to refrain from supporting a coercive law.

Eberle suggests a certain thought experiment to test the intuitive judgment that respect requires restraint: the portrayal of a citizen who refuses to exercise restraint, but is admirable in other respects – she supports the “right” policies, does not belong to a religious group burdened by numerous invidious stereotypes, and she strives to fulfill the ideal of conscientious engagement. Eberle maintains that, if once these extraneous factors are bracketed such a citizen does not evoke in us the sense that she disrespects her compatriots, it is appropriate to conclude that “the intuitive appeal of the claim that respect requires restraint is due to the rhetoric that accompanies admonitions to exercise restraint rather than the actual propriety of the doctrine of restraint.”⁴⁵

To this end, Eberle asks his readers to consider the following portrait of Elijah. Elijah is deeply disturbed about the widening disparities in wealth between the rich

⁴⁵ *Ibid.*, 112.

and the poor both in this country and other countries. He accordingly advocates a radical distribution of wealth. His condemnation of the disparity between the rich and the poor and the radicalism of his proposed distribution of wealth is based partly on his moral commitments, but he also has a peculiarly religious rationale. He is acquainted with Liberation Theology, and has come to believe that God has a preference for the poor, and that this preference for the poor obliges him to take drastic measures to narrow the disparity of wealth between the rich and the poor. Given these convictions, Elijah rationally regards himself as morally obliged to support laws and policies which he believes will affect the desired radical redistribution.

Elijah, however, does not desire to cram his favored policies down his compatriot's throats, so he pursues a public justification for them. He engages in long hours of sustained dialogue, listens to their concerns, but ultimately his pursuit to obtain a suitable public justification fails. Many of his compatriots find his policies misguided, dangerous, or even morally offensive. His radicalism turns out to be uneliminably dependent on his theological commitments, many of which his compatriots do not share given their evidential sets.

Given the importance Elijah attaches to the need to address the disparity in wealth and assist the poor, however, Elijah continues to pursue and support policies that he believes will address the conditions of the poor. He regards the situation as tragic, both because he believes his compatriots' failure to redistribute wealth costs lives and perpetuates suffering, and also because he is bound by his conscience to

impose his religiously grounded beliefs on citizens who he realizes (nonculpably) lack a compelling reason to accept his views.

Eberle argues that Elijah, in acting in this fashion, does not show disrespect to his compatriots. He has acted based on the dictates of his conscience arrived at in a fully rational and conscientious manner. He does not take joy in imposing his convictions that God has a preference for the poor on his compatriots, and is not indifferent to their cares and concerns. He doesn't aspire to support his favored policies based on his religious convictions alone, and did what he could to avoid that. He was rationally bound, however, to act in accord with what he believed was necessary to promote justice.

Eberle maintains that our reaction to Elijah differs from the common reaction to citizens who, for example, support laws restricting rights of homosexuals, largely because of the difference in the substance of the laws, the identity of the persons promoting the respective laws, and Elijah's implementation of the principles of conscientious engagement. It is much more politically attractive, at least among academics, to advocate assistance to the poor than to militate against the homosexual. Additionally, Elijah also belongs to a religious group (liberation theology vs. evangelicalism) of which academics are less likely to disapprove. Most important, however, Elijah is attuned to the distinctiveness of his compatriots' points of view and attempts to communicate with them. By pursuing public justification for his favored policies, he exhibits respect for his compatriots. Too often, by contrast,

evangelicals, in supporting coercive laws often fail to pursue public justification, and do not engage their compatriots in dialogue concerning their favored laws.

Eberle thus concludes that the intuition that the failure to exercise restraint constitutes disrespect is misplaced; perceptions of disrespect arise from factors unrelated to the lack of restraint. Most important, a distinction must be drawn between the pursuit of public justification and the lack of restraint. It is the failure to pursue public justification, to be sensitive to the distinct desires and beliefs of one's compatriots, and not the lack of restraint, which typically is responsible for giving rise to the intuition that a citizen promoting a coercive law is disrespectful of his compatriots.

2.4.1.2 Arguments For Restraint

Eberle willingly concedes that his attempt to show that the notion that respect requires restraint is intuitively implausible does not by any means settle the matter. There may still be some who will retain the intuition that respect requires restraint. More importantly, to the extent a more formal argument establishing the relationship obtains, this would settle the matter and override the issue of conflicting intuitions.

Eberle goes on to argue, however, that although the argument for restraint is central to justificatory liberalism, and is pervasive in the literature, it is difficult to discern any explicit and detailed formulations of it in the literature. He thus observes:

Very often, formulations of the argument from respect have the feel of an incantation: the justificatory liberal attempts to beguile the reader into endorsing the doctrine of restraint without specifying exactly what understanding of respect she employs or without identifying exactly

why one who accepts the obligation to respect others ought thereby to exercise restraint.⁴⁶

Eberle surmises that the paucity of detailed argument may be best explained by the (illusory) intuitive power of the claim that respect entails restraint.

Notwithstanding what he takes to be the lack of any clear and compelling argumentation in the literature, he attempts to articulate and evaluate what he views as instructive versions of the argument presented by Lawrence Solum,⁴⁷ Charles Laramore,⁴⁸ Gerald Gaus,⁴⁹ and Robert Audi.⁵⁰ Eberle's consideration of these accounts is lengthy and I cannot recount his treatment of each here.⁵¹ I shall limit my discussion to Eberle's evaluation of Audi's "principle of secular rationale".

Consideration of Audi's argument is of particular interest to my project here given my invocation of his recently advanced value-based Kantian intuitionism in the final chapter as an auspicious ethical theory within which a conception of respect might be situated.

Audi's principle of secular rationale states that a citizen has "a prima facie obligation not to advocate or support any law or public policy that restricts human conduct, unless [she] has, and is willing to offer, adequate secular reason for this

⁴⁶ *Ibid.*, 115.

⁴⁷ Lawrence Solum, "Faith and Justice," *DePaul Law Review* 39 (1990): 1086-1097.

⁴⁸ Charles Laramore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987).

⁴⁹ Gerald Gaus, *Justificatory Liberalism* (Cambridge: Cambridge University Press, 1996).

⁵⁰ Robert Audi, *Religious Commitment and Secular Reason* (Cambridge: Cambridge University Press, 1997).

⁵¹ Eberle selected the described accounts because they each provide a separate presentation of the same basic analytical flaw – the move from Eberle's principle of the pursuit of public justification to the doctrine of restraint. Eberle's overall strategy is to identify the source of the move, and to show why, in the context of the given account, restraint is not warranted.

advocacy or support (say for [her] vote).”⁵² Audi provides what Eberle views as two arguments in support of the principle: the intrusion of religion into politics tends to generate all sorts of problems of divisiveness and turmoil, and what Eberle calls the “role-reversal” argument. Eberle’s (general) treatment of the first argument is addressed in the next subsection.

Audi’s role-reversal argument is premised on the fundamental notion that other citizens possess a dignity and value equal to one’s own. A necessary condition of treating another citizen as an equal is to be willing to reverse roles with them. It would be inappropriate to engage in practices which we would unwilling allow an equally situated citizen to pursue as well. Such a constraint should not only govern the coercive laws one supports, but the reasons for supporting them, including religious reasons. Thus, Audi argues:

If the only reasons that move me are religious, and if I would not want to be coerced on the basis of religious reasons playing a like role in someone with a conflicting religious perspective, I would not want to abstain from coercion.⁵³

Audi’s argument is thus a simple one, and appeals to the intuitive notion that since we would not want to be coerced based on religious reasons we disagree with, we should refrain from relying on religious reasons as a basis for coercing others.

Eberle maintains that the primary problem with Audi’s argument is that it overemphasizes the extent to which citizens resent being coerced based on religious

⁵² Robert Audi, “Liberal Democracy and the Place of Religion in Politics,” in Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (Lanham, MD: Rowman and Littlefield Publishers, 1997), 25.

⁵³ *Ibid.*, 134 (quoting Audi., “Wolterstorff on Religion and Politics,” *Religion in the Public Square*, 141.

reasons. To see why this is so, Eberle invokes an example posed by Audi involving the protection of dandelions.

Suppose, however, that much money must be spent in enforcement and that many jobs are lost through changes in the food sector of the economy, so that human conduct is significantly restricted, even if meat consumption remains legal. Then one might ask the religious voters in question whether they would accept comparable restriction of their conduct, as well as similar job losses or mandatory shifts, on the basis of coercive legislation protecting the dandelion as a sacred species or prohibiting miniskirts and brief bathing suits as irreverent.⁵⁴

Eberle concedes that he would resent legislation denying him the ability to mow his grass in order to preserve dandelions. He maintains, however, that it does not follow that such resentment is based on the fact that the restricting legislation was enacted based on the religious preferences of its supporters. Rather, such resentment is properly identified as being either a result of his view that the supporters likely did not pursue rational justification for the law, or is attributable to the fact that he simply is not able to do something he desires to do. With respect to the former possibility, he suggests that given the current world we live in, it is not likely that many people would actually maintain a belief based on religious reasons that dandelions are somehow sacred and ought to be protected. In this case then, his resentment would be based on his belief that the proponents of the law must not have really engaged in much of an effort to rationally justify their belief. To the extent they did so, however, and complied with the principles of the ideal of conscientious engagement, Eberle believes that remaining feelings of resentment would not be a result of the fact that

⁵⁴ *Ibid.*, 135 (quoting Audi, *Religious Commitment and Secular Reason*, 201).

the law was enacted based on the religious views of its supporters, but rather as a result of his being frustrated in not being able to cut his lawn.

Eberle maintains that the fact that the religious basis of the law proscribing the killing of dandelions has nothing to do with his resentment is made clear by substituting a secular rationale for the religious one. If the supporters adopted the law based on the notion that dandelions are an endangered species, and he rejected the rationale, he would still be adverse to and resent the law.

In short, Audi's argument, according to Eberle, overestimates the extent to which citizens will resent the invocation of religious reasons as a basis for supporting coercive laws, at least when in the process of enacting such laws, their supporters engage in the principles of conscientious engagement. Remaining resentment will be a result of the inability to do what one wants to do. It is the coercive law itself, and not the supporters' reasons for supporting it, that is resented.

2.4.1.3 Respect And Rawls's Strains of Commitment

Eberle concludes his attack on the doctrine of restraint with an affirmative argument against the doctrine using some of the theoretical "machinery" Rawls employs in advocating that respect requires restraint. I shall provide only a brief summary of Eberle's argument, and assume familiarity with Rawls's basic account of the principles of justice and associated principles, including Rawls's notion of the original position and the veil of ignorance.

Eberle's argument can be succinctly summarized as follows:

1. Rawls's liberal principle of legitimacy entails the duty of civility, which in turn entails the doctrine of restraint.

2. The liberal principle of legitimacy is vindicated in the same manner as the principles of justice.
3. The principle of legitimacy does not satisfy the strains of commitment constitutive of the original position and the veil of ignorance.

Therefore, the principle of legitimacy, and hence the duty of civility (which entails the doctrine of restraint) would be rejected by persons in the original position.

With respect to first premise, Rawls's principle of legitimacy states as follows:

Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizen as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason.⁵⁵

The principle of legitimacy, in turn, entails the duty of civility:

And since the exercise of political power must be legitimate, the ideal of citizenship imposes a moral, not a legal, duty – the duty of civility – to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason . . . [All citizens] should be ready to explain the basis of their actions to one another in terms each could reasonably expect that the other might endorse as consistent with their freedom and equality.⁵⁶

The duty of civility requires that a citizen attempt to explain how one's favored policies enjoy public justification, and, Rawls's is clear, to refrain from supporting such policies where the requisite public justification cannot be provided. The principle of legitimacy thus entails the doctrine of restraint.

⁵⁵ *Ibid.*, 140 (quoting John Rawls, *Political Liberalism* (New York: Columbia Press, 1993), 137).

⁵⁶ *Ibid.*, (quoting Rawls, *Political Liberalism*, 217-218).

According to the second premise, Rawls's principle of legitimacy is vindicated by Rawls in the same manner as is the principles of justice – through recourse to the machinery of the original position, including the veil of ignorance. This seems to be the case, as the following lengthy quotation by Eberle from Rawls makes clear:

In justice as fairness . . . the guidelines of inquiry of public reason, as well as its principle of legitimacy, have the same basis as the substantive principles of justice. This means in justice as fairness that the parties in the original position, in adopting principles of justice for the basic structure, must also adopt the guidelines and criteria of public reason for applying those norms. The argument for those guidelines, and for the principle of legitimacy, is much the same as, and as strong as, the argument for the principles of justice themselves. In securing the interests of the persons they represent, the parties insist that the application of substantive principles be guided by judgment and inference, reasons and evidence that the person they represent can reasonably be expected to endorse. . . Thus we have the principle of legitimacy.⁵⁷

Parties in the original position do not, under the veil of ignorance, know such things as economic status, gender, race, or religious convictions. The veil of ignorance is not complete, however -- they have a general knowledge of human psychology, and, important for our purposes here, are aware that there will be theists in society.

According to Rawls's notion of the strains of commitment, when the parties enter into an agreement, they must be able to honor it even if the worst possibilities turn out to be the case. Thus, the parties must be able to “honor [the conception they

⁵⁷ *Ibid.*, (quoting Rawls, *Political Liberalism*, 225).

agree to] under all relevant and foreseeable circumstances’ and will therefore refuse to enter into agreements that may have consequences they cannot accept.”⁵⁸

Having set up the argument in this fashion, Eberle maintains that parties in the original position would reject the principle of legitimacy in so far as it entails the doctrine of restraint. This argument proceeds in a three-fold fashion. First, the parties will know that many citizens in the society will be theists, and hence that it is possible that they might be theists. Second they will realize that if they turn out to be theists, they will likely end up supporting certain policies or laws based on their religious convictions for which, if they cannot provide a public justification, they will be required to withhold support.

Third, the parties in the original position will likely conclude that they would not be able to withhold support for their favored policies or laws if they lack a public justification. Eberle maintains that this is the case because most theists take their religious convictions to be *obligations* which are *overriding* and *totalizing*. Theists view their religious commitments as obligations which must be obeyed without regard to their feelings or desires concerning those obligations. Such obligations are overriding in that one is to obey them above all else, even when they conflict with other obligations, such as to family, state, or an ethnic group. The obligation to obey God is totalizing in that the scope of obedience extends to “whatever they do, wherever they are, and in whatever institutional setting they find themselves.”⁵⁹

Further, Eberle argues, since a theist’s religious commitments are an essential

⁵⁸ *Ibid.*, 143 (quoting Rawls, *Theory of Justice* (Cambridge, MA: Belknap Press, 1971), 175).

⁵⁹ *Ibid.*, 145.

component of her moral identity, her pursuit of her totalizing and overriding obligation to obey God will be essential to the living of a meaningful life.

Eberle thus concludes that parties in the original position, knowing that they could be theists, would not choose the principle of legitimacy. Instead, they would choose, as an alternative, the principles contained in his ideal of conscientious engagement. Just as Rawls argued that the party in the original position who gambles that the principle of utility will leave him better off than the principles of justice might have difficulty abiding by his agreement if he loses the gamble, so too a party who chooses the principle of legitimacy over the idea of conscientious engagement and turns out to be a theist may similarly have difficulty abiding by his undertaking.

For these reasons then, Rawls's own notion of the strains of commitment strongly suggest that the principle of legitimacy, and hence the duty of civility and the doctrine of restraint, would be rejected by parties in the original position. They would elect, instead, to adopt Eberle's principles of conscientious engagement.

2.4.2 Historical-Consequentialist Arguments

The argument from respect has a primary deontological flavor; the moral duty to respect others, it is claimed, morally requires a citizen to comply with the doctrine of restraint. Although there is an expectation that compliance with the doctrine of restraint will have salutary benefits (e.g., harmonious relationships among citizens), such benefits are secondary to the duty to respect others (and obey the doctrine of restraint).

Some justificatory liberals, however, provide a decidedly consequentialist rationale in support of the doctrine of restraint. They maintain that history has shown that when religion is commingled with politics, all manner of calamities ensue, for example the Crusades, the French Victory Wars, The Thirty Year' War, the English Civil War, the Inquisition, the Salem Witch Trials, etc.

Eberle considers two versions of this historical-consequentialist argument: (1) the “argument from Bosnia,” which advocates the privatization of religion to inhibit religious disagreement from breaking out into religious strife, religious persecution, and even religious warfare; and (2) the “argument from divisiveness,” which seeks to limit religion to the private realm in order to avoid disruption and disharmony among citizens.

2.4.2.1 The Argument From Bosnia

Eberle summarizes the argument from Bosnia using the following simple syllogism:

1. It is always and everywhere immoral to engage in conflict over religious matters.
2. The refusal of large numbers of citizens to privatize their religious convictions might result in conflict over those religious convictions.
3. Hence, religious citizens morally ought to privatize their religious convictions.⁶⁰

Eberle accepts the first premise, which he understands to mean that the moral repugnancy of any conflict over religious matters far outweighs any positive consequences to such conflicts. Eberle, however, rejects the second premise.

⁶⁰ *Ibid.*, 156.

Eberle does not deny that widespread refusal to privatize religion has, in the past, led to religious persecution, strife, and warfare, and that the failure to privatize religion in some societies even today would result in similar consequences. He argues, however, that the relevant inquiry is whether there is a realistic prospect that religious involvement in politics in the *hear and now*, the contemporary United States, would generate comparable consequences. In addressing this issue, the justificatory liberal must: (1) “determine under what conditions it is feasible for religion to play a role in generating conflict in the contemporary United States”; and (2) show that, given those conditions, “a widespread refusal to privatize religion has a realistic prospect of initiating conflict.”⁶¹

Causal Conditions

In order to discharge the first of these argumentative burdens, the justificatory must, but has not, advanced any general account as to the role religion plays in generating conflict. Such an account is necessary to be able to make any inference from other cases in which religion has played a role in generating conflict to our own case in the United States.

Recognizing a lack of mastery of the historical and sociological materials relevant to the issue, but not wanting to leave the matter at an impasse, Eberle suggests the following hypothesis concerning religion’s role in generating strife and conflict: “it is when the state employs its coercive apparatus in order to secure such

⁶¹ *Ibid.*, 158-159.

religious aims as conversion, suppression of dissent from the reigning orthodoxy, participation in religious rituals, and so on.”⁶²

Working from this hypothesis, Eberle observes that modern liberalism learned that the way to inhibit religion from creating strife and conflict is to preserve citizens’ right to the free exercise of religion. He maintains that he knows of no case in which a regime successfully protected the religious freedom of its citizens that was also plagued by religiously generated destruction, death, etc.

In order to discharge her burden under (2) then, the justificatory liberal must show that there is a “realistic prospect that the United States’ long-standing commitment to freedom of religion stands in danger of dissipation.” More specifically:

The justificatory liberal must articulate a plausible story that takes us from our current state to some condition in which large numbers of citizens are intent on employing state power to compel others to adhere to some religious creed or participate in some religious practice.⁶³

Eberle argues that the above scenario is not likely to occur. First, quoting Michael Perry, he maintains that freedom of religion is so deeply rooted in the American political-moral culture, it is so deeply embedded in the American way of life, that as a practical matter it is irreversible. Second, Americans have a vested interest in continuing to affirm the right of all to worship freely because it secures the protection from persecution for their religious commitments and practices.

⁶² *Ibid.*, 161.

⁶³ *Ibid.*, 162.

Eberle thus concludes that the argument from Bosnia seems dystopian. Although it is logically possible that a widespread refusal to privatize religion might lead to warfare, conditions in the United States render that possibility too remote to vindicate the privatization thesis.

Effects Of The Non-Privatization of Religion

Thus far Eberle's argument has been that a state that protects religious freedom does all that is necessary to prevent religious disagreement from escalating into religious strife. The justificatory liberal may still argue that the failure to privatize religion will encroach on religious freedom, thereby leading to strife and warfare.

Eberle does not believe that this argument is plausible, however, for two primary reasons. First, claims concerning the privatization of religion and claims bearing on the right to exercise one's religion without persecution are separate claims which would not be confused. It is certainly possible, and likely, that a citizen might reject the privatization claim, which has to do with reasons which may be cited for specific political commitments, yet endorse the claim bearing on the right of religious freedom. Indeed, he argues, it is likely that citizens from most faith traditions in the United States would commit to religious freedom for religious reasons.

Second, citizens who reject the privatization claim have good reason to commit to religious freedom for their own benefit. Religious freedom allows citizens the framework within which they can attempt to shape and mold laws in a manner

consistent with their religious beliefs without facing the stigma which would rightfully attach to those who attempt to forcibly impose orthodoxy.

2.4.2.2 Argument From Divisiveness

The argument from divisiveness, like the argument from Bosnia, advocates the privatization of religion; it does so, however, based on the prediction of the occurrence of far less dire consequences from a widespread refusal to privatize. Advocates of this argument maintain that the failure to privatize leads to such undesirable consequences as frustration, separation, divisiveness, resentment, profound alienation, and extreme anger. All agree that these consequences should, if possible, be avoided: "[w]e should aspire to a society in which none are excluded or alienated from the process by which we select the laws to which all of us are subject." Therefore, the argument goes, each citizen ought to refrain from supporting her favored coercive laws based on religious grounds.

Eberle provides the following initial formulation of this argument:

- (1) A morally responsible citizen won't engage in divisive activity.
- (2) A widespread refusal to privatize religion generates division.
- (3) Hence, a morally responsible citizen will privatize his religious convictions.⁶⁴

Eberle accepts (2), but rejects (1) on the grounds that it is obviously false. It simply isn't the case that a responsible citizen will forbear from engaging in divisive activity. One example should be sufficient -- those objecting to discrimination

⁶⁴ *Ibid.*, 168.

against blacks during the civil rights movement engaged in divisive behavior, but such conduct was not morally inappropriate.

Eberle suggests that the argument could be revised to prohibit activity that generates not just divisiveness, but a *great deal* of divisiveness. This move would not be successful, however, because of a consistency problem. Secular arguments in support of coercive laws can be just as divisive as those based on religious grounds. (The extremely divisive nature of President Obama's health care plan serves as a good example of this fact.) This modification could thus be adopted only by arbitrarily proscribing religious grounds and not secular grounds which lead to division.

Eberle maintains that the argument from divisiveness can only succeed if it attempts to privatize religion on the basis that it can be shown that, all things considered, a political community would be better off by a widespread privatization. The above syllogism, thus modified, is as follows:

- (1**) Given two alternative activities, a responsible citizen will engage in the alternative that renders the political community morally better off, all things considered.
- (2**) A widespread privatization of religion will render the political community morally better off, all things considered, than a refusal to privatize.
- (3) Hence, a morally responsible citizen will privatize his religious convictions⁶⁵.

This revised formulate requires (2**) the justificatory liberal to add up all the morally relevant consequences which would result both from the widespread

⁶⁵ *Ibid.*, 173.

privatization of religion and from the lack thereof, and then weigh them to determine whether the United State would be morally better off, all things considered, from either privatizing religion or not doing so.

This argument avoids both problems discussed above. It permits some divisiveness, even a great amount of it, but requires that religion be privatized if the benefits of such divisiveness are, all things considered, outweighed by the moral harm caused. Similarly, it avoids the consistency problem by requiring separate analysis for harm caused by secular and religious based division. That is, it is possible that, all things considered, division based on secular arguments (e.g., the great division caused by argumentation over President Obama's health care legislation) is morally appropriate, but not so with division arising from the failure to privatize religion.

Eberle agrees with those who argue that this formulation is problematic in that it requires the impossible tasks of identifying reliable information concerning the likely outcomes from privatizing religion and not privatizing religion, and of weighing and comparing these relevant consequences. Despite these doubts, Eberle does not object to the argument from divisiveness on these grounds. Rather, he maintains that widespread refusal to privatize religion would not have the dire consequences the justificatory liberal predicts, and, conversely, a widespread privatization of religion would have worse consequences than envisioned by the justificatory liberal.

With respect to the first point, Eberle maintains that the divisiveness generally associated with the failure to privatize religion is more appropriately attributed to the

failure to pursue public justification and comply with other constraints embodied in the ideal of conscientious engagement. Once the distinction between the pursuit of public justification and the privatization of religion is properly recognized, the amount of division to which the justificatory liberal can appeal is greatly reduced.

Of course, Eberle recognizes, there will be some division which will result from the lack of the privatization of religion, but this greatly reduced amount of division would be offset by the bad consequences which would result from privatization. Such consequences are two fold. First, because religious citizens do not view their religious commitments as mere preferences but as overriding and totalizing obligations imposed on them by God, requiring them to privatize their religion would impose on them the expectation that they be willing to disobey God, and violate their most fundamental commitments. Doing so would interfere with their ability to live their lives in a meaningful way. Second, it is likely that resulting alienation caused by the privatization of their religious commitments would lead to their withdrawal from political engagement, and even possibly an exit from the liberal camp altogether.

Finally, Eberle stresses that it must be remembered the argument from divisiveness, as reformulated above, is essentially a “numbers game”. That is, if the positive consequences of privatizing religion outweigh the negative consequences of doing so, then a citizen should be willing to privatize her religious commitments. If, on the other hand, the negative consequences outweigh the positive consequences, then religious commitment ought not be privatized. To this end, Eberle observes that

the vast majority of citizens in the United States are theists, and this fact is likely to continue on into the foreseeable future. Additionally, most theists view their religious commitments in the manner described above. Accordingly, he concludes, as long as theists practice the ideal of conscientious engagement, on the consequentialist calculation, it would appear that a widespread privatization of religion would not render the political community morally better off, all things considered, than a refusal to privatize.

2.5 Conceptions of Public Justification

Eberle maintains, in what I have referred to as the fourth argumentative stage of his book, that even if justificatory liberals *could* show that respect requires restraint, their work would not be done. He argues that advocates of JL must discharge a second argumentative burden in order to vindicate JL: they must articulate a defensible conception of public justification.

[J]ustificatory liberalism must articulate a defensible distinction between the grounds on the basis of which it is, and the grounds on the basis of which it isn't, appropriate for a citizen to support her favored coercive laws.⁶⁶

If advocates of justificatory liberalism cannot articulate a defensible conception of public justification, JL must be rejected.

Failure on this score would scuttle the justificatory liberal's project: absent a clear understanding of the sorts of grounds regarding which they ought to exercise restraint, citizens can't determine how to discharge their obligation to exercise restraint, in which case they can hardly be expected to try to fulfill that obligation.⁶⁷

⁶⁶ *Ibid.*, 195.

⁶⁷ *Ibid.*

Eberle notes, as I indicated in section 2.2, that there while there is agreement on the core *concept* of public justification among advocates of JL, there is no such consensus about an appropriate *conception* of public justification. Eberle identifies the non-controversial core concept of public justification as follows: “a citizen enjoys a public justification for coercive law L only if she enjoys a rationale that articulates in some appropriate way with the distinctive and divergent points of view of her compatriots.” While most advocates agree with this notion of the concept of public justification, there are numerous views among advocates of JL concerning the way a public justification articulates appropriately with other citizens’ points of view.

The disagreement among advocates of JL concerning the proper conception of public justification forces Eberle to articulate and evaluate what he takes to be the dominant forms of public justification. To this end, Eberle groups conceptions into two broad categories – what he calls populist conceptions of public justification, and those that depend on the satisfaction of certain epistemic conditions or standards. I consider each in turn in this section.

2.5.1 Populist Conceptions of Public Justification

Populist conceptions of public justification share two defining characteristics. First, they seek to maximize inclusivity. The default position is that each citizen counts as a member of the public and accordingly plays a role in evaluating whether a rationale for a coercive law counts as public justification. The justificatory liberal must provide a principled argument if this default position – that all citizens should count as members of the public -- is to be modified.

Second, populist conceptions take citizens as they actually are, and do not idealize them. Eberle defines the default position of this second defining characteristic as follows:

[T]he default populist position is that a rationale R counts as a public justification only if the members of the public find R acceptable in light of their existing evidential sets, irrespective of their epistemic pockmarks and doxastic defects. . . . [P]opulist conceptions of public justification resist idealizing the members of the public: they resist identifying a public justification with what citizens could or would accept if they were to enjoy certain moral or epistemic desiderata, that is, if they found themselves circumstanced very differently from the way they do in fact.⁶⁸

With these defining commitments in mind, Eberle articulates, evaluates, and rejects eight possible formulations or permutations of a populist conception of public justification. I will state each one, and briefly summarize the bases upon which Eberle relies in rejecting it.

2.5.1.1 Enumerative Conceptions

Eberle establishes a baseline for examining specific populist proposals by articulating the following two enumerative conceptions:

- (1) In order for a citizen's rationale R to count as a public justification for some coercive law, R must not be essentially dependent on religious considerations.
- (2) In order for a citizen's rationale R for some coercive law to count as a public justification, R must not be essentially dependent on religious considerations, a controversial conception of the good, a comprehensive doctrine, and so on.⁶⁹

⁶⁸ *Ibid.*, 200.

⁶⁹ *Ibid.*, 201.

These conceptions are unacceptable because they merely list certain kinds of rationale that do not constitute public justification (and hence upon which citizens should refrain from relying in supporting a coercive law). They do not provide any principled bases for explaining why the types of rationale putatively excluded should be excluded, thus making it impossible to determine what criteria are relied upon in excluding the types of rationale listed. Accordingly, any satisfactory conception must provide a principled basis which a citizen can employ in distinguishing between those grounds about which she must exercise restraint, and those which she need not.

2.5.1.2 Default Populist Conception

Eberle states the default position associated with a populist conception as follows:

- (3) In order for a citizen's rationale R to count as a public justification for some coercive law, each of his fellow citizens must accept R.⁷⁰

This formulation satisfies both of the defining characteristics of the default conception of public justification: it requires that *each* citizen find R acceptable, and it takes each citizen as she is, without idealizing her.

Eberle rejects (3) because any realistic conception cannot require that all citizens accept R: any restraint must apply only to those who can satisfy at least the very minimal standards of rationality. Madmen and infants, for example, must be excluded. Eberle indicates that he is aware of no advocate of JL who endorses (3).

⁷⁰ *Ibid.*, 202.

2.5.1.3 *Actual Acceptance*

To remedy this defect, Eberle offers the following modified conception:

- (4) In order for a citizen's rationale R to count as a public justification for some coercive law, each of his rational compatriots must regard R as an adequate basis for supporting that law.⁷¹

This formulation solves the problem with (3) in that it limits those who must accept R in order for it to count as public justification to those "rational" citizens.⁷² Eberle maintains that (4) is a complete failure, however, because it violates a condition that any defensible conception of public justification must satisfy: what Eberle refers to as the "sufficiency condition". Eberle's sufficiency condition requires that any defensible conception of public justification must permit each citizen to rely on considerations that are sufficiently rich to enable him to articulate a justification for: (1) liberal commitments (e.g., religious freedom); and (2) a wide range of important political decisions he faces. Formulation (4) violates the sufficiency condition because, based on the diverse backgrounds of a liberal democracy's citizens, the citizens will exhibit a wide diversity of religious, moral, and political commitments, thus resulting in a meager set of claims to which each rational citizen actually assents. This meager collection of shared beliefs or claims

⁷¹ *Ibid.*, 204.

⁷² I take it that Eberle intends (4) to otherwise be similar to (3). Although (4) requires that R be regarded as "an adequate basis for supporting the law", rather than, as in (3), that R must be accepted, Eberle construes the former to mean the same as the latter. Accordingly, (4) requires that each of a citizen's rational compatriots must actually accept R. Eberle, however, does not understand (4) (or (3)) to require *actual* acceptance in the sense that every citizen must have considered and accepted R. A citizen need only be situated such that if he *did* consider R, he would accept it.

will be insufficient to underwrite a justification for core liberal commitments, or provide guidance in resolving typical political issues which routinely arise in a liberal democracy. Eberle thus argues:

Although we can grant that all rational citizens will accept certain platitudes – for example, that rape is morally wrong and that torture ought to be legally proscribed – the set of those platitudes will be so meager as to enable citizens to arrive at a publicly justified resolution of only a tiny proportion of the political quandaries they face and, no doubt, for none of the live political quandaries they encounter.⁷³

Accordingly, Eberle concludes: “[a]ctual unanimity is too demanding an ideal to govern the activities of the fractious and fallible mortals who inhabit actual liberal democracies.”⁷⁴

2.5.1.4 Acceptability

Eberle suggests that one way to address this problem with (4) is to weaken it so that it does not require that all rational citizens accept R, but require only that R is *acceptable*. That is, require only that a citizen *can* accept R, not that they actually must. Eberle thus modifies (4) as follows:

(5) In order for a citizen’s rationale R for some coercive law to count as a public justification, each of his rational compatriots must find R acceptable.⁷⁵

This reformulation greatly expands the amount of claims that a citizen may draw upon to formulate a public justification; certainly a citizen is able to accept many more claims than he actually might, would, or does.

⁷³ *Ibid.*, 206.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*, 207.

The question arises, however, as to how permissive (5) should be. If one interprets (5) to require that a citizen need only be logically able to accept a claim, (5) would be too broad, because it would not exclude claims justified on religious grounds (which JL requires be excluded). Eberle mentions various other options, such as metaphysical possibility and psychological possibility, but suggests the following criterion as reasonable: “a citizen can accept rationale R only if accepting R wouldn’t rationally require him drastically to revise his evidential set.”⁷⁶ That is, under this standard, a citizen would not be deemed to be able to accept R if doing so would require that he abandon or drastically revise his noetic structure. (E.g., an atheist would not be deemed to be able to accept the claim that the Bible states that homosexuality is a moral abomination as a rationale for a law banning same-sex marriage.)

Although (5) weakens (4), Eberle argues that (5) is still much too strong. After all, he argues, there exist a number of rational citizens who not only reject liberal commitments, but find them totally at odds with their own fundamental convictions such that to accept them would require them to undergo radical transformation of their noetic structure. He cites as an example the so called “Christian Reconstructionists,” who desire to see society reconstructed in a manner consistent with the Mosaic law in the first five

⁷⁶ *Ibid.*, 208.

books of the Bible. Consequently, he concludes, (5) violates the sufficiency condition, and is indefensible.

2.5.1.5 Restricting Membership In The Public

Eberle suggests a strategy of further limiting the membership in the public from all rational citizens, to a certain subset of rational citizens. If the subset was limited to most, rather than all, rational citizens, it would be likely that beliefs shared by the public would increase both in number and richness. The strategy here would be to widen agreement, rather than expect unanimity. Eberle thus offers the following new formulation of a populist conception of public justification:

- (6) In order for a citizen's rationale R for some coercive law to count as a public justification, most of her rational compatriots must find R acceptable.⁷⁷

This formulation is unacceptable for at least two reasons. First, it eliminates the universality condition. “[JL]’s central claim is that *each* citizen deserves to be respected by her compatriots and thus that *each* citizen has a right to demand a public justification for the coercive laws to which she is subject.”⁷⁸

Second, there does not seem to be a principled difference between (6)’s settling for a public justification which results in the coercion of some of a citizen’s compatriots, and the person who relies on a religious rationale in support of a law which ends up coercing some of her compatriots. Eberle

⁷⁷ *Ibid.*, 210.

⁷⁸ *Ibid.*

believes that the honest justificatory liberal would find that both types of persons violate the norm of respect equally.

The primary underlying problem with (6) is thus that it arbitrarily restricts the class of citizens who must accept a rationale R in order for it to count as public justification. Eberle suggests that (6) may be revised to limit the subset of rational people which must accept R based on some principled basis. One possible line of distinction which can be drawn is between citizens who are, and citizens who are not “reasonable”. Eberle thus revises (6) to provide as follows:

(7) In order for a citizen’s rationale R for some coercive law to count as a public justification, each reasonable and rational citizen must find R acceptable.⁷⁹

Eberle, in evaluating (7), uses Rawls’s populist conception of public reason, which relies heavily on the notion of reasonableness, as a foil. Eberle’s analysis of Rawls’s conception of public reason/justification is somewhat lengthy here, and I can only briefly summarize his primary basis of attack of Rawls’s invocation of reasonableness.

Eberle’s primary objection is that if, according to Rawls’s burdens of judgment, there cannot be agreement or consensus about comprehensive doctrines in a liberal democracy, so too there will be much that reasonable people will disagree about such that the sufficiency condition will not be met. That is, citizens of the United States will not be able to agree on a sufficiently

⁷⁹ *Ibid.*, 213.

rich set of claims such that they will be able to articulate a public justification for liberal commitments and standard political quandaries. In Eberle's own words:

[W]hy should the burdens of judgment give rise to an irremediable pluralism regarding Rawls's favored targets (conceptions of the good, metaphysical claims, comprehensive doctrines, religious traditions, etc.) and not give rise to a similarly extensive divergence of conviction regarding all but the most platitudinous claims? Why shouldn't we expect that the very factors Rawls seizes upon to explain the reasonable pluralism endemic to a free society result in disensus not just regarding conceptions of the good and religious commitments but regarding all but the most vapid commonplaces?⁸⁰

Eberle thus endorses Gerald Gaus's view that Rawls's "[p]roject of securing a consensus of all reasonable persons leads to the undermining of [Rawls's] liberalism, which is to say that it leads to self-destruction".⁸¹ Eberle concludes that the partial consensus which must obtain to satisfy the sufficiency condition is not actual or even likely.

2.5.1.6 Adequate Information

Eberle proposes one final strategy to formulate a satisfactory populist conception of public justification. It would seem unduly burdensome he suggests, to require that a rationale R, to constitute a public justification, be acceptable to members of the public no matter how uninformed they might be. Shouldn't it be sufficient that a rationale is acceptable to those adequately informed citizens who evaluate a given rationale in light of reliable information? Idealizing the evidential sets in this fashion broadens the pool of

⁸⁰ *Ibid.*, 215.

⁸¹ *Ibid.*, 216.

citizens who might find a rationale convincing, and thus satisfies the sufficiency condition. Eberle states this final conception as follows:

- (8) A citizen's rationale R counts as a public justification for some coercive law only if R would be acceptable to his reasonable, rational, and adequately informed compatriots.⁸²

Eberle understands a citizen to be "adequately informed" with respect to a rationale R only if the citizen "evaluates R in light of whatever socially available and reliable information bears on the soundness R."⁸³

Eberle raises three objections to (8): (1) It is too weak to forbid a citizen from supporting his favored coercive policies solely on religious grounds and can't thereby do the exclusionary work required of it; (2) it is inconsistent with the notion of respect; and (3) it is suspicious. I will briefly discuss each objection.

With respect to the first objection, it will be helpful to consider an example similar to one posed by Eberle, but altered to reflect my focus on laws recently adopted which ban same-sex marriage. Consider a citizen Ruth, who is committed to complying with (8), and who wants to determine whether she enjoys public justification for a state constitutional amendment banning same-sex marriage. Does her claim that homosexual marriage is proscribed by the Bible constitute the desired public justification? Surely the claim will be contested, but that does not settle the matter under (8). What will be whether Ruth's compatriots would find the rationale acceptable if they were adequately informed.

⁸² *Ibid.*, 223

⁸³ *Ibid.*, 224.

The question arises as to who decides what an adequately informed citizen would find acceptable, and on what basis this decision can be made. If Ruth is to apply (8), there would seem to be no principled reason why she should not rely on her own parochial commitments as opposed to any one else's. And if she is entitled to rely on her own commitments, which are based on her own evidential set, Eberle argues that there is no principled reason Ruth should be restricted from relying on her religious convictions that the Bible proscribes homosexuality. The fact that her claim, based as it is on the view that the Bible is authoritative, is contested, is irrelevant. Just as many citizens would reject the claim that an adequately informed citizen would be aware that the Bible is reliable, many citizens would reject the claim that an adequately informed citizen would be unaware that the Bible is reliable. (The citizen-based state-wide movement to ban same-sex marriage bears this out.) Accordingly, a citizen such as Ruth who is considering voting to ban same-sex marriage should make her decision on whether to support the law based on whatever information *she* rationally and conscientiously regards as reliable.

Ruth, of course, will expect that an adequately informed person will accept the Bible as authoritative, and further accept the claim that the Bible proscribes homosexuality. She will thus be able to satisfy (8), which renders (8) unacceptable to JL.

Second, Eberle objects to (8) on the grounds that it seems to be inconsistent with the notion that we owe others respect. Each citizen has an

obligation to respect her compatriots as they are, but (8) requires one to idealize one's compatriots. It is certainly possible that a citizen could conclude that a rationale for some coercive law would satisfy the idealizing conception of public justification, yet one's fellow citizens be vehemently opposed to the law.

Eberle's third objection is that (8) is "suspicious" in that it is self-serving. "The appeal to what adequately informed citizens would find acceptable turns out to be an indirect way of expressing one's conviction that some policy is, well, the correct policy."⁸⁴ He regards (8) as a licensing of a "dangerous and suspicious trumping of the citizenry's parochial and fallible political commitments."⁸⁵

2.5.1.7 Conclusion

For these reasons, Eberle concludes that populist conceptions are indefensible. Attempts to tinker with the most basic of populist conceptions by weakening membership in the public or by idealizing the public are unsuccessful. Ultimately, the large scale disagreement which exists among citizens in a contemporary liberal democracy dooms any attempt to articulate a successful populist conception to failure.

2.5.2 Epistemically Based Conceptions of Public Justification

If the justificatory liberal is to provide a conception of public justification capable of preserving the doctrine of restraint, therefore, she must articulate some condition weaker than acceptability to or a lack of dissent by the public, but still

⁸⁴ *Ibid.*, 231

⁸⁵ *Ibid.*, 232.

strong enough to require that a citizen not support a coercive law on religious grounds alone. Eberle maintains that any such nonpopulist conception of public justification must articulate a public justification as a rationale that satisfies some normative desideratum and that “thus merits the status of a public justification” notwithstanding the fact that many citizens are aware of the rationale, understand it, but reject it.

Eberle concurs with Gaus in his diagnosis:

Justificatory liberals require a normative theory of justification – a theory that allows them to claim that some set of principles is publicly justified, even given the fact that they are contested by some.⁸⁶

The only form of normative constraints available to the justificatory liberal and which they have articulated, Eberle concludes, involve epistemic desideratum of some type.

Any epistemic conception of public justification must satisfy two constraints. First, it must not imply skepticism about religious convictions. Most of the citizens in the United States are religious, and many rely on religious conviction (for better or worse) in making political decisions. Presumably, the justificatory liberal wants to offer a conception of public justification that is acceptable to the public. A conception that implies that a citizen’s most cherished commitments – her religious commitments – are epistemically defective, would defeat this goal.

Second, any epistemic conception of public justification must conform to the basic concept of public justification: “a citizen enjoys a public justification only if she enjoys a rationale, not just that she finds plausible given her evidential set, but

⁸⁶ *Ibid.*, 236 (quoting Gaus, 3).

that articulates in some appropriate way with other citizens' distinctive points of view."⁸⁷ This *core* concept of public justification requires that any *conception* of public justification provides some specification of just in what an "appropriate articulation" consists. Thus, although given the rejection of populist conceptions of public justification, an epistemic conception need not be convincing to the public (broadly construed), it must be amenable to meaningful evaluation (based on the chosen epistemic desiderata) to the public.

Numerous forms of epistemic desiderata, which comport with these constraints, have been advanced by justificatory liberals in formulating epistemic conceptions of public justification. Eberle articulates and evaluates eight of the most prominent and plausible conceptions as a means of attempting to establish that epistemic conceptions of public justification, like populist concepts, are indefensible.

Eberle's analysis of the representative epistemic conceptions is quite lengthy. Rather than consider his treatment of each conception, I will briefly describe his general argumentative strategy, including the form of religious conviction he uses to test the epistemic conceptions, and then briefly discuss, by way of examples, his arguments against three specific forms of epistemic desiderata.

2.5.2.1 General Argumentative Strategy

Eberle's primary objection to epistemic conceptions of public justification, as was true with his attack on populist conceptions, is grounded in an argument from consistency. Epistemic desiderata must be sufficiently strong to rule out reliance on

⁸⁷ *Ibid.*, 238.

religious reason alone in supporting a coercive law. If they possess this characteristic, however, Eberle maintains that they will also rule out reliance on other grounds necessary for decision making in the public square. Thus, Eberle argues, each of the representative conceptions suffers from at least one of two fatal flaws: it is either not strong enough to rule out reliance on religious grounds alone, and/or it prevents reliance on religious grounds alone, but in so doing also eliminates reliance on other grounds essential to liberalism, and thus is too strong.

2.5.2.2 Robert Alston's *Mystical Perception*⁸⁸

Eberle uses philosopher William Alston's account of *mystical perception* as a test case for evaluating various forms of epistemic conceptions of public justification. Even though it is unlikely that many citizens rely on beliefs formed based on putative perceptions of God in supporting coercive laws, he chooses mystical perception as a basis for evaluating epistemic conceptions of public justification because he believes it is most congenial to the justificatory liberal's case. That is, mystical perception, because of its extremely private nature, is perhaps the most vulnerable, of any religious epistemic ground, to attack by the justificatory liberal. Accordingly, if it can be shown that the epistemic conceptions under consideration are incapable of

⁸⁸ Alston's religious epistemology invoked by Eberle will, of course, be rejected by many, including some who do not consider themselves justificatory liberals. I include two observations concerning my presentation of Alston's account of mystical perception as employed by Eberle in evaluating epistemic conceptions of public justification. First, Eberle presents Alston's account as a "worse case scenario". His argument is that if he can succeed in defeating JL with Alston's controversial account of mystical perception, other more developed and sustainable religious epistemological theories surely would prevail against JL. Thus, possible weaknesses in Alston's theory should not be attributed, without analysis, to such other more established religious epistemological sources (e.g., natural theology and sacred texts). Second, as will become clear below, the fundamental nature of Eberle's attack against the various conceptions on offer, based as it is on an argument from consistency, arguably does not depend entirely for its success on the viability of Alston's theory. Indeed, his argument against several of the conceptions invokes Alston's theory little if at all.

mandating restraint regarding mystical perception, there will exist substantial reason to believe that such conceptions are incapable of mandating restraint as to other, more prominent forms of religious grounds (such as claims to sacred texts).

Accordingly to Alston, some citizens perceive God in a generically similar way in which they perceive physical objects, and as a consequence, perceive God as possessing certain characteristics, and as performing certain actions (such as commanding, forgiving, etc.). Eberle quotes Alston as follows in emphasizing that Alston is serious about the perceptual nature of mystical experience:

The experience, or, as I shall say, the perception, of God plays an epistemic role with respect to beliefs about God importantly analogous to that played by sense perception with respect to beliefs about the physical world.⁸⁹

Eberle, following Alston, refers to putative perceptions of God as “manifestation-beliefs,” or “M-beliefs” for short.⁹⁰ Again, like Alston, Eberle is interested in the formation of M-beliefs within the Christian tradition, which practice Alston refers to as the “Christian Mystical Practice” (“CMP”).

⁸⁹ *Ibid.*, 241 (quoting Robert Alston, *Perceiving God: The Epistemology of Religious Experience* (Ithaca, N.Y.: Cornell University Press, 1991), 1).

⁹⁰ Eberle recounts an experience attributed to Martin Luther King, Jr. as an illustration of an M-belief. Following the birth of a daughter, King recalled being overwhelmed with a sensation of weakness after recognizing that his daughter could be taken from him at any moment. Believing that there was no other human he could turn to for strength, he prayed a prayer asking for strength to proceed forward with his work in the civil rights movement. Immediately thereafter he seemed to hear an inner voice telling him:

Martin Luther, stand up for righteousness. Stand up for justice. Stand up for truth. And lo I will be with you, even until the end of the world. . . . I heard the voice of Jesus saying still to fight on. He promised never to leave me, never to leave me alone. No never alone. No never alone. He promised never to leave me, never to leave me alone.

Ibid., 241-42.

Eberle focuses on three aspects of Alston's account: (1) CMP's "overrider system"; (2) the sense in which CMP is "innocent until proven guilty"; and (3) the autonomy of CMP.

CMP's Overrider System

CMP is a doxastic practice. A doxastic practice is a socially established way of forming and evaluating beliefs, and is constituted by the following:

- (1) [A] family of dispositions to form beliefs with a certain content when an agent is in a certain kind of mental state; and
- (2) [A] matrix of beliefs and procedures by which members of a given doxastic practice can determine whether the beliefs they are disposed to form deserve continued adherence.⁹¹

The second element just described constitutes what Alston refers to as an "overrider system." An overrider system consists in beliefs and procedures which participants use to check whether the beliefs that appear to be true are in fact true. (Alston (as is Eberle), as this description makes clear, is a thoroughgoing fallibilist.)

By way of example, we possess a set of tests that we can employ to test the veracity of a belief formed from sense perception ("SP"). If someone tells us they saw a snark, to test this claim, we go back to the scene of the putative snark sighting and look for other clues to verify the sighting, such as broken twigs, footprints, etc.

Participants in CMP likewise have a set of tests which can be used to distinguish between veridical and nonveridical mystical perceptions. CMP's tests are consistency tests and differ from those employed in SP. A putative perception of God, whether our own or someone else's, can be tested by comparing it with at least

⁹¹ *Ibid.*, 242.

one of the following: (1) a past experience of God; (2) the depiction of God in some other source of information about God such as a sacred writing or natural theology; or (3) our understanding of the world as developed from other secular doxastic practices (such as moral philosophy). Although CMP's overrider system includes no procedures for confirming beliefs, it does consist in "a set of beliefs about God's character and past activities with which a citizen's M-beliefs must cohere and which enable a citizen to *disconfirm* M-beliefs." ⁹²

Innocent Until Proven Guilty

Alston maintains that doxastic practices such as SP are "innocent until proven guilty" in the following sense. Although we have no reliable noncircular and otherwise acceptable argument to establish that the components of what he calls the "standard package" of doxastic practices, such as sense perception, memory, introspection, inductive inference, and deductive inference, are reliable, we remain confident that the beliefs we form from these doxastic practices are generally true. If, however, we have good reason to believe that a given doxastic practice is unreliable by virtue of it giving rise to a high ratio of inconsistent beliefs, or beliefs that are inconsistent with beliefs generated by a more reputable practice, the practice loses its presumptive innocence.

Eberle, following Alston, argues that consistency requires that we impute the same presumptive innocence attributed to the standard package of doxastic practices to CMP. Additionally, there is no good reason to believe CMP is unreliable.

⁹² *Ibid.*, 243.

According to Alston, consistency requires that we impute to CMP the presumptive innocence we also grant to SP and the other practices constitutive of the standard package. Moreover, we lack sufficient reason to believe that CMP is unreliable -- a claim that requires, and for which Alston provides, considerable argument. Consequently, we have no reason to believe that those who engage in CMP commit any epistemic improprieties thereby: judging with respect to the general criteria Alston has articulated, CMP passes epistemic muster along with sense perception, introspection, memory, testimony, and other such practices.⁹³

CMP's Autonomy

Central to Alston's defense of CMP, and accordingly to Eberle's evaluation of epistemic conceptions of public justification, is Alston's claim to the autonomy of CMP. Alston maintains that each doxastic practice is autonomous in the sense that internal to each practice are differing standards of evaluation, types of input and output, and procedures for evaluating beliefs. There are thus fundamental differences between each doxastic practice, and the differences are "epistemically legitimate."

Thus, for example, we formulate sense perceptual beliefs on very different grounds from those upon which we base memory beliefs, both which, in turn, differ from the bases upon which we form beliefs about our moods and desires. Similarly, the way we check sense perception beliefs differs substantially from the way we check beliefs based on our memory. We gain nothing of epistemic value by requiring that beliefs formed from one doxastic practice (e.g., sense-perceptual beliefs) be based on the same type of ground, or be evaluated using the same type of checking procedures, that we employ in forming and evaluating claims derived using another doxastic practice (e.g., deductive reasoning).

⁹³ *Ibid.*, 245.

There is no reason not to attribute such autonomy to CMP. The fact that there are considerable differences between the manner in which M-beliefs are formed and evaluated and the manner in which sense-perceptual beliefs are formed and checked provides no more basis to discount the epistemic status of CMP than does, for example, the fact that the means of forming and checking introspective based beliefs differs from the means by which sense-perceptual beliefs are formed and checked warrants discounting the epistemic value of sense perception.

Eberele maintains that recognition of the autonomy of distinct doxastic practices is critical to arriving at reasoned conclusions regarding the adequacy of CMP's overrider system. He concedes that, unlike SP's ability to provide confirming evidence, by way of further sense perceptions, of prior sense perceptions, such that a snark was sighted, CMP cannot provide independent confirmation for putative perceptions of God. Based on the autonomy of doxastic practices, however, the fact that such independent confirmation is lacking does not count against CMP's epistemic status.

Given the differences in the properties of God and physical objects, we should not expect that M-beliefs be confirmable in the same way as SP beliefs. God is said to be both transcendent and sovereign and is manifest at his own behest and timing; it is not reasonable to expect that M-beliefs would be amenable to independent corroboration. Physical objects, on the other hand, are enduring objects subject to natural laws; it is reasonable to expect sense-perceptual beliefs to be amenable to such independent corroboration.

In short, once the differences between the objects of M-beliefs (God) and the objects of sense-perceptual beliefs (physical objects) is properly acknowledged, it is not reasonable to expect that we should be able to evaluate M-beliefs in the same way we do SP beliefs. Moreover, it is clearly possible that CMP is “as reliable as you would like,” and any difference in the form of confirmation can hardly count against CMP’s epistemic status. Alston (and hence Eberle) thus conclude that CMP is autonomous with respect to at least the procedures by which citizens check M-beliefs.

The Justificatory Liberal’s Dilemma

Eberle invokes Alston’s notion of autonomy of CMP to further develop his overall argumentative strategy outlined above. It will be remembered that Eberle’s primary strategy consists in an argument from consistency. Epistemic conceptions of public justification either are too weak in that they do not actually rule out CMP as a basis of public justification, or they are too strong, and require restraint of beliefs formed from other doxastic practices which are necessary to the political process.

Employing his notion of autonomy among doxastic practices, Eberle similarly maintains that justificatory liberals can either respect the autonomy of CMP, or they can not respect it. The failure to respect CMP’s autonomy will result in epistemic conceptions that are too weak to mandate restraint. This is because they will have an indefensibly low opinion of CMP’s epistemic status. Respecting CMP’s autonomy, on the other hand, will result in epistemic conceptions that are so strong that “consistency requires the justificatory liberal to forbid reliance on grounds essential to healthy political decision making,” including, most importantly,

“nonplatitudinous” moral judgments. This more sophisticated version of Eberle’s consistency argument is illustrated in my discussion of Eberle’s treatment of the epistemic conception based on external criticism discussed (as the last example) in the next subsection.

2.5.2.3 Representative Epistemic Conceptions

Eberle uses Alston’s epistemic account of CMP as a foil to test eight different types of epistemic conceptions: intelligibility, accessibility, in principle public accessibility, replicability, criticizability, dialogicality, independent confirmability, and provability. I will briefly discuss Eberle’s treatment of four of these conceptions.

Intelligibility

Eberle considers an argument based on intelligibility advanced by Colin Bird, which Eberle presents as follows:

A citizen’s rationale R counts as a public justification for a given coercive law only if R is publicly intelligible.⁹⁴

Bird maintains that a given ground is intelligible only if it can be communicated to others, and a ground cannot be communicated to others if those who have the experience cannot “articulate an exhaustive phenomenological description of that experience.” A consequence of incommunicability is that one’s compatriots will be uncertain about the kind of evidence is being offered to support to a particular coercive policy. An unintelligible ground is opaque to others, according to Bird, and thus is immune from external criticism. An argument in support of a coercive policy

⁹⁴ *Ibid.*, 252.

based on an MP would, for Bird, be unintelligible. A putative perception of God could not be communicated by the person who experienced the MP to his compatriots.

Eberle concedes that if it was in fact the case that an a mystical perception of God is incommunicable, Bird would have a strong case for the claim that MP cannot count as public justification. Accordingly to Eberle, however, Bird offers no reason to believe that mystical perceptions are incommunicable, and it is not obvious that such perceptions are actually incommunicable. A citizen having a putative experience of God telling her to vote in favor of a law banning same-sex marriage, for example, can report this experience to her compatriots by simply stating that “I perceived God telling me to support the state constitutional amendment”. Such communication would be no different that were the citizen to report that her mother told her to vote for the amendment.

It is true that the citizen would not be able to provide an exhaustive and explicit phenomenological description of the perception, which is what Bird apparently would require. However, such a requirement would be too demanding – none of our experiences are fully describable in such terms. Referencing an observation made by Michael Polanyi, he argues that it is equally impossible to provide an unambiguous representation of sense perceptions, such as feeling sand slip through one’s fingers, or hearing the whisper of the wind through the trees. The inability to provide exhaustive descriptions is even more obvious with respect to moral perceptions. For example, it is not possible to give an exhaustive and explicit

phenomenological description of the moral perception concerning ones weighing of the relevant values implicated in the abortion issue (i.e., protection of the unborn vs. a woman's right to choose). Bird's intelligibility requirement, therefore, would create too great a constraint, and eliminate many grounds upon which it is necessary to rely in deciding the addressing the most basic political issues.

Bird could, of course, weaken his conception of intelligibility by eliminating the need for an explicit phenomenological description in order for a report of a perception to count as intelligible, but then there would be no reason to conclude that a citizen's report of a putative perception of God is unintelligible. Bird's conception is accordingly either too strong as a result of the breadth of perceptions, including sense and moral perceptions, which it would eliminate, or too weak and would permit mystical perceptions to constitute public justification.

Actual And In Principle Public Accessibility

Eberle contends that one of the most popular epistemic constraint pertains to the "accessibility" of a rationale. Eberle provides the following statement of this epistemic conception:

A citizen' rationale R counts as a pubic justification for a given coercive law only if R is publicly accessible.⁹⁵

Public accessibility is typically understood in terms of possibility. A rationale is publicly accessible only if it is possible for a citizen's compatriots to recognize the rationale as convincing by use of their own cognitive faculties.

⁹⁵ *Ibid.*, 255.

Eberle cites Abner Greene's image of the "secret box" as illustrative of the public accessibility argument:

Express reference to religious doctrine . . . is like the secret-box model To be sure, religious reference might be similar to nonreligious philosophical argument and moral reference in many ways Only religious reference, however, relies on a source of normative authority that is claimed by its proponents to be beyond the scope of human experience and to be based in special relationships that the Believers have with that source of authority and that other citizens might not have.⁹⁶

Eberle's evaluation of the argument from accessibility turns on the distinction he draws between *actual* public accessibility, and *in principle* public accessibility. Each (normal) person is born with the same "standard package" of cognitive equipment. We can all perceive external objects, understand logical relations, render moral judgments, etc. But each of us develops the common native endowment of cognitive skills in different ways. This fact is a contingent matter. The manner in which a citizen develops her native cognitive endowments has to do with such things as personal preferences, economic circumstances, education opportunities, and the like. Based on this individualistic development of our native cognitive endowments, it is possible for a person to have in principle access, but not actual access, to certain concepts and perceptions.

Eberle invites his readers to consider the accessibility of a complicated scientific argument in support of global warming to a person who has not graduated from high school, on the one hand, and on the other hand to a person who has advanced scientific training. The first person may accept the argument based on the

⁹⁶ *Ibid.*, 255 (quoting Abner Greene, "Uncommon Ground," *The George Washington Law Review* 62, no. 4 (April, 1994): 659).

authority of a scientist he acknowledges as authoritative on the subject, and whom he respects, but he will not have *actual* access to the relevant scientific theory in the sense that he can understand it. The fact that he cannot understand the theory, however, is contingent. Had he developed his native cognitive skills differently, he would be able to understand it. In this sense, then he has access to the theory *in principle*. He does not have actual access to the theory, but he has access in principle.

Eberle argues that the advocate of accessibility as constraining epistemic desideratum cannot have actual access in mind, because actual access would be too demanding. It would prevent much needed rationale in the public square, like the scientific theory described above relating to global warming, from counting as public justification. Thus, the accessibility advocates have in mind must be in principle access. Eberle modifies the above conception to reflect this clarification as follows:

A citizen's rational R counts as a public justification for a given coercive law only if R is publicly accessible in principle.⁹⁷

Accessibility, formulated in this fashion, however, is too weak: there is no reason to think that mystical perception counts as publicly inaccessible in principle. Just as a person can develop his native cognitive faculties in such a manner that would permit him to determine the probative value of a complicated scientific theory, so too he could develop his cognitive faculties in such a way that he would be capable of perceiving God. Advocates of MP would concede that many do not so perceive God, and even admit that they cannot under certain circumstances. They will deny,

⁹⁷ *Ibid.*, 259.

however, that those who have not perceived God could not do so were circumstances different. Thus, Eberle concludes:

Mystical perception is thus thoroughly democratic in the relevant sense: just as any citizen enjoys cognitive capacities he could have employed to understand and devaluate the scientific theories that bear on specific coercive laws even though he can't in fact, any citizen can perceive God in that he enjoys cognitive capacities that he can employ to perceive God even though he does not in fact.⁹⁸

In short, public accessibility is either too strong or too weak. Actual public accessibility is too strong, since many grounds, other than religious ones, which cannot reasonably be restrained, are also actually inaccessible to many citizens. In principle access is too weak, because it cannot reasonably be denied that any (normal) citizen employs the cognitive faculties to experience God.

External Criticism

Another popular epistemic conception invoked to rule out religious reason as a basis of public justification is that religious rationales are immune from external criticism. Eberle states this conception as follows:

A citizen's rationale R counts as a public justification for a given coercive law only if R is amenable to external criticism.⁹⁹

The primary charge of this conception is that the tests and procedures for evaluating the merit of a religious rationale, or CMP, are available only to those who subscribe to CMP. There are no such tests and procedures available to those who do not engage in CMP.

⁹⁸ *Ibid.*, 260.

⁹⁹ *Ibid.*, 268.

Illustrative of this conception is a passage authored by Amy Gutmann and Dennis Thompson:

But the primary reason why [appeals to biblical authority in support of coercive laws] must be rejected as moral reasons [and thus as an appropriate basis for coercive laws] is that they close off any possibility of publicly assessing or interpreting the content of the claims put forward by the authority. It cannot constitute a moral reason to appeal to an authority whose dictates are closed to reasonable interpretation. To argue otherwise would place no limit at all on the claims that could be made in the name of morality. An appeal to authority can certainly count as a reason, but only when its dictates are open to interpretation by publicly acceptable reasons or method of inquiry.¹⁰⁰

In evaluating the argument based on external criticism, Eberle maintains that it is necessary to take into account the nature of CMP's overrider system, which is constituted by a set of consistency tests. A putative perception of God and the formation of an M-belief based on the putative perception of God must be tested to determine if it is consistent with her other well grounded convictions. Only if, all things considered, the M-belief conflicts with her other well-grounded beliefs can she count the belief as false.

As discussed earlier, three such basic sources of beliefs against which a perception of God and the formation of an M-belief can be tested for consistency are as follows: (1) a past experience of God; (2) the depiction of God in some other source of information about God such as a sacred writing or natural theology; or (3) our understanding of the world as developed from other secular doxastic practices (such as moral philosophy). Clearly this last source of beliefs, secular moral theory

¹⁰⁰ *Ibid.*, 269 (quoting Gutmann and Thompson, 70).

for example, constitutes a basis of criticism which any person, including those who do not subscribe to CMP, can use to test a putative perception of God and resulting M-belief. Additionally, the first two sources of belief are not the domain of the adherent to CMP only. It is quite possible for a person who does not engage in CMP to show that a given M-belief is not consistent with the understanding of God internal to CMP, even if they disregard CMP as a reliable doxastic practice.

By way of example, a citizen who contends that she had an experience of God in which God commanded her to torture babies could be challenged by a person who does not subscribe to CMP on both religious and secular grounds. First, it could be argued that on the conception of God internal to CMP, the nature of God precludes such treatment of babies. Additionally, such a practice could be shown to be inconsistent with basic moral proscriptions against harming others. M-beliefs are, therefore, subject to appropriate forms of external criticism.

The appeal to external criticism as a basis for barring M-beliefs as an acceptable form of public justification illustrates Eberle's view of the dilemma advocates of epistemic conceptions face in deciding whether or not to respect the autonomy of CMP. If the justificatory liberal argues that M-beliefs do not qualify as candidates of public justification because they are not amenable to external criticism, and does so on the grounds that the consistency tests available to evaluate M-beliefs are too different from the tests available to evaluate SP, then she fails to respect CMP's autonomy. CMP *is* subject to external criticism, "although the sort of external criticism differs in appropriate respects from the sort of criticism that can be leveled

at sense-perceptual beliefs.” If the autonomy of CMP is respected, that is, it is recognized that each of the doxastic practices (including CMP) have different means of testing beliefs formed through exercise of that practice, constraint based on external criticism is too weak to mandate restraint pertaining to M-beliefs.

If, on the other hand, the justificatory liberal respects CMP’s autonomy and concedes that M-beliefs are subject to external criticism, but instead requires some more stringent form of external criticism, she runs the risk of eliminating beliefs necessary to the public process, such as moral beliefs. Such beliefs are subject to the same challenges as CMP, and the justificatory liberal thus cannot non-arbitrarily rule out M-beliefs while at the same time preserving moral beliefs.

Eberle’s analysis of the four epistemic conceptions just discussed is demonstrative of the general strategy he employs in attacking the various epistemic conceptions on offer. Based on roughly similar reasoning, Eberle rejects the other possible conceptions, leading him to conclude that there are no defensible epistemic conceptions of public justification available in the literature.

2.5.3 Conclusion: Conceptions of Justification

The justificatory liberal’s failure to provide a suitable populist or epistemic conception of public justification constitutes a sufficient basis to reject the doctrine of restraint. If the justificatory liberal cannot provide a principled conception of public justification, a citizen cannot be expected to forbear from relying on her religious commitments in supporting her favored policies or laws.

2.6 Conclusion

Religious Conviction helpfully advances the debate concerning the relationship between the principle of respect and the doctrine of restraint in the public square in at least the following four ways. First, Eberle's account constitutes what may properly be viewed as a mediating position between inclusionist and exclusionist views. On the one hand, citizens are required to exercise the principles contained in the ideal of conscientious engagement in supporting a favored coercive policy or law. Included among these principles of constraint is the requirement that one pursue public justification, and that one refrain from supporting a measure if one cannot obtain rational justification for supporting it. His position is, in this regard, is exclusionist. On the other hand, it is very much inclusionist in its rejection of the doctrine of restraint. As long as one pursues public justification (and complies with the other principles contained in the idea of conscientious engagement), respect does not require that one refrain from supporting a policy or law where such support is based on religious reason alone.

Second, consistent with the above, but on a more narrower plane, Eberle's key distinction between the principle of the pursuit of justification and the doctrine of restraint constitutes a helpful framework for facilitating further debate on the issue. The distinction appears to be a valid one, and arguably helps narrow the focus of the debate over what respect actually requires. Surely respect for others mandates compliance with most if not all of the constraints contained in the ideal of conscientious engagement. If this is so, the remaining issue to be debated is whether

Eberle is correct in arguing that respect does not demand compliance with the doctrine of restraint.

Third, Eberle's account is an important one because it constitutes a serious and considered attempt to work out the implications of the demands of the principle of respect in terms of what respect requires of citizens in the public square. Rather than forfeit or avoid the issue as many inclusionists have done, and rather than just assume, as many exclusionists do, that the principle of respect entails compliance with the doctrine of restraint, Eberle's analysis of respect and what it requires in the public square is far reaching and probing.

Finally, Eberle uniquely attempts to anchor his notion of respect to a more fundamental, underlying concept of respect for persons. He adopts Darwall's notion of "recognition respect," which he utilizes as a framework for developing his ideal of conscientious engagement, and as a basis for rejecting the doctrine of restraint.

These salutary aspects of the Eberle's book notwithstanding, his account quite plausibly is subject to the following potentially fatal weakness: the (Darwall's) conception of respect upon which he relies in developing his ideal of conscientious engagement and in rejecting the doctrine of restraint arguably is too thin, and is deficient in a number of regards. By stating that it might be "too thin," what I mean is that the conception, at least as he presents it, is not sufficiently developed such that it is capable of yielding the kind of results (e.g., the ideal of conscientious engagement and rejection of the doctrine of restraint) that he draws from it. While his discussion of the application of his conception of respect is developed over the course

of several chapters, his treatment of the conception of respect itself, upon which almost his entire account is based, is quite brief and spans but a few pages. As suggested above, and as will become clearer in the following chapter, his conception constitutes essentially a wholesale adoption of Darwall's recognition respect.

This quick incorporation of Darwall's notion of respect, without further development or revision, gives rise, in my opinion, to a number of quite troubling problems with Eberle's conception of respect – problems, which, if not addressed, arguably may be viewed as undermining the success of his entire project. These difficulties are readily traceable to Darwall's own account. I believe that the best means of identifying and gaining a better understanding of some of the problems with Eberle's conception is to first consider Darwall's own account in some detail. This analysis is the subject of the next chapter. Consideration of Darwall's account, including its strengths and weaknesses, will be helpful in pinpointing some of the problems with Eberle's theory, and, more important, provide valuable insights useful for the development of a framework for constructing a more comprehensive and satisfactory conception of respect.

3. Rethinking Darwall's Recognition Respect

3.0 Introduction

Before beginning to formulate a framework for developing a conception of respect for persons in the public square, it will be helpful to first consider some of the primary features such a conception should include if it is to be satisfactory. I attempt to accomplish this preliminary task in this chapter by considering, in some detail, Stephen Darwall's conception of respect for persons contained in his influential article, "Two Kinds of Respect".¹

Darwall's theory constitutes a general and important account of the notion of respect. It distinguishes between several of the most common uses of the concept of respect for persons. Most important, it offers an explanatory framework for differentiating two of the most important notions of respect: respect for all persons as persons, and respect for certain persons based on merit. Though instructive in several important ways, I will argue that Darwall's conception ultimately is fatally deficient. I intend to draw upon what I shall present as the salutary aspects of his theory, as well as my development of the grounds upon which I argue it is lacking, in attempting to identify those features essential to a viable conception of respect for persons.

Consideration of Darwall's theory of respect for persons will serve a second useful purpose. As indicated in the previous chapter, Eberle's conception of respect relies, in substantial part, on the underlying structural framework contained in Darwall's account. An acquaintance with Darwall's notion of recognition respect

¹ Stephen L. Darwall, "Two Kinds of Respect," *Ethics* 88, no. 1 (October, 1977): 36-49.

will be helpful in gaining a better understanding of the merits and problems associated with Eberle's derivative account.

I begin my analysis of Darwall's conception of respect for persons, in the second section (section 3.1), by summarizing his two kinds of respect – what he refers to as “appraisal” respect and “recognition” respect. I then present, in the next section (section 3.2), a more detailed exegesis of a specific, and for our purposes, more important, form of recognition respect – “moral recognition respect”. I then provide, in section 3.3, a critical analysis of his conception of moral recognition respect. I argue that: (1) it fails adequately to distinguish between four notions of respect, particularly between the attitude of respect and treating others with respect; (2) it is overinclusive in its excessive demand of successful moral deliberation and conduct; and (3) its failure to countenance esteem or high regard for others as an essential element renders it fatally underinclusive. I also attempt to show how consideration of the defining aspect of Darwall's recognition respect – the recognition that the fact of the existence of other persons places moral restrictions upon us – leads to the likely conclusion that prior commitment to an underlying normative ethical theory is inescapable in formulating any conception of respect for persons. I attempt to show, in the fourth and final section (section 3.4), how my analysis of Darwall's conception of respect contained in the previous sections is instructive in attempting to determine some of the most important aspects we should expect a viable general theory of respect for persons to possess.

3.1 Appraisal and Recognition Respect

Darwall's primary concern in "Two Kinds of Respect" is to explain how it is that we can claim that all persons are entitled to respect, yet speak about people deserving or not deserving another person's respect. The article constitutes, in large part, an attempt to remedy the perceived failure of a number of theorists to distinguish adequately between respect which is merited or earned, and respect which we "owe to all persons," as Darwall puts it. He also is concerned, he tells us, to address a number of other "puzzles," such as whether respect is a single kind of attitude or primarily a moral attitude, and whether persons are the only thing entitled to respect.²

The primary means he uses to address both sets of concerns is to draw a distinction between what he refers to as two different ways in which persons may be the object of respect, or, alternatively, two different kinds of "attitude" which are both referred to by the term "respect": appraisal respect and recognition respect.

3.1.1 Appraisal Respect

Appraisal respect consists in "an attitude of positive appraisal" of a person. One defining aspect of the attitude of appraisal respect is that it is "like esteem or a high regard for someone".³ Another is that its exclusive objects are persons or features of persons that "manifest their excellence as [1] persons or [2] as engaged in some specific particular pursuit".⁴

² *Ibid.*, 36-37.

³ *Ibid.*, 39.

⁴ *Ibid.*, 38.

The appropriate grounds of appraisal respect in the first case are “features of a persons character: dispositions to act for particular reasons or a higher-level disposition to act for the best reasons”.⁵ Honesty and integrity are examples of lower character traits in a person for which we ascribe appraisal respect. Higher-level dispositions are general character traits not related to specific reasons for acting, and include such traits as not being weak of will, or being insufficiently resolute.

Appropriate grounds necessary to warrant appraisal respect in the second case are features of excellence in a particular pursuit, such as playing tennis, or a musical instrument. However, Darwall argues that excellences of character play at least two roles in evaluating cases of the second sort. First, the person must generally abide by the “code of ethics” relevant to that pursuit. A tennis player who has the skills necessary to beat any other player in the world may be feared, but not respected, if she continually heckles her opponent, disputes every close call to throw off her opponent’s concentration, laughs at her opponent, etc. Second, purely “natural” abilities are not proper objects of appraisal respect, as are those abilities which are developed through discipline and exercise, which call into play many features of a person we identify as part of their character.

3.1.2 Recognition Respect

Darwall provides a general and two additional specific formulations of recognition respect. I shall describe each of them in turn.

⁵ *Ibid.*, 44-45.

3.1.2.1 *General Formulation*

Generally, recognition respect is a “disposition to weigh appropriately in one’s deliberations some feature of the thing in question and to act accordingly.”⁶ As I shall attempt to show in the following section, recognition respect appears to require that one recognize the importance of a fact in one’s deliberations about how to act, that one deliberate appropriately (correctly) about how to act given the relevant fact, and then act accordingly. Thus, Darwall writes, “[T]o respect something in this way is just to regard it as something to be reckoned with (in the appropriate way) and to act accordingly.”⁷

Like appraisal respect, persons may serve as objects of recognition respect. And, importantly, it is recognition respect which we have in mind when talking about respect for persons “as persons” (as opposed to because of merit):

Indeed, it is just this sort of respect which is said to be owed to all persons. To say that persons as such are entitled to respect is to say that they are entitled to have other persons take seriously and weigh appropriately the fact that they are persons in deliberating about what to do.⁸

Unlike appraisal respect, however, the scope of objects which may properly warrant recognition respect is not limited exclusively to persons, but includes numerous other objects. The law, someone’s feelings, social institutions, nature, etc., are all examples Darwall cites as things which may demand recognition respect.

Appraisal and recognition respect differ in a second, more fundamental way. This difference has to do with the distinct essential natures of each form of respect.

⁶ *Ibid.*, 38.

⁷ *Ibid.*, 40.

⁸ *Ibid.*, 38.

Appraisal respect, for Darwall, *just is* the positive appraisal itself – the positive appraisal of a person either as a person or engaged in some particular pursuit.

Recognition respect, on the other hand, essentially involves a conception of how one’s behavior toward another person (or other thing) is appropriately restricted.

Thus, Darwall writes:

Unlike recognition respect, one may have appraisal respect for someone without having any particular conception of just what behavior *from oneself* would be required or made appropriate by that person’s having the features meriting such respect.⁹

Darwall notes that to express appraisal respect, certain behavior will be appropriate.

But unlike recognition respect, “appraisal respect does not consist in that behavior or in the judgment that is appropriate.” Rather, he concludes, “it consists in the appraisal itself.”¹⁰

Darwall’s description of what he takes to be the essential nature of recognition respect, offered in the context of distinguishing it from appraisal respect, raises several important questions concerning how, precisely, we are to understand his conception of the nature of recognition respect. I shall postpone discussion of these questions, however, until the following section. It is sufficient at this point to note that for Darwall’s notion of appraisal respect, considerations of action, though a natural response to such respect, is not an essential part of it. For recognition respect, however, identifying appropriate conduct, based on the object of respect (and

⁹ *Ibid.*, 39.

¹⁰ *Ibid.*

apparently also performing the relevant action), is not just an element of recognition respect, that is what recognition respect consists in.

3.1.2.2 Moral Recognition Respect

The first, and more important, of the two narrower notions of recognition respect that Darwall offers is “moral recognition respect”. To respect something in this fashion is to “regard it as requiring restriction on the moral acceptability of actions connected with it.”¹¹ Stated negatively, “some fact or feature is an appropriate object of respect if an appropriate consideration or weighing of that fact or feature would result in behavior that is morally wrong.”¹² Crucially, he notes, the restrictions imposed by the fact are to be regarded not as incidental, “but as arising because of the feature of the fact itself.”¹³ It is moral recognition respect of which we speak when referring to respect for persons as a moral requirement.

Three aspects of distinction which exist between appraisal respect and moral recognition respect are worth noting. The first two – the objects of respect and the essential natures of respect – have already been mentioned in connection with Darwall’s treatment of his “general” conception of recognition respect, and apply equally to the more specific moral form of recognition respect. The third applies specifically to moral recognition respect due persons. It is this: moral recognition respect, but not appraisal respect, is “owed” to all persons. The latter form of respect is predicated on the existence of certain excellences in persons. It is warranted or

¹¹ *Ibid.*, 40.

¹² *Ibid.*

¹³ *Ibid.*

merited only to the extent such excellences exist (if at all) in a person. Moral recognition respect, on the other hand, involves giving appropriate weight to the fact that one is a person by willing to be constrained in one's behavior in a manner consistent with that fact. Such respect does not differ between persons.

3.1.2.3 Prudential Recognition Respect

The second narrower conception of recognition respect is properly conceived of as involving prudential, as opposed to moral, restrictions on action. The restrictions placed on the actions of a boxer who has respect for his opponent's left jab, and on the adventurer who respects the rapids of the Colorado River, are prudential, not moral in nature.¹⁴ Thus, like moral recognition respect, this second kind of recognition respect, which I shall refer to as "prudential" recognition respect, involves the disposition to take a fact into account, and to act appropriately. The difference between prudential and moral recognition respect is, of course, simply that the reason or basis for acting is prudential in the former, and moral in the latter. The boxer and the adventurer who fail to consider appropriately the relevant facts do not run the risk of violating a moral obligation, but do so at their own physical peril.

This concludes my summary of Darwall's two kinds of respect. Though not exhaustive, it nevertheless is sufficient to provide a basic understanding of the general framework of Darwall's conception of respect, and the natures of, and primary differences between, the two kinds of respect. I will now attempt to provide a more probing formulation of Darwall's moral recognition respect for persons.

¹⁴ The object of respect in the latter example is not, of course, a person. The example shows, moreover, that this form of respect applies equally to other objects.

3.2 Moral Recognition Respect

I understand Darwall's conception of moral recognition respect for persons to provide as follows.

A person "S" has moral recognition respect for another person "T" ("as a person" or "as such"), if and only if the following six conditions are satisfied:

- (1) S and T are both persons.
- (2) S recognizes that T is a person.
- (3) The fact that T is a person places restrictions on the moral acceptability of S's actions connected with T.
- (4) S recognizes the fact that T is a person places restrictions on the moral acceptability of S's actions connected with T.
- (5) S, in deliberating on the restrictions on the moral acceptability of her actions connected with T, reaches the appropriate judgment.
- (6) S acts in accordance with her appropriate judgment reached in deliberating on the restrictions on the moral acceptability of her actions connected with T.

The first two conditions seem fairly straight forward and uncontroversial.

With respect to (1), requiring that T be a person is necessary at the outset to limit the class of objects which can be the object of respect. As described above, Darwall's recognition respect countenances other objects of respect beside just persons, such as the law, social institutions, etc. Additionally, only persons are capable of exercising the kind of reasoning necessary to exhibit recognition respect. S also rather obviously, as set forth in (2), must recognize the fact that T is a person. Presumably, the inability to do so, for example by a person who is mentally incompetent, would

prohibit such a person from engaging in the subsequent mental activities necessary to have respect.

The fourth requirement contains what amounts to Darwall's explicit formulation of his central claim advanced in his notion of moral recognition respect. It is properly viewed as containing two separate claims – one epistemological,¹⁵ the other metaphysical in nature. The metaphysical claim is that T's status as a person "places" moral restrictions on S's actions connected with T. The epistemological claim is that S, in order to respect T, *must recognize* the underlying metaphysical reality that T's status as a person "places" moral restrictions on S's actions connected with T. The two claims raise different issues, and are appropriately considered separately. To more readily facilitate this analysis, I have stated the metaphysical aspect of the claim as the third requirement; the fourth requirement should be accordingly understood to embody just the epistemological component of Darwall's explicit claim. Separating the two claims in this fashion does not alter in any way the intended meaning or scope of his overall composite claim.

The fifth criterion requires that, in order for S to possess recognition respect of T, S must correctly judge what the proper course of conduct is in a particular situation. That is, S must correctly judge what her moral obligation is, all things considered, in a given situation. That he intends recognition respect to contain this strong requirement of success is supported by the following similar claims:

¹⁵ I take Darwall's use of the term "recognize" to mean not just some mere mental perception, but to also include some basic notion of justified belief in what is perceived. That is, what is at issue, as I understand it, is not just some perceived notions concerning moral obligations, but correct or true ones, or at least ones for which one possesses some reasonable degree of justified belief.

- [1] “To say that persons are entitled to respect is to say that they are entitled to have other persons take seriously and *weigh appropriately* the fact that they are *persons in deliberating* about what to do.”¹⁶
- [2] “The most general characterization which I have given of recognition respect is that it is a disposition to *weigh appropriately* some feature or fact *in one’s deliberations*.”¹⁷
- [3] “Most generally, [recognition respect] is a disposition to *weigh appropriately in one’s deliberations* some feature of the thing in question and to act accordingly.”¹⁸
- [4] “[Recognition respect] . . . consists in that behavior [and] in the judgment that is appropriate.”¹⁹

These statements make clear that Darwall means to require that one actually deliberate correctly, that is, reach the right judgment, about one’s final moral obligation in a particular situation. This is particularly evident given the further requirement, discussed immediately below, that one also behave in accordance with one’s prior (correct) judgment.

Darwall recognizes that making such determinations is often difficult. Thus, he writes:

“What [recognition] respect requires as appropriate is not a matter of general agreement for this is just the question of what our moral obligations or duties to other persons consist in.”²⁰

Nevertheless, as this passage itself, as well as those quoted above, clearly attest, Darwall is committed to the principle that, if one fails in one’s judgments concerning

¹⁶ *Ibid.*, 38.

¹⁷ *Ibid.*, 39.

¹⁸ *Ibid.*, 38.

¹⁹ *Ibid.*, 39.

²⁰ *Ibid.*, 38.

one's final moral obligation, even in difficult cases, one fails to have respect for others.

The sixth requirement, like the fifth, requires success; unlike the fifth requirement, however, the success that is required concerns how S acts toward or treats T. This requirement of success is clear from the statements contained in [3] and [4] above. Both require that one act "appropriately". More specifically, it requires that S act in a manner that is consistent with her prior correct judgment reached in deliberating about her moral obligations toward T.

3.3 Analysis of Darwall's Moral Recognition Respect

Darwall's conception of respect advanced in "Two Kinds of Respect" constitutes an important and sustained attempt to show that respect for persons as persons is a separate, independent form of respect apart from the more traditional notion of respect for persons based on merit, and to enumerate the central bases upon which this distinction rests. Though Darwall is of course right to distinguish between the two general forms of respect, there are several difficulties with the fundamental structure of his conception which, in my view, render it unsatisfactory. My primary focus in this section will be to state and enumerate the most serious of these problems.

There is, however, much to be learned from Darwall's discussion of the different forms of respect. Accordingly, I begin this section with a brief summary of those aspects most likely to be helpful in my effort to formulate a framework for developing a more satisfying conception of respect.

3.3.1 Guideposts From “Two Kinds of Respect”

Darwall’s conception of respect is instructive in at least three important ways. First, he identifies and provides a number of helpful distinctions between three primary forms of respect -- respect for persons based on merit, respect for persons as persons, and what I have referred to as “prudential” respect for persons. I have briefly mentioned several of these distinctions in the preceding section. The three forms of respect, and the associated distinctions, will properly need to be taken into account in developing a conception of respect.

Perhaps the most important aspect of his conception of respect and of his article in general, as I have suggested immediately above, is the claim that respect for persons, as persons, is something “owed to all persons,” apart from any notion of merit. His assertion of this position provides an appropriate attack of and response to conceptions of respect advanced by other theorists, such as Carl Cranor, which quite arguably over emphasize respect based on merit, and fail to develop a sufficient conception of respect for persons as such. Though, as I shall argue, Darwall incorrectly characterizes the essential nature of respect for persons, as such, the basic distinction between respect based on merit and having respect for all persons regardless of merit is an essential one. His attempt to enunciate the primary bases of this distinction, however ill-advised, provides a number of valuable insights upon which it will be possible to build in developing a more satisfying conception of respect for persons.

A third salutary aspect of his conception is his focus on the relationship between personhood and moral obligation. Though not as clear as one would like, it provides a helpful starting place in thinking about the nature of this relationship – both ontologically and epistemically. I attempt to draw out the implications of his treatment of this relationship in the latter two subsections in this section.

3.3.2 Conflation of Contextual Uses of “Respect”

A preliminary but not insubstantial problem with Darwall’s conception of respect for persons is its conflation of several different notions of respect, or, more specifically, its failure to countenance differing contexts in which respect for persons might be said to arise. I begin with its failure adequately to distinguish between having respect for another person, understood generally, at this stage, as a type of psychological state, or “attitude”, and treating that person with respect.

The first of Darwall’s two forms of respect, appraisal respect, consists in, as we have seen, an attitude of positive appraisal of a person. It is something akin to esteem or a high regard for someone. And that is all there is – appraisal respect just consists in such regard for someone. Its nature includes neither any judgment concerning appropriate behavior, nor any behavior itself. It is, it appears rather clear, simply a particular type of psychological state, or attitude.

The essential nature of recognition respect, on the other hand, contains two elements: both a psychological *and* a behavioral component. It is, first of all, a “disposition to weigh appropriately some feature or fact in one’s deliberations.” For moral recognition respect, this involves recognizing that the fact that someone is a

person restricts the moral acceptability of actions involving that person. Although, as I shall suggest below, the psychological state associated with recognition respect appears to differ significantly in kind from the psychological state constitutive of appraisal respect, it is properly characterized as a type of psychological state.

In a number of places, the manner in which Darwall describes the essential nature of recognition respect could be construed as holding that this attitude is all there is to recognition respect -- simply the (mental) recognition that the existence of persons requires appropriate deliberation about how ones actions towards others is constrained. It is clear, however, as shown above, that he has much more in mind. For one to have recognition respect, one must also act in a manner consistent with one's deliberations. That his conception of recognition respect is dual-natured in this way is evident from quotations [3] and [4] in the following section. To these we may add the following similar, unequivocal claim: "To respect something in this way [recognition respect] is just to regard it as something to be reckoned with (in the appropriate way) *and to act accordingly*."²¹

In short, in order for a person to possess recognition respect, one must both engage in the proper deliberations about how one is to act toward another, and also act in a manner consistent with that judgment. On this account, the proper mental disposition alone is insufficient to constitute recognition respect.

Two points may be made about this conception of recognition respect. First, it seems a bit misleading to characterize recognition respect as an "attitude". It

²¹ *Ibid.*, 40.

includes, as part of its essential nature, action or conduct. This mischaracterization may, perhaps, be due, in part, to his equivocation concerning the exact nature of recognition respect. In any event, the continued characterization of recognition respect as an attitude, notwithstanding the inclusion of its behavioral component, creates an obvious tension in his characterization of recognition respect as an “attitude,” one that is indicative of the problem of conflating the two very different forms and manifestations of respect for persons.

Second, it does not seem correct to say that one cannot have recognition respect, that is, respect for persons, as such, unless one acts in a manner consistent with one’s proper deliberations about another person’s status as a person. One can envision a number of situations in which a person might satisfy the psychological, but not the behavioral, component of Darwall’s recognitions respect, yet we would still be inclined to say that the person has respect (other than appraisal respect) for the other person, as such. For example, suppose S properly and appropriately deliberates about how her moral actions toward T are restricted based on the fact that T is a person, but fails to act in a manner consistent with that judgment based on a justified belief that she is or will be physically restrained from so acting. We would not say that such a person lacked respect for her compatriot simply because she was unable to act in a manner consistent with her appropriate judgment.

A person experiencing *akrasia* may well serve as a second type of counterexample against the view that one can have respect for a person, as such, only if one *treats* that person with respect. Such a person might have conscientiously and

deliberately concluded that the fact that another is a person requires that she treat the person in a particular manner, but simply lack the will to do so. Though the person may not have treated the other with respect, depending on the circumstances, we would not automatically conclude that the person lacked respect for the other. This would particularly be likely to be true if we conceive of the notion of respect for persons, as such, to consist in, as I suggest below we should, not just a cognitive recognition of one's duties toward another, but in, and perhaps fundamentally in, a high regard or esteem for the dignity of persons. It seems quite plausible to conclude that a person who legitimately has respect for others in this regard, that is, views others as equally important, makes a deliberate attempt to determine how this bears on the treatment of another, but fails to carry out her deliberate judgment as to the appropriate conduct, nonetheless can be said to respect the other person, even though she failed to treat him with respect.

On this expanded notion of the attitudinal component of Darwall's recognition respect, which includes, fundamentally, an appreciation for the equal importance and value of others, the divide between having respect for another, understood as a type of psychological attitude, and treating another with respect, becomes even more noticeable and important. Consider, for example, a situation in which S is faced with a set of circumstances involving a complex moral decision, say one in which competing moral obligations are at issue, and about which the following can be said: she sincerely recognizes T as having inherent and equal worth, recognizes that this fact should bear in her deliberations concerning how properly to act, conscientiously

and deliberately attempts to determine how properly to act in connection with T, and then, based on this judgment, acts accordingly. What if we conclude, properly, that notwithstanding the above, S's judgment about what the right thing to do was, all things considered, and her consequent action, were both wrong. In most situations we would not be inclined to characterize such a person as lacking in respect for the other person. We might take issue with her lack of moral maturity, and admonish her for failing to treat her compatriot with respect, but we would acknowledge her underlying (psychological) respect for the other, and praise her conscientious attempt to "do the right thing".

This third general type of counterexample, it should be noted, differs significantly from the first two, in that it assumes that not only is S's behavior inconsistent with her actual moral obligation(s) toward T (as do the first two), but also that her preceding judgment is erroneous. It shows that, in certain situations, even when a person fails to act appropriately and fails to reach the appropriate judgment through deliberation, it may still be said of that person that she possesses recognition respect for the other person. These three general counterexamples, then, are sufficient to show Darwall's behavioral component in his conception of recognition respect is not properly construed as an essential element of respect for persons as persons.

Undoubtedly what at least partially drives Darwall to conflate the two expressions of respect is the understanding that a sincere attitude (strictly construed) of respect is most often likely to exhibit itself, as it should, in respectful behavior.

We are rightly skeptical of a person who claims to respect another, yet acts contrary to her deliberate judgment or what we might construe to be a reasonable judgment under the circumstances. Though this skepticism is warranted, and often may be instructive about the person's true attitude, it does not follow that respect in its psychological form necessarily – either logically or practically -- entails that one always must (will) treat one with respect.

Darwall's dual-natured conception of recognition respect is therefore problematic in at least two regards. First, it misleadingly characterizes it as simply an "attitude"; though he tends to equivocate on its exact nature, it appears rather clear that he understands recognition respect to include a behavioral component. Second, and more important, its inclusion of one's conduct toward another as an essential element does not allow for the proper and common distinction between having respect for someone as a person, as such, and treating someone with respect. The nature of this distinction becomes even more apparent when the psychological notion of respect for others is properly understood to consist, most fundamentally, in an attitudinal respect for the inherent dignity of others.

Thus far I have argued that Darwall fails to distinguish two different ways we employ the term "respect" – to describe our psychological attitude toward someone (however broadly construed), and the manner in which we treat them. I now wish to mention a third usage of the term which Darwall employs. I have in mind his various descriptions of respect as the "respect to which all persons are entitled". He attaches no specific meaning to such phrases (or so I take it), but uses them to distinguish

recognition respect, which is the kind of respect “to which all are entitled,” from appraisal respect, to which all are not entitled (it is merited).

Another way to ascribe entitlement to something is to maintain that one has a right to that thing. We may therefore fairly construe Darwall as maintaining that all are entitled, or have a right, to recognition respect. This claim, is of course, pervasive in the literature, as well as popular culture, and is now almost considered a truism. Two points, however, are worth observing. First, whether such a right exists, and what the nature of respect is or what it consists in, are two completely separate questions. That respect might have such and such characteristics says nothing about whether there exists a universal right to respect. Second, Darwall’s conception of the two kinds of respect is devoted almost entirely to clarifying the nature of respect for persons. He does not address, let alone provide any argument for, the view that all are entitled of respect. At most, it is an unsupported inference.

It might be asserted that the notion of entitlement or right to respect is implicit in Darwall’s emphasis on deliberating about and acting consistent with one’s moral obligation toward others. It might be suggested, for example, that the notion of obligation implies a corresponding right or entitlement to respect. Setting aside the still controversial assumption that every duty must have an accompanying right, in speaking of moral obligations, Darwall does not appear to have in mind one overarching duty to respect others, but more specific moral obligations, or duties, which arise out of the fact that others are persons. Any existing rights would accordingly attach to these specific duties, not any obligation to respect others.

Perhaps Darwall envisions some such overarching duty to respect others, but if so, it is not at all clear that he does.

Finally, there is a fourth, quite important notion of respect about which Darwall says nothing, at least directly – the duty to respect others. That such a duty exists is not controversial. Indeed, it is such an engrained concept in discussions of respect that it seems rather remarkable that in constructing a conception of respect for others, Darwall would fail to include any notion of such duty, or at least explain how it relates to his conception of respect for persons. This latter omission is particularly striking given that it is not at all clear how such a duty to respect others does fit within his conception of respect. True, what is recognized in respecting others as persons are moral obligations, or duties; but as suggested above, these obligations are not connected in any way with a duty to respect others. Darwall's theory seems to be, in a certain sense, a descriptive one which, in failing to include any direct notion of a duty to respect, relies for its normative content on an independent notion of duty from a separate more general (Kantian) moral theory. Viewed in this fashion, Darwall seems to be presenting a basis for concluding, in a purely descriptive fashion, when it is that respect for others is demonstrated – when a person fulfills one's moral obligations. Nothing contained in this overall framework seems to include or rely on a notion of the duty to respect others.

The absence of any discussion concerning the duty to respect others is also acute given Darwall's concern to distinguish appraisal and recognition respect. The existence of a duty to treat others with recognition respect, but not to possess

appraisal respect, would seem to be an important factor distinguishing the two. And what about recognition respect itself -- does there exist a duty to be properly disposed to give appropriate weight to the personhood of another, or only to treat them in a morally appropriate manner?

In sum, Darwall's failure to include in his conception of respect for others a place for the duty to respect others, and explain how such a duty fits within his conception of respect, constitutes a deficiency which, like the failure adequately to distinguish between the attitude of respect, treating others with respect, and the right to respect, must be overcome by any satisfying theory of respect.

3.3.3 Correct Moral Judgments

I argued at length in the preceding subsection that one problem with Darwall's overall conception of persons is that fails adequately to distinguish between having respect for persons, understood as a psychological attitude, and treating others with respect. I offered several counterexamples to show that one can fail to treat one with respect, but still, under certain conditions, be said to have respect for the other person. In other words, failing to treat someone with respect does not necessarily entail lacking respect for them as a person. This objection thus amounts to a criticism of the inclusion of the sixth and final requirement in my list of criteria which I understand Darwall to require be present in order for it properly to be said that one person has recognition respect for another. Characterized in this fashion, the objection involves a charge of overinclusiveness – the behavioral component need not be satisfied in order for respect (or at least one notion of it) to obtain.

In the remainder of this section, I wish to set aside Darwall's behavioral component contained in his conception of moral recognition respect, and focus exclusively on the attitudinal or psychological component. In this regard, I shall be concerned only with what I have described as the third, fourth, and fifth requirements contained in my list of his criteria.

I begin by raising a rather obvious objection against the fifth requirement. That requirement, it will be remembered, involves Darwall's claim that in deliberating on the restrictions on the moral acceptability of her actions connected with T, S must reach the correct judgment. It is just false, however, that a person cannot be said to have respect for another simply because one fails correctly to judge what one's final moral obligation, all things considered, might be toward another in a given situation. Consider a counterexample similar to, but simpler than, my third one in the previous subsection. Suppose S is faced with a set of circumstances involving a complex moral decision, one in which competing moral obligations are at issue. She conscientiously deliberates about what her final moral obligation is, all things considered, and reaches a final judgment, but we properly conclude her judgment is wrong. It is unlikely that many would be inclined to characterize such a person as lacking in respect for the other person, just because she botched a difficult moral decision. Once again, we might take issue with her lack of moral maturity, but we would not necessarily conclude that she lacked respect for T as a person.

It is worth noting two possible reasons why we might tend to be so forgiving toward S in the above example, notwithstanding the fact that she made an erroneous

moral judgment. First, we tend to have difficulty faulting someone who makes a good faith effort in a particular endeavor like the one envisioned in this example. While we may admonish her for failing to have the degree of moral maturity appropriate for her age and circumstances, we would not view her incorrect moral judgment, accompanied as it is by a good faith effort, as constituting disrespect for T. Thus, to the extent recognition of one's moral duties toward others is an essential aspect of respect for persons, as such, we simply do not demand success, only a good faith effort.

Attempting to identify why we are inclined to think *this* leads to the second possible reason why we might be so forgiving toward S. We have a tendency to interpret the fact that S conscientiously deliberated about her duties toward T as possible evidence of her esteem or regard for the importance of T as a person. A substantial reason she might have been willing to engage in such complicated moral deliberation in the first place is her high regard for the equal worth and value of T. This need not, of course, be true. It is possible to envision a situation in which a person might undergo sustained moral deliberation out of a strong sense of moral duty, without regard to the importance or value of those likely to be impacted by the final judgment. But we tend to view such deliberation, I think rightly, as most often providing credible reason to ascribe an attitude of respect to the person engaged in such deliberation.

This second explanation, which seems to me quite plausible, raises a new and important question concerning the adequacy of the nature of Darwall's conception of

moral recognition respect. It seems to suggest that his conception of respect for persons as persons lacks an important element underlying our normal understanding of what it means to have an attitude of respect for other persons – an esteem or high regard for the value of persons. A high regard for the dignity and inherent value of other persons seems unquestionably to be a part of what we have in mind when we speak of having respect for others, yet Darwall says nothing about this type of esteem or regard. Or so it seems. It is to this important issue that I now turn.

3.3.4 Esteem And Human Dignity

Perhaps the most striking aspect of Darwall's conception of moral recognition respect, that is, his core idea of what is to have respect for persons as persons, is that it includes no sense of esteem or high regard for the inherent value or dignity of persons. Rather, it appears to entail solely what might best be described as a cognitive apprehension of certain facts concerning the existence of persons and one's moral responsibilities.

This glaring omission of any notion of esteem or regard in Darwall's recognition respect becomes particularly evident when comparing the manner in which Darwall conceives the natures of his two kinds of respect. Though he refers to both appraisal and recognition respect as "attitudes", the respective constituencies or make-ups of the two forms of respect are clearly quite different. Appraisal respect entails, as its moniker properly suggests, positive appraisal of a person. It is a high esteem or regard for someone. Moral recognition respect, on the other hand, involves no such attitude of esteem or regard.

Rather, it entails, Darwall maintains, only recognition of certain facts. This “recognition” is intended as a type of cognitive apprehension. Viewed in this fashion, it appears to involve the same cold, cognitive apprehension or recognition which we have of other facts, such as the truth of the law of non-contradiction, or other logical and mathematical facts; it includes no sense of esteem or high regard.

That Darwall does not understand recognition respect to include any axiological component is evident from statements like the following, in which Darwall treats moral recognition respect for persons as equivalent to recognition of one’s moral obligations:

Recognition respect for persons . . . is identical with recognition respect for the moral requirements that are placed on one by the existence of other persons.²²

Thus, on Darwall’s view, to say S has respect for T as a person, is at least to say that S recognizes that she has certain moral obligations in action connected with T. But recognition of one’s duty to another is clearly different than esteeming or having a high regard for that person. One can possess such recognition without having any view at all about the value of another person. At least one of the objects of recognition for Darwall, to be sure, is the fact that other persons exist. But this recognition, again, is just a cold, cognitive, mental apprehension of “the fact” that T is a person. The object of recognition here is not the importance of the person, but simply “the fact” that T is a person.

²² *Ibid.*, 45.

We are now in a position to further question the extent to which moral recognition respect is properly characterized as an “attitude” at all. In the preceding subsection, I argued that the inclusion of a behavioral component as part of the nature of moral recognition makes its characterization as an “attitude” misleading. It now further seems that one is hard pressed to construe the recognition of one’s moral obligations as an “attitude” at all, at least as that term is understood in its common usage. Viewed as a cognitive apprehension of certain facts, it seems more apt to characterize it as a type of mental state than an attitude. In any event, it clearly lacks the kind of axiological aspect of which appraisal respect is said to be comprised, and which seems to be more appropriately understood as an “attitude”.

Setting aside whether Darwall’s moral recognition respect is properly characterized as an attitude, I wish to stress that in my view, the objection that I have raised in this subsection – that Darwall’s conception of respect for persons as persons fails to include an explicit notion of esteem or high regard for persons as persons – is fatal to his conception of recognition respect, and his theory overall. By focusing exclusively on the recognition of one’s moral obligations to others, he neglects an essential element, and arguably the most fundamental aspect of respect for persons as persons – an appreciation for their dignity and inherent value. I shall suggest in the next chapter, and I shall consider Audi’s claim in the final chapter, that human dignity or a person’s inherent value quite arguably is the best candidate to serve as the cornerstone of a general theory of respect for persons. Even if not the starting place for such a theory, few would disagree that human dignity must play a leading role in

any viable theory of respect for persons. Darwall's conception of two kinds of respect fails to incorporate any notion of esteem or high regard for persons, as such, similar to that he associates with appraisal respect. His conception of respect for persons is, in this regard, fatally deficient.

It might be argued that Darwall intends us to understand his conception of moral recognition respect to include, as one aspect of the "fact" that other persons exist, that they possess inherent worth, and that it is this inherent value that gives rise, at least in part, to our moral obligations. This attempt to defend Darwall's treatment of his recognition respect must be rejected for three reasons. First, nowhere in the article is this assumption even hinted at by Darwall. Second, human dignity is an essential aspect of any theory of respect for persons as persons, even if not the most important; this status demands explicit treatment. The failure to contain such treatment renders his theory unsatisfactory.

Finally, and most important, construing Darwall's recognition respect to include an element of esteem and high regard for persons is not an option open to Darwall. For it is the very presence of esteem and regard in appraisal respect, and the absence of it in recognition respect, which constitutes his primary basis for distinguishing the two forms of respect. It is upon this distinction that his entire conception of respect for persons ultimately rests. To conceive of recognition respect as also involving a notion of esteem and regard would eliminate Darwall's basis for distinguishing the two, and thus undermine his overall theory.

In concluding this subsection, I wish to emphasize that my objections against Darwall's notion of moral recognition respect, understood as a type of "attitude," are essentially that it is underdetermined. I have suggested that it is fatally flawed because it fails to include any consideration of human dignity and worth. I do not mean to suggest that the recognition of one's moral obligations is irrelevant to the concept of respect for persons as persons. I mean only to argue, at this stage, that such recognition is not the only psychological state which is at issue in determining whether someone has respect for other persons, as such, and probably not the most fundamental.

3.3.5 The Relationship Between Personhood and Moral Obligation

I have argued that recognition of one's moral obligations towards others cannot be all that respect for persons, as such, consists in, while countenancing, at the same time, that such recognition does have an important role to play in a conception of respect. A good way to begin to determine the nature of this role with a bit more precision is by considering Darwall's understanding of the relationship between personhood and moral obligation contained in his conception of moral recognition respect. Darwall's broad statements concerning the ontological relationship between personhood and moral obligation, though not as clear as one would like, are, nevertheless effective in calling attention to the fact that considerations of the relationship between the existence of persons and moral obligation may indeed bear, in an important way, on the elements of a conception of respect for persons.

The third requirement necessary for one to possess moral recognition respect, it will be remembered, contains the following metaphysical or ontological claim: T's status as a person is responsible for "placing" moral restrictions on S's actions connected with T. The primary focus of this claim is that the fact of personhood somehow impacts the existence of moral restrictions on conduct, or moral obligations. It is an assertion having to do with the manner in which the two – personhood and moral obligations – are related. The existence of the two constituent members of this relationship, it is safe to assume, is taken as a given, and not at issue.

Darwall describes the relationship between the existence of persons and moral obligations in different ways. Sometimes, he refers to the existence of persons as "placing" moral restrictions on conduct. It is this characterization of the relationship which I have attempted to capture in my formulation of the third requirement (as above). Other times, he maintains that such moral restrictions "arise" out of personhood. The following claim includes examples of both characterizations:

To respect something is thus to regard it as requiring [placing] restrictions on the moral acceptability of actions connected with it. And crucially, it is to regard such a restriction as not incidental, but as arising because of the feature or fact itself.²³

In addition to illustrating Darwall's different characterizations of the relationship between personhood and moral obligation, these statements also manifest Darwall's view that the two are tied together in some strong, perhaps necessary fashion.

²³ *Ibid.*, 40.

But what Darwall actually means in stating that a person (T's) existence "places" moral restrictions on another's (S's) actions, or that moral restrictions governing S's behavior "arise from" T's existence, is unclear. This relationship could be conceived to take at least two forms. First, he could be interpreted as intending to argue that the facts of personhood are somehow constitutive of or are responsible for the existence of our moral obligations. That is, that T's personhood, or specific properties or features of T, are viewed as generating, in an ontologically prior fashion, the moral obligations S has towards T. In Darwall's idiolect, it is the very fact that T is a person that places certain moral restrictions on the manner in which S may treat him. Somewhat more concretely, on this view, he would be understood to mean that the fact T is adverse to being injured gives rise to or generates S's prima facie obligation not to injure T. This account may be said to view the persons-moral obligation relationship as running from "bottom-up". The fact of personhood or certain properties or features about persons generates moral obligations from the bottom (fact of personhood) up (moral obligations).

A second possible view of the relationship between the fact of personhood and moral obligation can be said to run in the opposite direction -- from the top, downward. On this view, moral obligations toward others are viewed as ontologically prior to, and independent of, the fact of personhood. Specific features or properties of persons serve as bases for identifying the prior existing, and independent moral obligations, both in the abstract, and as applied in certain specific circumstances in determining a person's overall duty, all things considered. We

would say, here, for example that S has a duty not to unreasonably coerce T. To require T to do action “A”, which T wishes not to do, would amount to a coercion of T. Therefore, S ought not coerce T to do A. As the intuitionist would have it, one’s moral obligations could be said to supervene on non-moral facts about persons. Such facts can give rise to more than one moral obligation, but each moral obligation can be traced back to particular facts which invoke that obligation. According to this view, then, the relationship between moral obligations or duties and the facts of personhood run from the latter to the former; duties are called into play based on the occurrence of certain facts, which cause them to be invoked.

Both of these quite different views of the relationship between the existence of persons and moral obligation appear to me to be plausible interpretations of Darwall’s characterization of the relationship. Though the spirit of the article seems to suggest that he may intend the bottom-up view, one is left without any clear indication as to which account he does actually intend to advance. This ambiguity is no small matter. His overall claim, it will be remembered, is that respect for persons requires that a person *recognize* that it is the fact of personhood which gives rise to certain moral obligations. Such a constraint surely requires that he provide the conscientious moral agent with some idea of exactly what the agent is required to recognize – is it that the facts of personhood give rise to specific moral responsibilities, or rather that, given the existence of certain facts in a specific situation, he is morally constrained to act in certain ways toward others? The psychological requirement demands that the ontological issue be presented in some clear manner. Such a discussion, in turn,

requires Darwall to make certain fundamental commitments bearing on the relationship between the facts of personhood and moral obligation. He cannot escape it. His failure to address satisfactorily the underlying ontological claim upon which the overall claim clearly rests renders his conception of moral recognition respect unusable as a practical matter.

I wish to conclude this subsection by offering a few general observations about each of the two possible accounts. The first view – which I have described as the bottom-up view, has great appeal and, in one fashion or another, has wide currency in the current literature in moral and political theory. Nonetheless, I offer three cautionary observations concerning it which I believe will be helpful in considering the role of such a view in a general theory of respect for persons. First, it likely seeks to generate or derive certain moral obligations from non-moral facts about persons. If this is the case, the persuasiveness of the view will turn, at least in part, on the strength of the rationale or basis offered to explain the generating or deriving relation. In making this observation, I do not mean to invoke the long-standing, and still controversial claim that one cannot derive an ought from an is. Rather, I wish only to suggest that if this view is advanced, we should expect, in fashioning a well-reasoned concept of respect for persons, something more than mere assertion that personhood, or certain facts about persons, generate moral duties.

Second, if this view is adopted, the fact that someone is a person, considered as a general fact, would seem insufficient itself, to generate the kinds of specific obligations which we commonly appeal to in our everyday life. If personhood is to

generate specific moral obligations in the manner envisioned in the bottom-up approach, I take it that it must be certain specific features about persons which actually are said to give rise to the specific obligations. If so, we should expect some explanation as to why certain features of personhood are chosen over others in ascertaining or identifying one's moral obligations toward others. Human dignity, autonomy, desire for freedom, the capacity for rational thought, for example, are all prime candidates to serve as features which might be said to give rise to moral obligations. Do all of these features serve in this fashion? What about other features of persons, such as the desire for pleasure and to avoid pain? What is it that delimits the pool of features giving rise to moral obligation? These are the kinds of questions which must be addressed by such an account.

Darwall almost always refers to the fact that persons exist, generally, as that which gives rise to moral obligation, and fails to provide any indication as to what, if any particular features of persons he thinks are relevant to generating moral obligations. His reluctance to further fill out his conception with these important details may, applying the principle of charity, be fairly attributed to his desire to avoid similar difficulties faced by earlier theorists in attempting to delineate exactly what features of a person are relevant in identifying moral obligations. In any event, what I am suggesting is that a theory of respect for persons which takes the bottom-up approach must, in order to be satisfactory, address the kinds of questions set forth in the paragraph immediately above. As was seen in the second chapter, Eberle's conception of respect, which employs Darwall's notion of recognition respect,

attempts to identify those features of a person germane to determining whether a person, in order to respect another, must refrain from supporting political measures which have the effect of coercing the conduct of others. In so doing, he is properly viewed as attempting to provide the kind of detail I have suggested is missing in Darwall's theory.

Third, I have suggested that Darwall's conception of respect for persons, which I have taken to advance at least a type of the bottom-up view, does not indicate, in any fashion, what the source of the overall duty or obligation to respect persons is, or even how such a duty fits into his overall conception. To raise these questions is not to contest the existence of such a duty. But in fashioning a general conception of respect for persons, it seems reasonable to expect that any such theory contain, as a baseline requirement, the ability to account for the relationship between the duty to respect others and the individual moral obligations said to arise out of the fact that other persons exist.

Turning to the top-down view, one advantage it may said to possess over the bottom-up approach is that it does not entail an argument from the facts of personhood to the normative notion of moral obligation. Such obligations are viewed as existing independently of the underlying facts about persons. Of course, the view that moral obligations are somehow prior raises a separate problem. The facts of personhood at least provide some naturalistic grounding for our moral obligations towards others. If they are not so grounded, how do we explain them?

The top-down view, even more so than the bottom-up view, appears to require some specification of aspects of personhood, rather than just the fact of personhood, in order to get off the ground. For a moral obligation to be applicable, presumably some specific fact must obtain in order for the obligation to come into play. The general fact of personhood seems incapable of distinguishing, in any practical way, the relevance of one obligation over another. Though all this is obviously true, the top-down approach avoids many of the associated questions which plague the bottom-up view. There is no need to decide which facts are more fundamental or to prioritize them, since on the top-down view, the facts of persons merely determine which prior moral duties are relevant. The only questions bear on whether they are present or not, not which is more fundamental to the status of personhood, and what kind of duty each might be said to generate.

Finally, the top-down view may perhaps more easily accommodate the notion of an overarching duty to respect others. Such a duty, as we shall see in the final chapter in looking at Audi's Kantian value-based intuitionism, might plausibly be construed as the overarching moral duty, which our other duties are conceived of as fulfilling. The top-down approach would therefore be retained – the duty at the “top” is the duty to respect others; proceeding downward are the more specific moral obligations, the fulfillment of which satisfy the duty to respect others.

I am inclined to think that the top-down view provides a better resource in attempting to formulate a conception of respect for persons as persons than does the bottom-up view. Nevertheless, as I shall suggest in the final chapter, I think it may

be possible to draw upon certain aspects of the bottom-up view in attempting to make such a conception more satisfying.

3.3.6. Agent Recognition and Respect

An important aspect of evaluation of Darwall's moral recognition respect is the extent to which, what he actually demands a person recognize in order for it to be said that the person possesses respect for another person, is reasonably recognizable. The object of recognition is the relationship between the fact that persons exist and one's moral obligations toward others.

In considering this issue, it will be helpful to distinguish between two possible senses in which Darwall might possibly understand the recognition requirement to apply to it. On the one hand, his view might be understood, in a *strong* sense, to require that S realize that some specific moral obligation facing S which bears on actions connected to T arises out of or is placed on S by some specific attribute or feature of T, say his autonomous nature. That is, S must be aware of the specific attribute of T's personhood which gives rise to a particular corresponding moral obligation. It could be intended, on the other hand, in a *weak* sense to mean only that S must have a general understanding that her moral obligations to T arise, in a general fashion, from the fact that T is a person, without always exactly knowing what it is about T that gives rise to a particular moral obligation.

Concerning this weaker sense, it certainly seems plausible to assume that our recognition that others exist will provide some justified basis for thinking that our actions connected with others will be morally restricted in certain ways. This may be

particularly so if we consider certain relevant aspects of persons, such as, most importantly, as I have suggested, their dignity, but also such features as autonomy and the like. But surely it is equally implausible to conclude that knowing others exist, and having an awareness of most of their axiological and other features, will clue us in to all the obligations we might have, or how to apply them in certain situations. This is particularly true in a pre-theoretical sense. Most people's beliefs about their moral obligations are not based on their views of personhood; they surely lack, in any event, the theoretical resources to construct such a moral understanding. Even a serious attempt to work out a concept of what a person is will be neither sufficient to provide the necessary tools for properly identifying and applying all one's moral obligations, nor the subject of unanimous agreement.

In any event, whether Darwall understands the relationship between the existence of persons and moral obligation in the strong or weak sense is unclear.

I wish to conclude this subsection with one cautionary observation. Darwall, in at least one place seems fairly clearly to view recognition respect for persons, understood as recognition of the fact that persons exist places moral obligations on us, as identical to recognition of the moral obligations themselves. For example, he writes: "Recognition respect for persons . . . is identical with recognition respect for the moral requirements that are placed on one by the existence of other persons."²⁴

Setting aside several potential puzzling aspects of the identity relationship expressed in this passage, it seems to suggest that a substantial focus of Darwall's

²⁴ *Ibid.*, 45.

conception of moral recognition respect is the recognition of one's various moral obligations. That is, one has moral recognition respect for others to the extent one recognizes one's moral obligations towards them. Viewed in this fashion, the actual source of the moral obligations need not be recognized, or at least such recognition is not as important as the recognition of the obligations themselves. This would seem to be inconsistent with his frequent statements that it is the fact that one is a person which gives rise to one's moral obligations that is the proper object of recognition. Perhaps one way to reconcile the apparent conflict is to construe recognition respect as concerned about and requiring both. One must both recognize one's moral obligations, and that they are placed on one by, or arise from (however understood) the existence of persons. This possible means of reconciliation is, however, conjecture on my part; I do not think it is possible to say much more about Darwall's view on this matter.

It is worth noting, however, that to the extent to which the defining characteristic of his conception of moral recognition respect is the recognition of one's moral obligations, his conception of respect for persons as persons seems overly sterile and inconsistent with common notions of what it means to have respect for others. For on such a view it potentially leaves out the means by which moral obligation may be seen as connected to more fundamental aspects of respect, such as perceived value and importance of other persons. As I have suggested above, merely recognizing one's moral obligations to other persons is not sufficient to regard one as having respect for others, nor is it essential.

3.4 Conclusion

Darwall's conception of respect successfully calls attention to several important aspects or features which any formulation of a conception of respect for persons must take into account. I shall briefly mention three of them. First, it is imperative to distinguish between at least three forms of respect – respect for persons based on merit, respect for persons as persons, and what I have referred to as “prudential” respect for persons. Second, consideration of one's moral obligations toward others, and acting in a manner consistent with one's moral obligations toward others, are important aspects of what it means, respectively, to have respect for someone, or treat someone with respect. Third, the relationship between the existence of persons and one's moral obligations toward others is also important, and its characterization may have an important bearing on how to construe the nature of treating others out of respect.

These helpful general observations notwithstanding, I have argued that Darwall's conception contains a number of fundamental problems. I have already suggested some ways in which the bases of these problems may help inform the formulation of a more satisfying conception of respect for persons. I now wish briefly to state in a little more direct and precise fashion six principles and/or observations which can be gleaned from my critical analysis of Darwall's two kinds of respect, and which I think will be helpful to carry over into the ensuing chapters in formulating a framework for developing a conception of respect for persons.

First, I have argued that it is necessary to distinguish four contexts in which the notion of respect is commonly employed and understood to arise: (1) as a psychological attitude; (2) the manner in which a person is treated; (3) as a duty to respect others; and (4) as entitlement. Properly distinguishing between these different notions of respect makes clear that it is possible to possess an attitude of respect for someone, yet still reach the wrong conclusion concerning how actually to treat someone with respect, and/or actually fail to treat the person out of respect.

Second, fundamental to any conception of respect for persons is esteem or high regard for the dignity and inherent value of all persons. This esteem or high regard is properly characterized as a mental or psychological state or attitude. Though consideration of one's moral obligations toward others, or the relationship between one's obligations and the existence of other persons, may play an important role in an overall conception of respect, such consideration need not be present in order for the attitude of respect to be present.

Third, I have indicated above that Darwall's article helpfully draws attention to the fact that moral obligation has an important role to play in a conception of respect. Although I have argued that Darwall's conception of respect for persons does not contain an adequate notion of the attitude of respect, and fails properly to countenance the centrality of esteem for the dignity of persons, moral obligation must play an important role in any conception of respect – particularly as it applies to treating others out of respect. If moral obligation is to play a role in developing a conception of respect, however, it would seem that it will be necessary, in developing

such a conception, to resort to a broader ethical theory. If, for example, one concludes that treating another person with respect entails (at least) abiding by one's moral obligations toward another person, such a conclusion would in turn entail a prior commitment to some ethical theory and underlying normative moral obligations.

Hints of such a commitment are present in Darwall's article – we may presume, given the heavy Kantian framework within which his arguments are advanced, that Darwall would be likely to employ the categorical imperative, or some version of it, in identifying the relevant moral norms. Eberle, even more so than Darwall, makes an explicit commitment to certain metaethical principles in deriving his (more detailed) conception of respect. Eberle's appeal is decidedly to a form of Rossian intuitionism consisting of well-known prima facie duties. Both theories arguably represent a form of what I have referred to as a "top-down" approach – abiding by the moral obligations results in treating others out of respect. It is possible, however, to employ the "bottom-up" approach, and maintain, hopefully in some sustained way and not by mere assertion, that the values associated with personhood give rise to or entail normative reasons for acting in a manner consistent with respect for the aspects of personhood valued.²⁵ Regardless of what ethical theory one ascribes to, or which direction such a theory moves, it would seem clear that any conception of respect must appeal to at least some basic ethical theory.²⁶

²⁵ As will be seen in some detail in the fifth chapter, Robert Audi, in advancing his value-based Kantian intuitionism in the *Good In The Right* (N.J.: Princeton University Press, 2004), employs, in part, this bottom-up approach – although he does so primarily by employing his experiential theory of intrinsic value.

²⁶ I argue in the next chapter that appeal to a broader ethical theory or principles is necessary, not because as Darwall and Eberle argue, respect consists in compliance with one's moral obligations, but

Fourth, my discussion concerning the ambiguity in Darwall's account surrounding the precise ontological relationship between the fact of personhood and moral obligation suggests that, in formulating a conception of respect, it may be helpful to invoke a theory of value as a means of attempting to make a connection between personhood and moral obligation. Rather than argue for the strong thesis alluded to above that moral obligation may somehow be derived directly from the value of human persons, it may be possible to argue for the weaker thesis that the dignity or other values associated with personhood somehow ontologically ground, and should thus be viewed as giving rise to, moral obligations, compliance with which is required in treating persons out of respect.

Fifth, Darwall is ambiguous concerning agent recognition of the nexus between moral obligation and a specific attribute of personhood said to give rise to the obligation. I have suggested, here, and will develop more fully, the view that recognition of one's moral obligation (as opposed to acting in conformity with a moral obligation) is not a necessary condition for conducting an act out of respect. To this end, the question left open by Darwall concerning the level of awareness one must allegedly have of the connection between one's moral obligation and the precise feature of personhood giving rise to the obligation, is not directly applicable to my project. Nevertheless, I will also argue that possessing an attitude of respect *is* a necessary element of an act performed out of respect. A question similar to the one raised about the understanding of the nexus between obligation and feature of

because it is necessary to provide some means of identification of acts done out of respect (and as a means of justifying a duty to respect others).

personhood valued must accordingly be asked about the level of understanding necessary of the relationship between the attitude of respect and the feature of personhood. The question thus becomes, “To what level of specificity must a person be aware of certain features of a person as being valuable in order for the first person to be said to possess an attitude of respect for the other person?”

Finally, a conception of respect should be equipped to address at least the relationship between the overall duty that we have to respect others, and more specific individual moral obligations bearing on treating others out of respect.

Having employed Darwall’s conception of respect for persons as a foil for identifying these as well as other important observations and principles applicable to any theory or respect for persons, we are now in a better position to begin thinking about what a conceptual framework useful for the development of a concept of respect for persons might need to look like.

4. Toward A Conception of Respect For Persons

4.0 Introduction

My purpose in this chapter is to sketch out a framework that can be used for the purpose of developing a satisfactory concept of respect for persons in the public square. One of my principal aims will be to provide a framework that avoids what I take to be some of the primary pitfalls of the view advanced by Darwall, and adopted by Eberle. I shall accordingly have occasion to draw upon my analysis in the previous chapter, and further comment on and interact with the two accounts, throughout the chapter.

I begin, in the following section (4.1), by discussing in more detail what I have up until this point have essentially only asserted: that the notion of respect is a deceptively complex and variegated concept. Based on this complexity, I once again advocate the need for a conception of persons suitable for use in the public square. In section 4.2 I make several observations concerning the nature and scope of the framework I hope to articulate and develop. The remaining organizational structure of the chapter tracks what I have described as the four separate notions of respect: (1) as an attitude, or mental or psychological state (section 4.3); (2) as being instantiated in conduct (section 4.4); (3) as a duty (section 4.5); and (4) as a right or entitlement (section 4.6). Because I take the attitude of respect to be foundational to the other three notions of respect, the framework I propose adopts the attitude of respect as its central skeletal structure.

4.1 Respect For Others In The Public Square

Talk of having respect for another person or thing is, in these times, commonplace and quite familiar to almost all people. It is, as it is said, “in the air,” particularly in liberal democracies such as the United States. The notion of respect, or what it means to respect an object, moreover, seems relatively straight-forward to most people, and is not a subject of considerable controversy. We have become fairly adept at employing the concept in specific situations in such a way that we reasonably believe others will understand what we mean, and likewise are confident that we understand what others intend when they speak of respect in connection with a particular object. These observations are true both with respect to descriptive claims about whether someone possesses respect for another or treats someone with respect, as well as such normative notions as having a duty to respect others, or being entitled to respect from others.

It would be a mistake to think that these observations apply only to popular culture. As far as I am aware, few theorists, other than Chris Eberle in *Religious Conviction In Liberal Politics*,¹ have attempted to anchor an account of restraint in the public square based on respect to any developed account of respect for persons. It is certainly plausible to maintain that the near universal acceptance of the normative claims concerning the duty and entitlement to respect, coupled with the sense of familiarity with and beliefs about the simplicity of the descriptive aspects of the concept of respect, are substantially responsible for the failure of theorists who rely

¹ Christopher Eberle, *Religious Conviction In Liberal Politics* (New York: Cambridge, 2002).

on the norm of respect as a basis for constraining religious dialogue in the public square to provide a satisfactory conception of what respect really is and requires.

Despite the ease and comfortableness with which the notion of respect currently is employed – both in popular culture and the literature -- it is, upon closer inspection, a quite complex concept. Given the complex nature of the notion of respect, it is reasonable to demand that appeals to restraint in the public square based on respect be anchored to some basic conception of respect for persons as persons.

4.1.1 Respect As A Complex Concept

The complexity of the notion of respect may be attributed to a number of factors. I shall briefly mention four of them here. First, there are a number of kinds of objects, and numerous objects and features of such objects, for whom or for which it is commonly said we have or should exemplify respect. Persons, or a particular feature of a person, of course, constitute important objects of respect. But persons (or their features) are not the *only* objects of respect. Rather, the kinds of objects about which we talk of having respect for range over a broad spectrum of living and non-living things. At one end of this spectrum, in addition to persons, other sentient creatures, or animals, particularly those we perceive to possess high levels of mental capacity, are said by many to be appropriate objects of respect. On the other end of the spectrum, respect is said to be due certain inanimate objects, such as the earth. We also talk of having respect for such social institutions as the law, or for certain energies or forces such as those found in nature. In short, there are many different

kinds of objects, and myriad objects, about which we talk of as being appropriate objects (or possible objects) of respect.

A second factor responsible for the complex nature of the concept of respect is that many objects of respect may be respected in various ways or forms – and quite often in multiple ways at a given instant in time. For example, we might say of the boxer in the ring that he possesses any one, all, or any combination of the following five different kinds or forms of respect for his opponent. He might: (1) respect him “as a person”; (2) respect him as boxer; (3) respect him as a skilled champion boxer; (4) respect him as being courageous; and/or (5) “respect” the danger of his opponent’s swift right upper-cut. Each of these five descriptions of respect connote different, albeit in certain instances closely related, ways we talk about having respect for another person. Similarly, we might talk of having respect for a particular body of law, as a source of authority, without regard to its justness or other beneficial features. We might, on the other hand, express respect for that law because we think that overall, it is just, etc.

Given the existence of different ways or forms in which it is said an object may be respected, it also is possible to respect and disrespect an object (in different ways) at the same time. Many who do not respect former President Bill Clinton from a moral point of view, do respect him as a master politician. We even talk of the responsibility of having respect for all persons, even those persons for whom we do not, understood in another similar but different way, “respect as a person”. Thus, one might say she respects Karl Rove, one of former President Bush’s chief aides, as a

person, as such – that is as possessing equal intrinsic value and dignity, etc. – but at the same time quite consistently claim that she does not respect him as a person because she believes he has continually compromised the truth for political gain.

Complicating the matter still further, there are some features of some objects about which we talk of having respect for which, somewhat ironically, we do not actually value, but disvalue. The boxer respects, but does not value, his opponent's right upper-cut; the rafter respects, but fears the Class V rapids on the Colorado River.

Third, the mental attitudes associated with the various ways or forms of expressing respect, though described in a unitary fashion as “respect,” arguable differ in two important respects. First, it is not clear that the attitude, or mental state, itself, is exactly the same in each context in which the attitude of respect is ascribed. That is, the constitutive make-up or phenomenological “feel” of the psychological states possessed when the respective forms of respect are experienced seem to differ, at least in certain instances. Surely, for example, the attitudes associated with having respect for the character of Mother Teresa, on the one hand, and respect for Adolph Hitler, as a person (as such), differ markedly.

A second way that the attitude of respect might be thought to differ among the various forms of respect has to do with the extent to which such forms entail the acknowledgement or disposition to act in a particular way, or recognition of the duty to act in a particular way. I am not here talking about respectful conduct, or any actual duty to respect someone (whether by possessing an attitude of respect or

treating another with respect). Rather, the issue is whether, and if so, to what extent, the various forms of respect include an additional mental or psychological component bearing on what conduct is appropriate (or morally required) given the relevant attitude of respect. For example, does the attitude of respect for someone's possessing the character trait of courage also entail that one acknowledge or be disposed to act in a particular way, or that one recognize some moral obligation to act in a particular way? Is such acknowledgement, disposition, or recognition an essential element of the relevant forms of respect, or, perhaps, more weakly, simply necessary conditions which must be satisfied if we are appropriately to ascribe the attitude of respect to someone?

A fourth complicating factor associated with the notion of respect is that we talk about it in four different, but closely related ways or contexts: (1) as an attitude, or mental or psychological state; (2) as being instantiated in conduct; (3) as a duty; and (4) as a right or entitlement. At least two basic problems arise as a result of this variegated notion of respect.

The first has to do with interpretation. Many times it is not clear which of these different forms or notions of respect a speaker or writer has in mind. Darwall's "Two Kinds of Respect," as I attempted to show, provides a good example of such an interpretive difficulty.

There is, however, a much greater difficulty associated with these four notions or uses of respect than merely the problem of interpretation. More substantively, it has to do with the very conception of each of the four aspects, and the complex

relationship that exists between them. I argued in the previous chapter that any complete theory of respect must be able to both distinguish between, and provide an adequate conceptual account of, each of the four aspects or notions of respect. Darwall's failure adequately to distinguish between possessing respect for someone and treating another respectfully, and to provide an adequate conception of either, demonstrates how failing to do these things can lead to substantial theoretical difficulties and an unacceptable overall conception of respect.

These two problems are, of course, closely related. Often, a speaker or writer is imprecise in talking about having respect for an object *because* he has no clear conception of one or more of the various aspects of respect, or how they interact together.

This brief survey of some of the important aspects of the notion of respect is sufficient to illustrate a number of the complexities which underlie what appears at first blush, at least in a pre-theoretical sense, to be a fairly basic concept. The numerous kinds of objects and the many objects and features of objects for which we have respect; the various ways or forms we may have respect (or disrespect) for such objects and features of objects; the complicated nature of the attitude of respect; and the four contexts in which we often talk of the concept of respect, demonstrate that the notion of respect is actually multi-faceted, and elusively complex.

4.1.2 The Need For a Conception of Respect For Persons

Given the complex nature of the concept of respect, and the multiple contexts and ways it is employed, before it is possible to make a reasoned determination

concerning what kind of constraints the norm of respect should place on a citizen in the public square, one must first possess at least a basic theory or conception of respect. Without possessing some coherent understanding of what the nature of each of basic notions is, under what conditions they are present, and the relationships between them, it is difficult to see how one can be in any kind of position to say much at all about the role of respect in the public square.

A number of writers have advanced accounts of what constitutes respect for persons. Such accounts, however, have tended to focus, quite narrowly, on various aspects of persons about which it is said respect from others is warranted. A few theorists have attempted to provide general accounts of respect, but such accounts are largely unsatisfactory. For example, Darwall, in “Two Kinds of Respect,”² discussed at length in the prior chapter, attempts to provide a general theory of respect by distinguishing “recognition respect” from “appraisal respect”. I have suggested that while Darwall provides several valuable insights into the broader notion of respect, his account fails in a number of regards to provide an adequate theory of respect.

Carl Cranor likewise attempted to provide a general account of respect in “Toward a Theory of Respect for Persons,” published in *American Philosophical Quarterly*³ a few years before Darwall’s “Two Kinds of Respect”. Cranor’s account is deficient, however, as Darwall properly points out in his article, because it does not properly countenance respect for persons, as such. Instead, Cranor appears to

² Stephen L. Darwall, “Two Kinds of Respect,” *Ethics* 88, No. 1 (October, 1977): 36-49.

³ Carl Cranor, “Toward A Theory of Respect For Persons,” *American Philosophical Quarterly* 12, no. 4 (October 1975): 309-319.

focus almost exclusively upon what he refers to as “abilities” and “characteristics” (Darwall’s objects of his “appraisal” respect) as the appropriate objects of respect.

Darwall’s and Cranor’s accounts, are, therefore, albeit for separate reasons, unsatisfactory as general conceptions of respect for persons. It is my intent to attempt to provide at least a strategy for formulating a more acceptable general account of respect for persons which can be utilized as a basis of determining the proper role of respect in anchoring principles of restraint in the public square.

4.2 A Strategy For Developing A Conception of Respect For Persons

In this section I begin by discussing three factors concerning the scope of the strategy for developing a conception of respect that I will attempt to advance in this chapter and the next. I then briefly address two general aspects of the strategy.

4.2.1 Scope of The Strategy

It is my intent to articulate a *strategy* for developing a conception of respect that will be useful in debates about principles of restraint in the public square, not such a conception itself. That is, I shall be attempting to create a framework or template which can be used, hereafter, for fleshing out a full blown conception of respect. While I will have occasion to discuss a good deal of what I believe such a conception may or will look like, my primary objective is to get a framework in place which will be suitable for development of a satisfactory account of respect. For reasons which hopefully will become obvious below, establishing a full-blown conception of respect would require much more extensive analysis, in a number of

quite thorny and controversial areas of philosophical inquiry, than could quite possibly be dealt with in this dissertation.

A second way in which the strategy I hope to advance is limited is that it will not focus on the development of what I view as a comprehensive conception of respect – that is, one which deals with non-human “respectors” as well as non-human objects of respect. A truly comprehensive conception of respect would encompass not only humans as respectors, but other creatures capable of exhibiting certain forms of respect; it would also countenance all objects of respect, including persons, animals, and inanimate objects. The strategy I will be crafting, however, will be limited in that it will be appropriate for use in the development of a conception of respect in which only humans are the agents exhibiting (or which it is alleged should exhibit) respect, and in which only humans are objects of respect.⁴

The reason for this limitation is two fold. First, a limited conception of respect in the form just described is all that is necessary. Such a theory is all that is needed to identify what, if any, constraints a duty to respect may place on citizens wishing to support coercive laws based on religious reasons alone. For in the public square, only persons are potential objects of respect, and it is only persons who are said to owe a duty to other persons who are to be respected.

Second, attempting to formulate a strategy for developing a comprehensive conception of respect would likely prove to be an unmanageable task for this

⁴ In formulating a conception of respect, I shall have occasion, either directly or indirectly, to address a number of the complexities or puzzles discussed above, many of which also obtain where the objects of respect are not persons. I shall do so (with limited exceptions), however, in the context of what it means to have respect for persons.

dissertation. Ideally, it would be advantageous to formulate a uniform theory of respect capable of countenancing all uses of the term “respect,” without regard to form, context, or object. Doing so, however, would require substantially more analysis, requiring more space than appropriate given the space limitations of this dissertation. Additionally, although my strategy is not directed at the formulation of a complete conception of respect, it nevertheless may serve as a suitable analytic framework capable of being appropriately extended, and, where need be, modified, to take into account claims of respect for objects other than persons. This task is properly reserved for another time, and I shall restrict my focus to the development of a strategy useful in creating a theory of respect for persons (by persons).

Finally, the strategy I will develop will attempt to make room for not only respect for persons “as persons,” or “as such,” but also for respect for those aspects of persons which Darwall argues “appraisal respect” is due (roughly character traits and abilities, to use Cranor’s terminology). As such, my developmental strategy will be broader than it need be, since, as it will be seen, it is respect for persons as persons, or as such, that is the kind of respect at issue in the public square. Developing the narrower, more crucial conception of respect for persons, as such, within the broader framework of respect for persons, has at least this primary benefit: there is much to be learned about the more narrow conception from considering it along side its other respect-for-person counterparts. Further, the various forms of respect possess a sufficient number of basic similarities such that a broader, inclusive treatment seems appropriate.

In short, then, my intent (in these next two chapters) is not to develop a comprehensive theory of respect. Rather, my more modest goal is to advance a possible strategy or framework suitable for the development of a conception of respect broad enough to countenance each of the most prominent forms of respect for persons – including, most importantly, respect for persons as persons.⁵

4.2.2 Organizational Structure

I suggested in section 4.1 that one important complicating factor associated with the notion of respect is that we talk about it and apply it in four different, but closely related ways or contexts: (1) as an attitude, or mental or psychological state; (2) as being instantiated in conduct; (3) as a duty; and (4) as a right or entitlement. I argued at some length in the previous chapter that Darwall's failure properly to consider these distinctions is largely responsible for the inadequacy of his theory (and by application Eberle's account) of respect.

It seems to me that any general account of respect must, in some fashion, adequately take these distinctions into account. The strategy that I shall advance does so. I shall use these four notions or forms of respect as a skeletal structure for the development of a conception of respect.

I consider the first two forms separately in the next two sections, and then take up the final two forms in section 4.5. My primary focus in this chapter shall be upon

⁵ My formulation of a framework for the development of a conception of respect may be properly viewed as being limited in three fashions. The primary limitation is that it does not take into account claims of respect in which the objects of respect are not persons. Second, some might claim that possession of the attitude of respect is not limited to persons, and that some animals are capable of possessing one or more of the (attitudinal) forms of respect. A theory of respect, to be complete, should at least address, even if it rejects, such claims. Third, I focus primarily on the attitude, treatment, and duty of respect, and have little to say about the right or entitlement to respect.

the attitude of respect. My comments on respect as instantiated in conduct and the duty to respect shall be brief in this chapter, in anticipation of fuller treatment in chapter five. I shall have very little to say about the right to respect.

4.3 The Attitude of Respect

In attempting to sketch a strategy for developing a conception of respect for persons, I begin with several admittedly quite rough observations concerning the ontological status of specific instantiations of the attitude of respect. Next, I articulate four elements which can be found in the instantiation of an attitude of respect. I then provide a definition of the attitude of respect for persons based on the complex relationship which exists between each of these elements.

In conducting these latter two tasks, I employ the basic analytical framework adopted by Carl Cranor in his article “A Theory of Respect For Persons”.⁶ I believe that identifying the elements present in an attitude of respect, and then attempting to wrestle with the complex manner in which they are interrelated, provides a fruitful and illuminating means by which to gain a better understanding of the attitude of respect for other persons. Although I rely heavily on Cranor’s framework of analysis, I depart from his account in a number of important ways – most importantly in affording proper place to features of persons “as persons” as appropriate objects of respect.

⁶ Carl Cranor, “Toward A Theory of Respect For Persons,” *American Philosophical Quarterly* 12, no. 4 (October 1975): 309-319.

4.3.1 Ontological Status

The attitude of respect is, most fundamentally, a certain psychological or mental state possessed, and thus experienced by a person about whom it is said possesses an attitude of respect (“Respector”). I shall address three aspects of the attitude of respect: its nature and composition, its variability, and the exception of “disvalue”.

4.3.1.1 The Nature of The Attitude of Respect

In considering the nature and composition of the attitude of respect, it is helpful to first differentiate between the attitude itself, and the mental state which is prior to the attitude of respect. Presumably possession of the attitude of respect must be preceded by some purely cognitive comprehension concerning the existence of a certain state of affairs. For example, in order for someone to possess the attitude of respect for a basketball player’s ability to excel from the three-point line, the Respector must believe, cognitively speaking, that the person which is the object of respect (“Respectee”) possesses the abilities which are the object of respect. The player may not of course, possess such an ability, and in that case the attitude of respect would be misplaced. But the attitude, even if not justified, must still be preceded by a belief that the abilities do actually exist. Similarly, to possess the attitude of respect for persons as persons, one must, for example, have some prior recognition of some state of affairs about another person. This recognition might be quite thin, for example that the other person exists. But again some prior belief must precede the attitude of respect. This prior mental belief is both, I believe, temporally

and ontologically prior. Further, although it is a necessary precedent to a person's possessing an attitude of respect, I do not believe it is constitutive of it.

Just exactly what the constitutive make-up of the attitude of respect is seems difficult to identify. Darwall, as I suggested in the prior chapter, seems to have a quite sterile view of the nature of the attitude of respect. His recognition respect appears (insofar as it applies to the attitude of respect) to be nothing more than the mental recognition of a moral duty concerning how to treat others. Even his appraisal respect, which he characterizes as "esteem" or a high regard, seems to amount to nothing more than the mental recognition of a certain state of affairs – that something has positive value. This is apparent by the relationship he perceives to pertain between having a positive appraisal or esteem for a person or property of a person, and feelings of respect.

Just as we understand the feeling of fear to be that which is explained by one's belief in the presence of danger, so the feeling of respect for a person is the one which is occasioned by the positive appraisal which constitutes appraisal respect for that person.⁷

If I understand this analogy correctly, we are to assume that, just as the feeling of fear is triggered by a mental belief that one is in danger (based on the circumstances, say that one in a raft is about to go over a steep waterfall), so too the feeling of respect is triggered by the mental recognition that something has value. Darwall appears to want to draw a sharp distinction between a belief concerning perceived value and a feeling about it.

⁷ Darwall, 39.

Surely Darwall is right that the attitude of respect, for both the abilities and character traits of others, and also for those properties of persons which are not based on some element of merit, is constituted at its core by a mental ascension to the value of the properties which are the object of the attitude. There is a preliminary comprehension (both temporally and ontologically) of the object of respect, followed by the determination that the object has value. But it seems that there is something more to the attitude of respect than just this. Having “esteem” or a “high regard” for an ability, character trait, or inherent property of a person seems to suggest that something more than just the recognition that value is present. I believe this is particularly true with respect to the attitude of respect as it applies to contemplation of the dignity of another human being.

I do not mean to suggest that the “something else” not accounted for in Darwall’s theory is akin or comparable to, or of the magnitude of something like the feeling of fear that strikes one when becomes aware that one is in danger, or the feeling of having fallen in love. It is much more subtle than that, though I am hard pressed to come up with any further explanation of it. One thing, however, seems clear – if the attitude of respect constitutes nothing more than the recognition of value in something, or the “recognition” that we have a moral duty toward another person -- it is difficult to understand why we refer to respect as an attitude at all. Following Darwall (as to his view of recognition respect), we would be better off to describe all forms of respect simply as recognition of value/moral duty.

4.3.1.2 The Variability of The Nature of The Attitude of Respect

Not only does it seem that there is something more to the nature of the attitude of respect than mere mental recognition of value/moral duty, it also appears that the phenomenological feel of the attitude differs to some degree depending on the context in which the attitude arises or is present. Perhaps the biggest difference exists between what I shall describe below as the three primary objects of respect for persons – abilities, character traits, and those properties for which we are said to possess respect for persons as persons (or as such). The respect one possesses for someone who has developed a talent to play championship chess seems to differ markedly for the respect one experiences for someone one believes to possess the character trait of courage, or honesty. And the attitude of respect regarding the dignity of another person differs still from these two former forms of respect. Some of these differences are, I believe, attributable to the weightiness of the objects of respect, but I believe there are other differences in the textures of the respective attitudes which I am unable here properly to identify.

4.3.1.3 Dual Valences Of the Attitude of Respect

The attitude of respect is, as Cranor points out, a value term. It is not the case, however, that the attitude of respect always entails a positive valuation. This is at least true with respect to a broader conception of respect for persons – one which attempts to countenance differing ways in which we say we can have respect for a person. As alluded to on a number of occasions above, we commonly talk of having respect for something which, if we do not take proper action, will give rise to

consequences which we actually *disvalue*. A person can be said to respect a fellow boxer's quick right hook in the sense that if he fails to take evasive action, the likely result will be something the person does not value but disvalues – some type of physical harm.

As discussed more fully below, this somewhat ironic application of the notion of the attitude of respect seems to arise only with respect to one of the three primary object forms – abilities of other persons. It is clearly an exception to the general manner in which we talk of having respect for others, which typically countenances the valuing of the object of respect. It is, in any event, largely irrelevant to the attitude of respect for persons as it applies to respect in the public square. I include reference to it because it seems to be part of the general manner in which we talk of having respect for persons, and thus is an appropriate element in any general conception of respect for persons.

4.3.2 Four Elements Present In The Attitude of Respect

In explicating the attitude of respect, it is appropriate to begin by identifying four elements which can be found in any instantiation of the attitude of respect.

These four elements are as follows:

1. A subject who respects (the Respector).
2. An object of respect (the Respectee).
3. Some property or feature of the object (Respectee) which is the subject of respect (what Carl Cranor refers to as the “basis of respect”).

4. An “evaluative point of view from which the object is respected”.⁸

I shall discuss each of these elements in turn.

4.3.2.1 Subjects of Respect

The attitude of respect entails, first of all, a subject who possesses an attitude of respect. Persons are not, of course, the only beings which we consider capable of possessing an attitude of respect. The dog who’s master constantly kicks it for no reason may be said to have a healthy respect for his master’s boot. Other sentient creatures are said to display similar attitudes of respect for a variety of objects, such as other creatures, or of features of nature.⁹ Many will object to this use of the notion of respect, and perhaps rightfully so. But its usage in this fashion is quite common, and any broad theory of respect must take it into account. My concern in this chapter, however, is with the fashioning of a general theory of respect for persons, and in particular a theory which will be useful for determining the application of respect in the public square. The subjects of which I will be concerned may, and, therefore, will be limited to persons.

4.3.2.2 Objects of Respect

The second element which can be found in any instantiation of respect is the property or feature of a person (Respectee) which is the object or “basis” of respect. There are three basic forms of objects of respect: (1) character traits; (2) abilities; and

⁸ As indicated above, I employ the basic four-point framework of analysis used by Cranor in “Towards A Theory of Respect”.

⁹ I omit discussion here of the possibility that some animals, in addition to having a proper “respect” for things that may harm them, may possess other forms of respect for their “masters”. Such respect, to the extent that it might exist, might arise as a result of the master’s treatment of the creature, or, more likely, be simply based on some primitive notion of authority or rule.

(3) those properties of which we say persons are due respect “as persons”.

Character Traits

We often talk of having respect for persons because of some character trait they possess. We respect someone who we believe is courageous -- for example someone who, in the face of abundant opposition is willing to state her position on a particular issue. There are, of course, numerous character traits which can serve as objects of respect.

There are seven features or attributes of this basic form of object of respect worth noting. First, there are many dispositions which are not properly characterized as character traits and thus are not properly thought of as being objects of respect. As Darwall notes, being resolute and being honest are character traits which merit respect, but being prone to sneeze is not. But what about more difficult cases such as being irascible, good natured, prudent, discerning, or sensitive? As these examples make clear, it requires some discernment to determine which dispositions constitute elements of character.

Although beyond the scope of inquiry here, Darwall suggests a promising means of attempting to make this determination which is worth mentioning. Darwall observes that those features which form the basis of respect of character seem to be those which belong to persons as moral agents – that is, dispositions to act for particular reasons. This basis of identification properly eliminates those dispositions which may constitute human excellences, but which are not properly the objects of respect.

The second feature worth noting is also a point raised by Darwall, and follows closely on the previous observation. Darwall maintains, rightly so, I believe, that not all character traits which give rise to respect are particular dispositions to act. The notion of character should be viewed more broadly to include “higher level” dispositions to act on what one believes to be the best reasons, whatever those reasons must be. Thus, as Darwall concludes, “the conception of character which is relevant to . . . respect includes both rather more specific dispositions to act for certain reasons and the higher-level disposition to do that which one takes to be supported by the best reasons.”¹⁰

Third, character traits are objects of respect only if they constitute relatively permanent dispositions. As Cranor observes, we do not typically respect persons based on one act of which we approve. We require evidence acquired over a period of time that the person is worthy of respect based on the relevant characteristic. Thus, if we respect a person for being courageous, we do so based on observation of a number of instances in which the person evidences this quality. Although this is only an evidentiary requirement, it demonstrates that what we respect about a person is not a single performance or even a number of them, but the particular disposition that the person has. This is not to say, of course, that we might not conclude that a person is courageous based on a single, unusual act exhibiting courage, such as saving a drowning person under circumstances presenting extreme danger to oneself. But we

¹⁰ Darwall, 43-44.

respect such a person as being courageous because the weightiness of this single act is sufficient to convince us that the person must possess the character trait of courage.

Fourth, typically the character trait must be viewed as being under the control of the person thought to possess it. Although the notion of control applies more directly to respect based on ability (as discussed below), it nevertheless seems applicable here as well. We respect a person for being honest based substantially on the understanding that the trait of honesty is the result of the person's effort to develop, maintain, and control it. Since we are giving credit to a person for being honest, it must be subject to his control. We would not, for example, have contempt for a person for possessing a negative disposition if such disposition were not within the person's control. So too, we would not respect a person for being honest if we perceived that the person's disposition to be honest was not arrived at through the normal give-and-take of life which typically molds one's character for honesty.

Fifth, respect for certain character traits can be sufficiently weighty that sometimes we view the respect for the relevant character trait as being not only for the character trait itself, but also of the Respectee. That is, we refer to having respect for the person.

I believe that both Darwall and Cranor capture this fact, albeit in different ways. Darwall refers to respect for character traits as "respect for persons judged as persons". In doing so, he intentionally distinguishes such forms of respect from respect of persons "assessed in more particular pursuits" (exercising certain abilities). Cranor is even clearer on this. He explicitly recognizes that there are certain

character-traits associated with the understanding of a “person” that “are an important enough part of a human being’s character or personality such that if one respects or condemns them, one is respecting or condemning the human being himself/herself.” Thus, for example, we might have respect for Tiger Woods as a golf player, and even believe he is one of the best if not the best golfers ever to play the sport, but still, on the other hand think he is so dishonest that we might say that we have no respect for him as a person. It accordingly seems that the respect or disrespect pertaining to character traits is in a certain important way more fundamental than respect for a person’s ability. The former, but not the latter, may go to the very heart of respect for a person. (Such respect for a person should not, for the reasons set forth more fully below, be confused with respect for a person as a person, or as such.)

Sixth, respect for character traits comes in degrees. Based on a number of circumstances, we may have more or less respect for someone based on their relevant dispositions. We may, for example, have a great deal of respect for someone whose disposition for honesty is great. Typically such situations are ones in which evidence of the relevant disposition is substantial and/or of great weight. We might say we have a great deal of respect, for example, for a Congressional representative who stays the course and votes for health care reform, although she is aware that such a vote is inconsistent with the expressed wishes of her constituency and thus likely to lead to her defeat in a subsequent election.

Seventh, like respect based on ability, but unlike respect of persons as such, respect based on character is merited. It is something that is earned, and is not

possessed by all persons. As described above, respect based on character presumes that the relevant dispositions are developed, maintained, and controlled by the person. Not all persons develop and maintain dispositions equally. Doing so is viewed as requiring a certain element of discipline and work. It is essentially on this basis that they are viewed as being “earned”.

Finally, closely related to this notion of merit is that of contingency. Respect based on the possession of specific character traits is contingent in the sense, once again, that not all persons have the same character traits. The features of persons giving rise to respect for persons as such is not contingent in this limited fashion. All persons possess such features.

Abilities

We talk of having respect for persons not just for character traits they may possess, but also for having certain abilities. We respect someone who can play the violin, climb Mount Everest, or play championship chess. There are, like character traits, numerous kinds of abilities that can serve as objects of respect.

There are eight features or attributes of this basic form of object of respect worth noting. Several can be dealt with quite quickly because such features have already been discussed immediately above in considering character traits as objects of respect.

First, as is the case with character traits, to be appropriate objects of respect, abilities must be relatively permanent dispositions. As Cranor points out, this requirement seems to distinguish the attitude of respect from mere praise. We praise

a person for single acts of excellence, we do not have respect for them. Respect is reserved for relatively permanent, sustained demonstrations of excellence.

Second, abilities, like character traits, must be under the control of the person to merit respect. We respect the basketball player's ability consistently to make three point shots from the perimeter only if we believe that the player had somehow contributed to the development, realization, and maintenance of his ability. Were the ability to make three point baskets not the result of his efforts and subject to his control, if it were innate, for example, we would admire, but not respect, his shooting acumen. To use another basketball example, we admire, but do not respect Michael Jordan's ability to elevate in dunking the ball in the basket. We respect, however, his ability to win numerous championships because we believe his ability to win so many games was a result of intense training and dedication – features which were under his control.

My third and fourth observations are directly attributable to Darwall's observations concerning the relationship between character traits and abilities ("excellences of a particular pursuit"). Darwall correctly has observed that an ability which is the proper object of respect is dependent on the person having exercised an underlying character trait which is itself the object of respect, such as discipline and/or perseverance. Darwall suggests, as alluded to above, that this is because human accomplishments are never the result of just natural ability. Talents and various capacities are prerequisites to accomplishment, but they "must be developed, disciplined, and exercised in the face of various obstacles, and this will call into play

features of person which we identify as a part of their character.”¹¹ To return to the example of the three point shooter, we respect him for his shooting ability because we believe he was disciplined, and developed and nurtured a prior existing talent.

Darwall also contends that the absence of a character trait can cause a person to fail to respect another person notwithstanding the latter’s abilities which would otherwise be an object of respect. Darwall sites as an example a tennis player who is widely recognized as one of the best tennis players, but is not respected as a tennis player because she engages in conduct outside the acceptable forms allowable for tennis players – she heckles opponents, challenges every close call, and laughs when her opponent misses shots. Darwall posits that the tennis player could beat each of her opponents even if she did not engage in such conduct. According to Darwall, while other players may respect the champion tennis player’s ability to beat them (see below), they do not respect her as a tennis player because she lacks certain character traits thought essential to merit respect in the relevant pursuit (i.e., she has violated the tennis code of conduct).

It is not clear to me that Darwall is completely right about the conclusion he draws. I believe that the tennis player, because she could beat any opponent even if she did not engage in the inappropriate behavior, would likely still be respected, in at least one limited sense, as an excellent tennis player. Her skills were likely developed, disciplined and exercised in the face of various obstacles, and thus would be the object of respect. Nevertheless, I think that Darwall is right in saying that we

¹¹ Darwall, 42.

would not, in a broader sense, have respect for the tennis player qua tennis player. Additionally, it would seem that at the broadest level that we would also say that we do not respect the tennis player “as a person” because she does not exhibit certain character traits, the absence of which causes us to fail to respect someone “as a person”. As discussed above, we seem to view some character traits as sufficiently essential to a person’s character or personality that our respect/disrespect for the person turns on the absence or presence of the trait in the person. I believe that that is the case here. We thus would respect the tennis player in the most limited sense because of her abilities, disrespect the tennis player as a tennis player because of her antics (which demonstrate a lack of certain character traits) and disrespect her “as a person” because of the absence of certain character traits (treating her opponents with respect, etc.).

Fifth, one can have respect for the ability of another person in such a way that one does not value the ability, but actually devalues it. A boxer may respect another boxer’s sharp right hook in at least two ways. First, the boxer may respect his opponent’s right hook because it has been developed, nurtured, and maintained against various obstacles. In a more extended sense, however, the boxer might say he has a great deal of respect for his opponent’s right hook because he is well acquainted with what is likely to happen to him if he is on the receiving end of the punch. In this sense his having respect for the right hook has to do with a cognitive understanding of a possible negative result which he will suffer should he not properly “respect” the right hook. The use of respect in this context is, I think it fair

to say, fairly common; it is often used to apply to situations in which the Respector and/or the Respectees are not persons, and in which the Respectee is not even a sentient being. Any conception of respect should be able to distinguish adequately this form of respect from other more standard forms of respect.

Finally, like character traits, abilities come in degrees, are deemed to be merited, and are contingent. One may be said to have higher or lesser degrees of ability. This is true both with respect to the standard form of respect based on ability, and the extended form of respect as discussed in the preceding paragraph. With respect to the latter form, we might say the boxer has a “great deal” of respect or “little” respect for his opponent’s right hook depending on the extent of the damage which the boxer believes the right hook is capable of causing.

Respect based on ability is, in the standard case, and in a different way in the extended case, based on merit. In the former case, respect is predicated on the development, nurturing and maintenance of the ability. These actions are conducted against certain obstacles, and are thus said to merit respect. The respect is, in a certain sense, earned. This is also the case, albeit in a different sense, with respect for the ability of another person in the extended sense. We do talk of respect for the right hook as being “merited” or “earned”. Respect for the right hook is earned in the sense that the boxer is aware of the damage the punch can inflict based on prior incidents.

Respect for one’s ability is, like respect for character traits, contingent. It is so in the sense that not all persons have the same abilities. There existence is

contingent on a number of factors, including underlying talent and capacity, and the development and maintenance of the particular ability. As mentioned previously, and as discussed more fully below, the features of persons giving rise to respect for persons as such is not contingent in this limited fashion. All persons possess such features.

Features of Persons, As Such

The third kind or class of objects which we consider appropriate bases for or deserving of respect consists of certain features of human beings that are in some way thought to be essential to being a person. We talk of having respect for persons in this fashion as having respect for persons “as persons,” or “as such”. Respect for persons as persons is, of course, the form of respect which is at stake in the debate concerning respect for others in the public square.

Darwall’s recognition respect is properly viewed as a particular conception of this form of respect. And Eberle, as discussed in detail in chapter two, adopts Darwall’s conception of respect for persons, and identifies “mattering” and the capacity for self-reflection as the crucial features of persons which give rise to our obligations (countenanced in the principles of conscientious engagement) to respect other persons as persons.

The general notion that we do (and ought to) respect other persons as persons is well-accepted and not controversial in a liberal democracy such as the United States. There is no unanimity among theorists, however, as to which features of persons constitute the actual (proper) features of respect. Before addressing this

difficult and crucial issue, it will be helpful to first compare some of the basic attributes of this form of respect with the other two forms previously discussed.

Characteristics of Respect For Persons, As Such

I have suggested above that character traits and abilities must constitute relatively permanent dispositions to merit respect. Implicit in this is the assumption that a particular character trait or ability which a person may possess at a given time was at some previous point not present, or may not be possessed by a person at some time in the future. In this sense such features of persons are only “relatively” permanent. It would seem that some features of persons for which we have respect for persons as persons are likewise, although in a different manner, only “relatively” permanent. They also may come and go. Using Eberle’s features of “mattering” and the capacity for self-reflection as examples of features relevant to this form of respect, it would appear to be the case that these features are only relatively permanent. Neither a baby nor a patient lying comatose in a hospital bed with no chance of recovery has a capacity for self-reflection. The same could be said for other features of persons thought to be germane to this form of respect, such as autonomy. These features may perhaps in some respects be more permanent than character traits and abilities, but they nonetheless share an element of relativity.

The element of control, on the other hand, is quite different. Persons (generally speaking) have no direct control over features of their personhood such as mattering and the capacity for self reflection. The possession of character traits and abilities, on the other hand, is largely in the control of those possessing these traits.

The perceived level of control over one's character traits and abilities diminishes, of course, the more one is inclined to take into account the possible influence of external factors, such as educational and socio-economic background, on the development of these features. But some degree of control is at least a necessary condition to the possession of these traits, which is not the case with such features as mattering and the capacity for self-reflection.

I have suggested above, following Darwall, that it appears to be the case that respect for a person's abilities can be overridden, at least in one sense, by a person's lack of certain character traits. We may not respect a person as a tennis player, in the one sense, because she fails to abide by the profession's rules of conduct (i.e., she heckles her opponent, laughs at missed shots, etc.). It is important to guard against the misconception that the absence of certain character traits can, in a similar fashion, be thought of as overriding the respect we might have for a person as such. We might say for example, as I have suggested, that we do not have respect for the tennis player as a person because of her antics. We do not usually mean to say, however, nor do I believe it to be the case in most instances, that as a result of not having respect for her as a person because of her deficient character trait(s) that we do not respect her as a person as such. Our disrespect for her may be sufficiently deep that we do not think much of her as a person, but we still might (and should) respect her as a person – as a person for whom mattering matters, who has a capacity for self-reflection, or who possesses whatever traits are thought relevant by a particular conception of respect to this form of respect. Most citizens subscribing to the principles of contemporary

liberalism certainly would not respect the master mind of the bombing of the twin towers of the Trade Center on September 11, 2001, as a person in the first sense, but many would still respect him as a person, as such.

Finally, unlike like respect for persons based on character traits and abilities, respect for persons as persons does not come in degrees and is not merited, and its underlying features are not contingent. Respect for another person's character or abilities comes in degrees, depending on a variety of circumstances, including most important the character trait or ability at issue, and the amount of discipline and effort exerted in developing the relevant qualities. Respect for a person's features such as her mattering or her capacity for self-reflection exist without regard to degree. It would seem true that, depending on the features adopted by a conception of respect as those features upon which respect is based, it might be the case that such features are or become absent – as with the example of a comatose patient with no hope of recovery. Mattering and self-reflection are not then existing features, and it would seem that respect for (understood as placing a positive value upon or esteeming) such qualities is meaningless. There would be no basis for respect. But this would be an absence of respect, not a differing degree of it.

Perhaps the biggest distinction drawn between the first two forms of respect and respect for persons as such is that the former, but not the latter, are merited. Respect for character traits and abilities is earned in the sense that they must be developed and maintained against and in the face of certain obstacles and difficulties, and they are under our own control. We do not similarly develop our view of

matter of the capacity for self-reflection, and they are not directly under our control. Hence, respect for a person as such is not merited or earned as is respect for a person's character or abilities is earned.

A word of caution is appropriate here. In observing that respect for others as persons is not viewed as being earned, I have said nothing about persons being "entitled" to respect as persons. It is quite common, in discussions concerning respect for persons as such, for theorists to distinguish this form of respect from the other forms of respect by stating that respect for persons as such (unlike the other forms of respect) is not merited, but is the kind of respect to which all persons are entitled. This observation seems inappropriately to connect a descriptive observation about the basis for why people respect persons with particularly character traits or abilities, with a normative statement indicating that we ought to respect persons as persons (even though merit is not applicable). My concern here, however, is not with the normative question of whether all persons are entitled to respect, which suggests some type of right, or even whether we have a duty to respect all persons as such. Rather, my discussion here pertains only to the descriptive, non-normative issue of what persons experience as respect. Simply put, respect for persons as persons is not viewed as being merited or earned. In making this observation I do not mean to dispute that such a right or duty exists. My point is simply that in keeping with my intent to approach the concept of respect by considering the descriptive issues of the attitude and treating someone with respect separately and apart from the normative

issues of duty and rights pertaining to respect, that the issue of entitlement is not at issue in the present discussion.

With respect to contingency, respect for persons as such has an element of non-contingency that is lacking in the other forms of respect. Features of persons upon which respect for others is based are considered essential – they are essential features of what it means to be human person. Mattering, the capacity for self-reflection, and autonomy, for example, are viewed as essential features of being a person. This is not the case with character traits and abilities, which may or not be present in a particular person.

Conceptions of Respect For Persons, As Such

Eberle draws a distinction in *Religious Conviction in Liberal Politics* between the concept of public justification and conceptions of public justification. The former notion has to do with the requirement that citizens provide their compatriots public justification in supporting a coercive law. A conception of public of justification is a particular account of exactly what public justification should entail -- that is, in what way a particular reason offered in support of a coercive law is said to constitute a suitable public justification to others. Eberle maintains that while there is wide-spread acceptance by justificatory liberals concerning the need for public justification, there is no such agreement regarding a single conception of public justification. Rather, there are numerous conceptions of public justification on offer, none of which enjoys a place of priority among theorists.

A similar situation appears to exist with respect to the concept of respect for persons as persons, and the exact features upon which such a concept is properly based. As I have suggested above, the general notion that we do (and ought to) respect other persons as persons is well-accepted and not controversial in a liberal democracy such as the United States. There is no unanimity among theorists, however, as to what features of persons are responsible for both the aforementioned descriptive and normative aspects of respect.

Theorists have advanced a variety of possible features of the human condition as being responsible for, or giving rise to, respect for persons as persons. For Kant, a person appears to be someone who is capable of acting on maxims (the categorical imperative in moral matters), and thus reasons.¹² For Rawls, as Cranor correctly summarizes it, “a person is a human being with a conception of her/her own good and a sense of justice.”¹³ Thus Rawls, and likewise B.A.O. Williams, view others’ view of the world as demanding respect.¹⁴ For David Gauthier, others’ wants are the proper object of respect for persons.¹⁵ R. S. Downie and Elizabeth Telfer have

¹² Kant, *Foundations of the Metaphysics of Morals*, trans. L.W.Beck (Indianapolis: Bobbs-Merrill Co., 1959), 29, 46.

¹³ Cranor, 317 (citing John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), p. 337, 408, 505).

¹⁴ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), 337: Respect is a “willingness to see the situation of others from their point of view, from the perspective of their conception of their good; and in our being prepared to give reasons for our actions whenever the interests of others are materially affected.”

B.A.O. Williams, “The Idea of Equality,” *Moral Concepts*, ed. Joel Feinberg (Oxford: Oxford University Press, 1970), 159: “Respect requires that each man is owed an effort at identification . . . and one should try to see the world from his point of view.” This focus on other’s view points as a proper basis of respect is quite common in the current literature.

¹⁵ David Gauthier, *Practical Reasoning* (Oxford: Oxford University Press, 1963), 119: Respect is “a willingness to consider the wants of others as reasons for acting, and hence a willingness to accept the practical judgments of the other, in so far as they are based on a consideration of all wants.”

argued that not only wants, but rule following is what is to be respected.¹⁶ According to S. I. Benn, someone's "enterprises" is the proper focus of respect.¹⁷

Darwall, in attempting to present a more general account of respect, did not attempt to identify relevant aspects of persons which might be appropriate features of respect. Eberle, however, as I have discussed, did so; he identified two. Once again, the first feature is that a person cares about what happens. Persons have a set of concerns and commitments which can either be fulfilled or frustrated. The second feature is the capacity of self-reflection. Eberle refers to this as "*reflective mattering*." The capacity for self-reflection allows a person to form higher level beliefs and desires about his lower level beliefs and desires. A person can thus exercise some degree of "reflective influence" over his lower level cares and commitments and alter them. Eberle's first feature distinguishes a person from inanimate objects, for which nothing matters; his second feature distinguishes a person from an animal. An animal lacks the capacity to "alter, modify, and correct its (lower-level) cares and commitments."¹⁸

Even this short list of possible bases of respect in persons is enough to make one's head spin. Which basis is a correct candidate for respect? Are only some? Are all appropriate candidates? If so, should some be attributed a higher priority, or can they be otherwise categorized in some fashion? And what of the concept of human

¹⁶ R. S. Downie and Elizabeth Telfer, *Respect for Persons* (London: Allen & Unwin, 1969), 29: Respect is "an attitude of active sympathy and a readiness at least to consider the applicability of other men's rules both to them and to ourselves."

¹⁷ S. I. Benn, "Privacy, Freedom and Respect for Persons," in *Nomos XIII: Privacy* (New York, 1971), 8-9.

¹⁸ Eberle, 88

dignity? This seemingly basic and core notion seems to have received surprisingly little attention in the recent literature on respect for persons as such. As I have suggested in the previous chapter, it seems that Darwall and Eberle both give short shrift to this notion.

It seems that any conception of respect for persons as persons, if it is to be satisfactory, must provide some account of the features of persons which give rise to respect for persons as such. Such an account should be able, among other things, to identify the properties of persons for which we have an attitude of respect, differentiate and explain the relationship between properties if, as seems surely to be the case, there are multiple properties, and explain the role of the notion of human dignity (if it is not the sole feature of respect.)

It is beyond the scope of my project here to attempt to develop such an account. It would seem, however, as Robert Audi argues in *The Right In The Good*¹⁹ (discussed in chapter five), that human dignity provides the fundamental or most basic aspect of persons which is valued. The notion of human dignity is, he maintains, a “deep and comprehensive notion.” If dignity is taken in this fundamental way, other valued aspects of persons, such as the capacity for rational thought, autonomy, etc., are properly viewed as being attributes which comprise or are necessary conditions of human dignity. Audi’s identification of dignity as the core

¹⁹ Robert Audi, *The Good In The Right* (New Jersey: Princeton University Press, 2004).

underlying human value is a plausible conception of what it is that gives rise to respect for persons as persons.²⁰

4.3.2.3 *The Evaluative Point of View*

The fourth element which can be found in any instantiation of an attitude of respect is an evaluative point of view from which the object is respected. Except in those special cases in which a person possesses an ability which we realize can cause us harm if not properly “respected,” having respect for a person denotes some positive value associated with the feature of a person from a particular point of view. As Cranor helpfully puts it, “respect is relativized to a certain evaluative point of view”.²¹

We thus might respect someone, as Cranor points out, from the moral point of view, or some other non-moral, and perhaps, narrower, point of view. We might, for example, respect a person for her courage; we do so from the moral point of view because we believe that courage is a good moral quality to possess. Our respect for a good three-point shooter is from a non-moral point of view – specifically, the good-making qualities of a basketball player.

Thinking about having respect for others from a relativized, particular evaluative point of view is helpful in explaining how it is that we can exhibit respect for persons in different ways, and further can, somewhat counter intuitively, have both respect and disrespect for a person at the same time. The previous example of

²⁰ See Oscar Schachter, “Human Dignity As A Normative Concept,” editorial comment, *The American Journal of International Law* 77 (1986), 848-854 (citing numerous international instruments referencing the fundamental nature of human dignity).

²¹ Cranor, 316.

the unprofessional tennis player presents a good case-in-point. At the same time, it is plausible for a person to possess a number of differing attitudes of respect/disrespect toward her. We respect her ability as a tennis player; we do not respect her misconduct on the court, and may even say we disrespect her as a person, and in a certain sense, as a tennis player; but we (may/should) respect her as a person, as such. Each of these different attitudes emanates from a particular evaluative point of view. The first from the point of view of good tennis playing, the second from a moral point of view, and the third from the point of view of the possession of valued essential features of personhood (whatever they may be).

The notion of an evaluative point of view also properly leaves open the possibility that we can say we have respect for a person whom otherwise such respect might not seem possible. To borrow another of Cranor's examples, we can, in a very narrow sense, say we respect a Nazi officer or a thief. We would not, of course, respect them from the moral point of view, but we might from a much narrower, non-moral one.

Finally, countenancing respect as being experienced from a particular point of view helps to clarify, importantly, when a feature of a person is respected based on a non-moral, as opposed to a moral, point of view. Cranor provides two examples, in a different context, which are helpful in this regard. The first examples involves a statement made by B. A. O. Williams to the effect that respect for a person is:

based on, though not of course fully explained by, the notion that men are conscious beings who necessarily have intentions and purposes and see what they are doing in a certain light.²²

Cranor maintains that contrary to what appears to be Williams's assumption, the above stated characteristics are not morally appropriate objects of respect. We do not, he argues, value from a moral point of view the mere fact that people have intentions and purposes and see what they are doing in a certain light. From a moral point of view, we value persons having morally good intentions and purposes, and seeing their world from a moral point of view.

Similarly, Cranon observes (properly it seems to me) that Downie and Telfer's claim that rule following is a morally appropriate object of respect is false. Rather, it would be the following of moral rules which would be deserving of respect from the moral point of view.

Eberle's two features of persons underlying his conception of respect, mattering and the capacity for self-reflection, are, it will be seen, substantially similar to the features asserted by Williams in the excerpt above as partially accounting for the basis of respect. Eberle's two features, like those mentioned by Williams, are not objects of respect from the moral point of view.²³ This is not, of course, to diminish the value which we place on them. This observation is only meant to clarify a bit more precisely the nature of the features valued. They are valued, just not, at least strictly speaking, from a moral point of view.

²² Cranor, 316 (quoting Williams, 160).

²³ I do not mean to suggest that Eberle presents the features as being valued from the moral point of view. Although he does not directly address the issue, I believe it is fair to say that he does not. This is because he uses such "facts" (the two features) to pick out the relevant moral duties which are deemed to apply to the facts.

4.3.3 *A Definition of Respect*

The attitude of respect is a complex relationship which exists between the four elements discussed in the previous subsection. By way of summary, the four elements include:

1. A Respector (“R”).
2. A Respectee (“P”).
3. A basis/bases of respect (“F”).
4. An evaluative point of view (“E”).

Following the framework utilized by Cranor, these four elements give rise to the following definition of respect for persons:

R E-respects P’s having F (where F refers to some ability, character trait, or essential feature of P and E refers to some evaluative point of view), if and only if,

- (1) R believes P has F and that P’s having F is an E-good thing;
- (2) R appreciates (has knowledge and understanding of) why P’s having F is an E-good thing;
- (3) R is disposed to rely upon and have confidence in P’s having F and P’s doing what is appropriate to his having F; and
- (4) R is disposed to acknowledge and recognize the value of P’s having F in ways appropriate to the F in question.²⁴

I believe this definition properly identifies the necessary features of the attitude of respect for persons, with one exception. For the reasons discussed more fully below, the second condition, although necessary for R to respect P having F where F consists in a particular ability or character trait, it is not necessary for

²⁴ Cranor, 310-311.

R to respect P where F consists of an essential feature of persons involving respect for P as a person. The conditions, with this exception, are also jointly sufficient. I discuss each of these conditions in turn.

- 1. If R E-respects P's having F, then R believes that P has F and that P's having F is an E-good thing.²⁵*

Little needs to be said about this first condition in light of the analysis contained in the previous subsections. This first condition contains two separate requirements which must be satisfied if R respects P's having a property F from an E evaluative point of view. R must first believe that P has F. I have discussed this aspect in the context of considering the ontology of the attitude of respect. A person obviously must first believe that a person has a particular property before one can possibly respect it.

Second, P must believe that P's having F is a good thing from some E evaluative point of view. Again, this condition follows from what has been discussed above. One exception to this condition lies where R believes that P has F, where F is a particular ability, such as a boxer possessing a powerful right hook, and R believes not that F is a good thing, but believes that P is capable of exercising F in a way that could be harmful to R.

²⁵ Cranor, 311.

(2) *If R E-respects P's having F, R appreciates (has knowledge and understanding of) why P's having F is an E-good thing.*²⁶

This condition (like the first one), is an epistemological one. In order for R to possess the attitude of respect for F, she must understand why P's possessing the property is a good thing from an E evaluative point of view. As set forth above, I believe that this condition is necessary for respect involving abilities and character traits, but do not believe it is a prerequisite for respect for persons as such to obtain. I first consider this condition as it applies in the context of Fs that are abilities or character traits, and then in the context of Fs which are essential properties of persons.

Cranor supplies two examples which are helpful in understanding this condition as it applies to the former context. It is possible to admire Sir Edmund Hillary and even be in awe of his achievement of climbing Mount Everest without ever having set foot on the mountain or having engaged in the sport of mountain climbing. This is not the case with respect. One "must have some knowledge and understanding of why his having this ability enables him to achieve the kind of things that he does achieve."²⁷ Cranor goes on to observe that "[i]f one did not appreciate why the characteristic in question was valuable, one's claim to respect a person for his actions would be fatuous at best."²⁸

The second example involves explication of various forms of respect due a medical doctor. Only other doctors and not patients can respect other doctors

²⁶ Cranor, 313.

²⁷ *Ibid.*

²⁸ *Ibid.*

as good doctors because most patients lack the knowledge and appreciation of what it takes or what it means to be a good doctor that is essential to respect. (A patient could respect a doctor for other reasons, e.g. being open and honest, having a good “bedside manner,” etc.)

Understood in this fashion, I believe Cranor is correct in observing that this condition of respect requires a certain element of equality between the Respector and the Respectee. Because the Respector must have an understanding of and appreciate the property which is respected, it is likely that in many instances the Respector will possess similar abilities or character traits. I do not think this will always be the case, *e.g.*, a person need not be honest to respect another person for being honest. Nevertheless, with respect to many abilities, particularly those which require a great deal of effort in developing and maintaining, and perhaps some element of natural capacity, an element of equality will be necessary.

In any event, the important point is that in order for a Respector to respect an ability or character trait possessed by a Respectee, the Respector must understand what it is that makes the Respector’s having the relevant property a good thing.

Turning to the Fs which are essential properties of persons, it does not seem that this condition holds. It does not seem appropriate to talk of understanding why certain essential features of persons are valuable. For abilities and character traits, such knowledge is necessary in order to be able to

ascertain what abilities and character traits are necessary to overcome the problems and achieve success in the relevant activity. In other words, it is necessary for a Respector to be on a relatively equal plane with a Respectee in order to evaluate whether respect is *merited*. But respect for essential features of persons is not merited; there are no obstacles to overcome of abilities to develop. Essential features of persons which form the bases of respect for persons as persons are possessed equally by almost all fully functioning adults. There are thus no underlying facts warranting merit which must be known in order to apprehend respect for persons as such.

3. *If R E-respects P's having F, then R is disposed to rely upon and have confidence in P's having F and P's doing what is appropriate to his having F.*²⁹

The commitment contained in this condition is one of placing one's welfare or well-being in the care of the Respector. If we respect a person for possessing the character trait of courage, we will be disposed to place our trust in such a person when faced with a dangerous situation. If we are not disposed to do so, then we do not truly respect the person as being courageous.

This condition, framed as it is, appears on the face to be most applicable to character traits, such as honesty and courage, and abilities. But it applies equally to the extended cases of abilities of others that we respect in the sense that their exercise could cause us harm, and to features of persons for which we have respect for persons as persons.

²⁹ *Ibid.*

With respect to the former objects of respect, a Respector has confidence in the Respectee's ability in that he has a set of expectations of what is likely to occur. Thus, if a boxer does not properly defend himself in the ring against his opponent with the swift right hook, the boxer is fairly confident that he knows what will happen -- namely, he will receive a sharp blow. In this extended sense then, a Respector does not entrust his well-being to the Respectee, but rather possesses certain expectations concerning the Respectee's behavior.

This understanding of this condition in terms of having certain expectations of the likely behavior of another is similarly applicable concerning respect for features of persons for which the attitude of respect for persons as persons is present. If, for example, a Respector has respect for a Respectee's autonomy, then the latter will have certain expectation concerning ways in which the Respectee is likely to act (though they are not usually anticipated to be harmful).

Two general aspects of this condition should be noted. First, it is the Respector's *disposition* to rely upon or place confidence in the Respectee which is constitutive of R E-respecting P's having F, not the actual reliance/placing of confidence itself. We are here talking about the attitude of respect, understood as a psychological or mental state. This condition assumes that if respect for another is present, such an attitude will include the disposition to rely on/place confidence in the one respected. In those cases where the objects of respect are abilities that could harm us, or essential features of persons, the relevant

disposition is to have confidence in or have certain expectations concerning, the likely behavior of others.

Second, it is not the case that if the Respector does not actually rely on or places confidence in the Respectee (or have expectations concerning the behavior of others) that it necessary follows that the Respector did not actually respect the Respectee. There are many reasons why a disposition may not actually be acted upon.

Whether confidence actually is bestowed in someone with respect to a particular character trait or ability may be epistemologically relevant in the sense that it may provide reason to evaluate whether we think the Respector actually respects the Respectee. But again, one might be disposed to rely on and trust another, but for a variety of reasons not actually end up doing so. For reasons that are obvious, the connection between a Respector's having certain expectations concerning the behavior of others (as it applies to abilities which could harm us and essential features of persons) and the actual actions of the persons respected is even more attenuated.

4. *If R E-respects P's having F, then R is disposed to acknowledge and recognize the value of P's having F in ways appropriate to the F in question.*³⁰

Four aspects of this condition need explanation. First, it provides that in order for R to E-respect P's having F, R must be disposed to "acknowledge and recognize" the value of P's having F. To "acknowledge and recognize" the

³⁰ Cranor, 314.

valuable feature in P here means to express or manifest some sign or behavior demonstrative of his knowledge of the value of P's having F. Mere perception is insufficient. Some outward manifestation of the perception of value is assumed.

Second, like the previous condition, the fourth condition is dispositional in nature. It requires that R be *disposed* to manifest his respect through some action, it does not require that the action actually occur. It is the disposition, and not the occurrence of the action, which is constitutive of R respecting P in virtue of having F. Cranor nicely summarizes the notion of disposition contained in this condition as follows:

One should note that these are merely dispositions to act and at any particular time may not result in an action, but these dispositions must be among those competing dispositions in one's psychological field, if one has respect for another. The disposition statement "R is disposed to do A" is to be understood as "If R were to be in circumstances, C, then R, other things being equal, would do A."³¹

It will be noted that the notion that the attitude of respect requires only a disposition to express or manifest respect by one's actions, and that such acts of respect are not constitutive of the attitude of respect, is consistent with one of the main themes of this chapter and the last – that it is possible to possess an attitude of respect concerning some feature of another person even though one does not actually engage in appropriate acts of respect. I presented several examples in my critique of Darwall's conception of respect for persons in the previous chapter involving situations in which the attitude of respect was

³¹ *Ibid.*, footnote 15.

present, even though the Respector did not ultimately end up engaging in acts of respect. As Cranor puts it, all things considered, R would engage in the act of respect; the absence of such acts, however, does not entail the absence of (the attitude of) respect.

Third, the fourth condition assumes that the acts of respect which R is disposed to engage in will be “appropriate to the F in question”. This aspect demands that the act of respect engaged in be appropriate based on the particular feature which is the object of respect. For example, if we respect a particular person’s political skills, but do not think her morally upright (in matters extraneous to politics), we might try to emulate her political skills, but not her actions we view as immoral. The same can be said of features of a person we identify as being proper objects of respect as such. As suggested in the previous section, there are a number of features of persons which could serve as a basis of respect; the propriety of the acts one will be disposed to engage in will accordingly depend on which feature is the respect object.

This fourth condition raises a number of difficult questions. What makes an act one of respect? More specifically, what makes an act an “appropriate” act of respect? What is the connection between an attitude of respect about a feature F and an act of respect regarding F? How does one go about making such determinations, particularly what an appropriate act of respect pertaining to a feature F might consist in?

The fourth condition, as these important questions evidence, has led us to middle ground between the notion of the attitude of respect on the one hand, and acts of respect on the other. The relationship between the two is a complex one, and will be explored in some detail in the next chapter.

I conclude this section with the observation that the definition I have provided properly identifies the necessary features of the attitude of respect for persons. (As noted above, the second condition, although necessary for R to respect P having F where F consists in a particular ability or character trait, is not necessary for R to respect P where F consists of an essential feature of persons involving respect for P as a person.) The conditions (except as noted) are also jointly sufficient.

4.4 Acts Instantiating Respect

The attitude of respect is one thing, action instantiating respect in some fashion is another. One is a mental or psychological state, the other consists in physical movement of some type. To say that the two are separate kinds of things is not to suggest that the two are not related. To the contrary, the attitude of respect and respect acts are interconnected in complex and quite interesting ways. Indeed, respect instantiated in action cannot properly be understood without a firm grasp of at least several aspects of this relationship.

I accordingly begin this section by considering several fundamental ways in which the attitude of respect and respect acts are related. I then take up

the question, alluded to at the end of the previous section, pertaining to the identification of appropriate acts of respect.

4.4.1 The Attitude of Respect and Respect Acts

In this subsection I shall first argue that the attitude of respect is conceptually and foundationally prior to acts of respect. I shall then discuss the four various permutations in which the attitude of respect and acts of respect can arise.

4.4.1.1 The Attitude of Respect As Prior

The attitude of respect plays two defining foundational roles with respect to actions instantiating respect. The first foundational role is *conceptual* (or perhaps ontological) in nature. We gauge whether someone treats another with respect largely by whether she acts in a manner that is consistent with having an attitude of respect for that person. Acts of respect in a certain sense are, in this fashion, defined by the attitude of respect. Exactly how the attitude of respect “defines” such acts, as I alluded to in the prior section, is an important and difficult question – one which any conception of respect for persons must address. I shall discuss it in general terms in the following section, and then again in somewhat more detail in the final chapter. It is sufficient at this point, however, to simply note the general point that acts of respect are judged from the vantage point of their connectedness to related attitudes of respect for the feature under consideration.

This view of the attitude of respect being conceptually prior to acts instantiated in respect is directly at odds with the view of respect espoused by Darwall and Eberle, at least with respect to their notion of recognition respect. For both, one has respect for another person only in so far as one recognizes that some fact about a person requires that one's actions toward that person are restricted in certain ways, and one abides by those restrictions. Aside from conflating the attitude of respect with actions of respect, and failing properly to distinguish between the two, their account fails to recognize that acts of respect are defined, at least in part, by the relevant attitude of respect. Instead, both view acts of respect as being entirely defined by recognition and fulfillment of certain moral obligations. Although, as I suggest in the next section and chapter, exhibiting respect for others may require, in most instances, compliance with certain moral duties, I do not believe that actions of respect are defined by one's moral duties.

The attitude of respect is not only conceptually foundational to acts of respect, it is also *psychologically* foundational. Often times, although certainly not always, underlying a person's concerns about being treated respectfully is the more fundamental and pressing desire to be perceived with respect -- that is, to believe that another person views that person as being just as important. In such instances, another person's conduct serves as an outward manifestation of whether what one truly deems significant is present in the other person -- recognition of one's equal importance. Many times conduct lacking in respect, which may be about a trivial

matter, may nevertheless be quite offensive because of the underlying attitude that it demonstrates. Even where disrespectful conduct is of serious nature, it can be the other person's attitude toward one which substantially underlies the sense of being disrespected and is so bothersome.

This foundational aspect of the attitude of respect (as I suggested in the previous chapter), although largely absent from Eberle's conception of respect, nevertheless plays a quite prominent role in underwriting his intuitive appeal to his argument that by satisfying the principles of conscientious engagement, one treats others with respect. Supporting a coercive law which others will find offensive does not, according to Eberle, show disrespect towards others provided one pursues public justification, enters into a meaningful dialogue with one's compatriots, is willing to listen to arguments against his own view, etc. Engaging in these requirements, he maintains, shows that one thinks others are important. Hence, although not explicitly, but certainly implicitly, Eberle recognizes the foundational role of the *attitude* of respect.

In sum, whether one acts with respect will turn, conceptually, on whether such conduct is consistent with having an attitude of respect for the other person. Crucially important to this determination is the perception of one's equal importance as a person.

4.4.1.2 The Interaction of The Attitude and Actions of Respect

The attitude of respect and actions of respect are also related, practically speaking, in the manner in which they may occur in the give and take of life.

There are just four possibilities. One but not the other may be present/occur; both may be present/occur; or neither may be present/occur. Thus, for a particular feature “F” of a Respectee, a Respector may:

- (1) Possess an attitude of respect, but not act out of respect.
- (2) Engage in acts of respect, but not possess an attitude of respect.
- (3) Both possess an attitude of respect, and act out of respect.
- (4) Neither possess an attitude of respect, nor act out of respect.

The first instance is clearly possible – I demonstrated in the previous chapter, and have argued again in this chapter, that one can have an attitude of respect for a feature of a person, yet for some reason not act in a way which would be consistent with having such an attitude. As indicated in the previous subsection, one must have the disposition to act in a manner that is consistent with the attitude of respect, but one can still have the attitude of respect and the disposition to act accordingly, yet fail to so act.

In the second scenario, one acts in a manner which is appropriate toward to the F in question if one possessed an attitude of respect toward F, but the attitude of respect toward F is not present. In this case it is important to distinguish between engaging *in* acts of respect, and, as in (1), acting *out of* respect. In the former case, one performs an act that is appropriate for the F in question, but it is not done out of respect for the other person. For example, we might engage in acts of respect for a judge, but lack the attitude of respect for him. In such an instance, we might act with respect only because it will be

beneficial to us or others in some way. In doing so, we act *with* respect, but not *out of* respect. In the latter instance, the act of respect is accompanied by a genuine attitude of respect. We generally do not morally esteem acts of respect not based on the attitude of respect, particularly where such acts are self-serving.

The third scenario is, morally speaking, the optimal one. The Respector possesses an attitude of respect, and, based on this attitude of respect, acts out of respect toward the other person in an appropriate way.

An important question which must be addressed by a particular conception of respect is the epistemic requirements concerning the nexus between possession of the attitude of respect for object F, and an appropriate act done out of respect for the F. It would appear that the nexus between the attitude and acts out of respect for an F where the F is an ability or character trait must be fairly strict. Thus, for example, if I respect a basketball player's ability to consistently connect from the three-point line, I might be inclined to demonstrate this attitude of respect by engaging in similar training and practice. Here, the acts of respect would not be done if I did not have an attitude of respect *for* the other player's shooting. This view would seem consistent with the requirement set forth in the second condition of the definition of the attitude of respect set forth above. As discussed there, to possess the attitude of respect for an ability, one must first understand what it is that makes a particular F valuable. In order to know this, one must first perceive the F at issue.

Determination of the epistemological nexus between an attitude of respect for an F which is a feature of persons as such and for an act of respect relating to F is a much more complex matter. It does not seem likely that a person who engages in an act out of respect for another person, say in deciding to not support a coercive law, would necessarily do so based on an express or conscious attitude of respect for the other person's "autonomy". Yet we view such action as being done out of respect for the person. The point is that, contrary to views which Darwall and Eberle appear to espouse, it would seem too demanding to require that, in order for a Respector to be deemed to have acted out of respect for his compatriot, he must have knowingly acted out of respect for a particular feature of the other person.

On the other hand, there must be at least some nexus between an act of respect for a person and attitude of respect in order for the act to be considered meritorious, or something less than a mere act of respect. Perhaps the answer is that at minimum, the Respector must have a general attitude of respect for the other person – maybe nothing more than a positive valuation of the other person as "an end in themselves" who is as important as oneself. A reasonable conception might also require some understanding of something akin to Eberle's notions of mattering and capacity for self-reflection. If this requirement is deemed too strong, it could possibly be relaxed to require not actual understanding of the connection, but only that if the basis of the act was considered, or if it is explained, one would understand and agree that his act of

respect arises from this previously inchoate notion. In any event, the strong nexus account advanced by Eberle and Darwall does not seem plausible. A suitable conception of respect for persons will likely entail some weaker view of the relationship between acts done out of respect, and the underlying attitude of respect.

The fourth and final scenario, in which neither an attitude of respect, nor acts done out of respect is present, is, of course, the least desirable of the four possible permutations. Unfortunately, it appears to occur all too often, including in the “public square”.

One last observation is in order before turning to the identification of acts done out of respect. Robert Audi has observed, correctly by my lights, that the *manner* in which we engage in certain otherwise respectful acts towards someone also has a bearing on the extent to which our actions are respectful of them. Acting in a manner ill fitting of respect – say by voting against a law banning same-sex marriage but making snide or rule comments at the polling booth concerning same-sex partners – adds an additional layer or factor in determining the presence of respect. In such a case, the person may engage in an act which might otherwise be deemed to have been done out of respect for others, but it is tainted by the manner in which the act is performed.

The manner in which an act is performed is most likely to be relevant in situations, like the one above, in which the attitude of respect is not actually present. In the above example, for instance, one is likely to conclude that the

person really did not vote based on an attitude of respect, but grudgingly so, based perhaps on a sense of duty. This is not necessarily so, however. It is plausible to conceive of situations involving persons who, for example, have a sour disposition by nature, and, while acting in a manner which shows disrespect, nevertheless appreciate the importance of other persons and attempt to honor that attitude.

In light of the above brief observations, it would seem that a disrespectful manner of acting towards others is most likely to arise under the second and fourth scenarios described above – those in which the attitude of respect is not present. Most people do have a fairly good grasp of what it means to act in a disrespectful manner, and acting so seems inconsistent (again readily so to most persons) with having an attitude of respect for persons.

4.4.2 Acts Done Out Of Respect For Others

I have suggested above that acts of respect are defined, at least in part, by the attitude of respect. I suggested that we gauge whether someone treats another out of respect largely by whether a person acts in a manner that is consistent with having an attitude of respect for that person. I admitted that exactly how the attitude of respect “defines” such acts is a difficult question. The problem is one of identification. How does one determine what the appropriate act of respect is in a given situation?

I now wish to make a first pass at this issue. I begin by considering the question as it relates to acts done out of respect of another person’s abilities or

characteristics. I shall then consider acts of respect relating to features of persons as persons.

4.4.2.1 Abilities and Character Traits

Identification of appropriate ways to acknowledge and recognize that a feature of F of a person is valuable (as Cranor put it) is less tractable where the objects perceived to be of value are another person's abilities or character traits. I believe this is the case largely because with these types of objects, in contrast to essential features of persons, we typically have the feature of value clearly in view. We respect the champion tennis player based on our contemplation of the obstacles she had to overcome to develop and maintain her level of skill. Moreover, pursuant to the second element of the definition of the attitude of respect, one must have the capacity to understand the obstacles and impediments that the Respectee had to deal with and overcome in order fully to respect an ability of another person. Such capacity presumes recognition of the object of value.

Nevertheless, identifying appropriate ways to acknowledge and recognize a person's abilities or character traits is not a science, and requires application of practical reasoning. Cranor provides some help in this regard, by identifying four different ways we generally think of a Respector as appropriately acknowledging the value of F in a Respectee.

First, we sometimes emulate the Respectee in regard to F. If I desire to be a doctor and think that Dr. Becky is a good doctor, then I will be disposed to emulate her as a doctor. Second, we are disposed to protect the Respectee. If we believe the

Respectee is honest, we will defend her against critics who claim that she is not truthful. Third, if we have an attitude of respect for the Respectee at least in part because of her judgment or opinion as to some matter, we are disposed to “take into account, heed, or defer to [the] respected person’s wishes, desires, advice, [or] command”.³² Fourth, we are disposed to honor those we respect. We do so based on applicable custom or convention, such as tipping our hat, or bestowing an honorific title.

As Cranor points out, these methods of acknowledging and recognizing valuable features in a person are contingent in at least two respects. First, they are contingent on the F in question. Second, they are contingent, in most instances, upon the community or country in which one lives.

4.4.2.2 Essential Features of Persons

I want to again emphasize the point that acts of respect are defined, at least in part, by the attitude of respect. More specifically, in order for a person’s act to constitute an appropriate act of respect toward a particular F of a person, it must (at least) be consistent with an attitude of respect for that feature and that person. The connectedness between the act and the attitude of respect is a necessary condition which must exist in order for an act to constitute an act done out of respect.

As I have alluded to above, identification of appropriate ways to acknowledge and recognize an essential feature F which we value, i.e., towards which we have the

³² Cranor, 315.

attitude of respect, can be a difficult matter. I believe this to be case for several reasons.

First, there is great disagreement, as I briefly discussed in subsection 4.3.2.2, concerning exactly what the “essential” features of a person are, and which are thus “entitled” to respect. Candidates include autonomy, freedom, a person’s perspective on the world, sympathy for others, and, most fundamentally, human dignity. Which of these options one selects, and how one characterizes the preferred feature, will have a direct bearing on one’s analysis concerning what constitutes appropriate respectful action.

Second, these features are complex, particularly when compared against abilities and character traits. Identifying an ability and character trait we value and thus respect is one thing; identifying the nature and properties of an essential feature of a person is much more difficult and subject to a wide a variety of interpretations.

By way of example, Eberle, in deriving his principles of conscientious engagement, argues that because the fact that each person inhabits a perspective on the world that is distinct and provides each person with reasons to act as one sees fit is particularly valuable, we have a moral obligation to encourage and not interfere with this capacity. Aside from the unargued for move from the good to the right contained in this argument, the notion that the development of all inclinations and talents is valued and thus should be promoted is open to debate. It is appropriate and beneficial inclinations and talents that should be promoted, not the capacity in general

or itself. Surely we do not value nor should we promote inclinations or talents pertaining to stealing or unjustifiable killings without detection.

Third, even where the features which constitute the object of value are identified, it typically is not an easy matter to “read off” of one’s positive valuation of an object what conduct appropriate to that valuation should consist in. This is especially the case where there are competing values at issue, which may be related in a complex way, and have to be weighed against one another.

4.4.2.3 Acts of Respect And The Duty To Respect Others

The problem of identification of what constitutes an appropriate way to acknowledge and recognize through one’s conduct an essential feature F of a person which we value is a serious one. It is, I believe, an inevitable consequence of the analytical framework I have employed, which calls for separate consideration of the notions of the attitude of respect, actions instantiating respect, and the duty to respect others. Actions instantiating respect dangle (analytically) between the attitude of respect, on the one hand, and the duty to respect others on the other hand.

Thus far I have argued that actions done out of respect for a particular feature F are conceptually dependent on the correlative attitude of respect for F. This relationship has proved inadequate, however, as a means of determining what actions are actually appropriate toward F. I have also suggested, on the other hand, that the attitude of respect and actions instantiating respect are separate and independent from the notion of the duty to respect others. One of my primary reasons for doing so has been to avoid what I take to be the mistaken view advanced by Darwall and accepted

and applied by Eberle -- that respect for persons consists only in the recognition that there are certain features of persons which morally restrain us from acting in certain ways towards them. Such a view of respect, as I have suggested, seems far too sterile, robbing the attitude of respect, which I have argued is foundational, of any meaningful significance.

Although the attitude and actions of respect are notions separate and apart from the duty to respect others, and they are properly analyzed separately, I believe that the third notion of respect – the moral obligation or duty to respect others – is nevertheless closely related and interconnected to the first two notions. Further, depending on one's particular conception of the duty to respect others, the notion of the duty to respect others may potentially provide certain analytical resources helpful in identifying appropriate acts of respect pertaining to an essential feature of a person. Such resources, however, as I shall suggest in the next section, may come at a great price – a necessary commitment to a particular ethical theory or set of ethical principles.

4.5 The Duty To Respect Others

I begin this section by first clarifying the nature and object of the duty to respect others. I then argue that a satisfactory conception of respect for persons as persons will necessarily entail commitment to an underlying broader ethical theory of some type or form.

4.5.1 The Nature and Object Of The Duty of Respect

Two aspects of the nature of duty of respect are worth noting. First, the duty to respect others, like the notion of entitlement to respect, is a *normative* concept. This distinguishes these two notions from the first two.

The first two notions of respect, the attitude of respect and treating others out of respect, are both *descriptive* in nature, and contain no normative content. To say that a person S has an attitude of respect for another person T is to make a descriptive statement about the way things are. It states, factually, that S possesses a particular type of mental or psychological state. Similarly, to say that S treated T out of respect in connection with S's action A, is to make a descriptive statement about the manner in which S acted (it comported with having respect for T). Such descriptions of S's attitude and conduct contain within them no normative content whatsoever. That is, to say that S has an attitude of respect, or is treating T with respect, is not to say that S has an obligation to have an attitude of respect for T, or to treat T with respect. It is merely an attempt to describe, factually, the way one thinks things are.

It is this absence of normative content which provides a primary element of distinction between the first two notions of respect, and the latter two. For as I have suggested, the duty to respect others, and the entitlement to respect, are each essentially normative notions. One tells us that we ought to respect others, while the other indicates that we have a moral right to be respected.

A second aspect of the nature of the duty to respect others worth noting has to do with the nature of the normative requirement itself. I shall distinguish between

two different kinds of normativity: moral obligation or duty, on the one hand, and a practical or rational “obligation,” on the other hand. The former is what we usually have in mind when talking about a duty or obligation to do something, and this is certainly the case with the duty to respect persons. We typically understand it to be a moral duty or obligation. But the second kind of obligation is also properly construed as a kind of a normative concept, although it is not, of course, a moral one. We often have certain practical reasons for doing something which lead us to say that we “really ought to do such and such”. The fact that we may value something, for example, such as a person, may give us practical reason, and hence a kind of rational obligation, to treat them in a particular way. Such an obligation, as I shall argue below, must be distinguished from a moral obligation to so treat another person.

I understand that some theorists have maintained, many without argument, that the fact that a particular feature of a person is valued in and of itself gives rise to certain moral requirements or duties concerning treatment of the person in connection with that value. It would seem that the move from value (or the “good”) to obligation (or the “right”) cannot simply be assumed, however, and satisfactory argument must be presented on its behalf. In any event, for present purposes I shall construe the obligation at issue in the notion of the duty to respect others as the stronger, moral form of normative obligation.

Finally, it is necessary to clarify the actual object of the duty of respect. Is such a duty to: (1) possess an attitude of respect; (2) treat others with respect; (3) only (1) or (2); or (4) both (1) and (2)?

When talking about moral duties, we typically have in mind duties concerning our actions towards other people or how we treat them. We do not normally think of persons having a moral duty to possess a certain attitude. I believe it fair to say that in the context at hand, most people, when talking about a duty or obligation to respect, envision the duty to respect others as applying primarily to the way one treats others. For purposes of this dissertation, at any rate, it is the conduct of citizens (in the public square) that is at issue, for it is through one's conduct that one advocates or supports a coercive law.

Although we may not have a duty to possess an attitude of respect, two aspects of the relationship between the attitude of respect and the duty of respect are worth noting. First, although we may not think of there being a moral duty to possess an attitude of respect, we nevertheless view the possession of such an attitude (towards appropriate objects) as morally valuable. We may condemn a person for not possessing an attitude of respect for another person's dignity, even if we do not think that they have a duty to possess such an attitude.

Second, it is not entirely clear that the duty to respect another person does not entail, even if indirectly, the duty to possess an attitude of respect. To the extent that the duty of respect entails treating someone not just with respect, but out of respect, it could be said the duty to treat someone with respect entails the duty to possess an attitude of respect. As maintained in the previous section, treating someone out of respect only occurs if the person treats the other person in a respectful manner, and possesses a respectful attitude. Rather than considering there to be a duty to possess

an attitude of respect, however, it is appropriate, as Robert Audi suggests, to construe the possession of the attitude of respect as a virtue.

These latter two caveats notwithstanding, I believe that the common understanding of the duty to respect others is that it applies primarily, if not exclusively, to the actions and not mental or psychological states.

4.5.2 The Duty of Respect And Normative Commitments

In attempting to formulate a conception of respect for persons as persons, addressing the notion of the duty of respect (understood as a moral obligation as described above) would appear to require, both as to its explication and as to its justification, appeal to some form of broader moral theory. This is true for at least two reasons.

First, the general duty to respect other persons must be justified in some sense. That is, what justifies such a duty in the first place? That we have a duty to respect others has almost become a truism. Few controvert it, and I have no intention of doing so in this dissertation. But to accept it as an important moral principle is not to justify it. A conception of respect for persons as persons must be able to address this issue. I cannot see how this can be done without appealing to a broader ethical theory of one form or another.

Second, and more important, appeal to an ethical theory is necessary in order to be able to identify what the duty to respect others entails in the everyday give and take of moral life. The duty to respect others does not arise in one simple context, but rather concerning a number of complex features of the personhood of others, and

involving numerous contexts and factual situations. It is not possible to identify what one's duty to respect another person entails in most situations by mere appeal to the general notion that we have a duty to respect others. Some means of determining how this broad obligation applies to a specific feature in question and the relevant circumstances is needed.

The need to appeal to an ethical theory to apply the duty of respect is vividly clear in both Darwall's "Two Forms of Respect" and Eberle's application of Darwall's article in developing the principles which comprise his ideal of conscientious engagement. With respect to the former, it will be remembered that Darwall maintains that recognition respect for persons is identical to "recognition respect for the moral requirements that are placed on one by the existence of other persons." His view, as this excerpt and his entire article bear out, are steeped in Kant. Darwall does not, I assume because the scope of the article did not allow it, offer guidance as to how one goes about determining how one ascertains what moral requirements are placed on us by the existence of other persons. I believe one can safely presume, however, that he would likely invoke the categorical imperative as a means of adjudicating such issues.

Eberle adopts Darwall's notion of recognition respect in formulating his conception of respect, and it too, at bottom, thus has traces of Kant. Unlike Darwall, however, Eberle attempts to determine not only what facts about persons are essential, but also how these facts can be used to identify what specific moral obligations the general duty to respect others entails. In doing so, however, he does

not invoke Kant's categorical imperative (as one might expect since he adopts Darwall's Kantian notion of recognition respect). Rather, he appears to employ what looks like a form of Ross-like intuitionism. The following excerpt from *Religious Conviction* is demonstrative of Eberle's underlying commitment to a form of ethical intuitionism:

We can determine what sort of weight we ought to accord some fact only if we have recourse to moral truths that bear on that fact. So, in order to determine what follows from a citizen's obligation to accord due weight to the fact that her compatriots are legitimately and deeply adverse to being coerced, we must have recourse to whatever moral considerations bear on that fact. . . . [T]here are certain moral platitudes we can expect any morally decent person to obey, each of which expresses a presumption: in almost every circumstance, lying is wrong; in the vast majority of cases, we shouldn't torture others; typically, we ought not steal.³³

This excerpt demonstrates a heavy reliance on a number of features consistent with Ross' intuitionism, including the existence of certain duties, the notion that the duties are grounded in underlying facts, and the characterization of the duties as *prima facie* duties.

Eberle invokes these Rossian principles to help explicate his notion of respect for others:

There's another claim that although more abstract than the aforementioned is no less platitudinous: when my actions affect another persons and that person is legitimately and deeply adverse to my actions, then that person's legitimate aversion counts as a presumption against the moral propriety of my course of action. Alternatively put, when some course of action affects another person and that person legitimately resents that course of action, then I have a *prima facie* obligation to refrain from pursuing that course of action.³⁴

³³ Eberle, 90.

³⁴ *Ibid.*

These two paragraphs vividly demonstrate Eberle's invocation of certain basic ethical principles in developing his conception of respect. Regardless of whether these principles do actually resemble, as I have suggested, Ross's prima facie duties, Eberle's citation, development, and explication of them, and his reliance on them in developing his conception of respect, provides strong evidence in support of my claim that a conception of the duty of respect for others must be derived from, and ultimately must be deeply rooted in, an independent underlying ethical theory.

Darwall's conception of respect, and Eberle's application of it in fashioning his principles of conscientious engagement, must appeal to a broader ethical theory or principles because for each conception, respect simply *is* compliance with one's moral obligations as it affects certain persons under consideration. There is no way around it. Under the framework for developing a conception of respect which I am attempting to develop, however, moral obligations or duties do not play this role. I have argued that the essential feature of an act done out of respect is that it be consistent with the attitude of respect toward the object of respect under consideration. The attitude of respect toward an object is foundational and prior to acts done out of respect. On this account, then, whether an act is done out of respect is determined by the extent to which it is consistent with possessing an attitude of respect toward the Respectee, not whether someone complies with a particular moral duty.

It does not follow, however, that under the framework I am proposing that appeal to a broader ethical theory is still not necessary. It is. Such appeal is

necessary to help identify those acts which are consistent with the attitude of respect. Sometimes it will be obvious what action is appropriate based on the attitude of respect for the feature in question. Many, perhaps most times, it will not. Such a basic test will often need to be supplemented by some other guide. It is at this point that resort to moral obligation will provide direction as to what respectful treatment in a particular situation will require. Accordingly, it will be necessary, even under my proposed conceptual framework, to appeal to a broader ethical theory in order to provide a means of identifying acts done out of respect for others.³⁵

4.5.3 Peering Down Into The Chasm

It appears that any serious attempt to construct a conception of respect for persons will require commitment to a broader ethical theory in order to provide a justification for the duty to respect others, but, more important, to provide an essential mechanism for explicating and then applying the duty to respect to situations involving various objects of respect in varying factual circumstances. Some element

³⁵ One potential criticism to the distinction my framework draws between an act of respect consisting of compliance with a moral obligation and an act of respect being identified by a moral obligation is that it is a distinction without a difference. I do not believe, however, that this is true. First, it certainly seems plausible that acts of respect can have as their essential feature a connectedness to the attitude of respect, and yet there be no ontological tie to moral obligation. In this sense then, moral obligations serve only an epistemic role, as a means of identifying acts consistent with the attitude of respect. Second, even if it turns out to be the case that an act of respect cannot be such without compliance with one or more moral obligations, it does not follow that moral obligation is an essential component of respect acts. Compliance with a moral obligation may be required for an act to be done out of respect without such compliance being an essential element of such an act. Having said this, my framework leaves open the possibility that there might exist *some* ontological relationship between moral obligation and acts done out of an attitude of respect. As I discuss at some length in the next chapter, Audi's hybrid ethical theory countenances just such a relationship – he argues that moral obligations are true in part due to their ontological connection to underlying valued features of persons. However, I believe it to be the case that at bottom, whether an act is done out of respect for another person turns on its connectedness to the underlying attitude.

of skepticism concerning the overall project of developing a strategy for deriving a conception of respect for persons thus seems to be in order. Such skepticism seems warranted given the breadth of ethical theories on offer, and the depth of the disagreement concerning them. Given these factors, it appears unlikely that a conception of respect can be formulated that will not, derivatively, be equally open to objection.

Eberle, in arguing against the principle of restraint contained in the notion of public justification, maintains that the principle of restraint should be rejected because justificatory liberals cannot provide a satisfactory conception of public justification that can be applied in the public square. Similar reasoning may apply here. If it is not possible to construct a satisfactory conception of respect (more specifically the duty to respect) because such an account requires appeal to an ethical theory, such appeal of which will itself be rejected by many, then perhaps reliance on the notion of respect as a moral basis for restraining reliance on religious reason alone in the public square should be abandoned.

Such skepticism arguably may be misplaced for three reasons. First, perhaps it would be possible to develop a conception of respect in which the normative component is not a moral one, but rather the practical one I alluded to earlier. That is, we might be willing to settle for a conception in which the duty to respect is based on a rational rather than a moral obligation to respect others. This solution, however, would still not resolve the problem of how to go about applying the general duty to respect others to specific objects and situations.

Second, perhaps there might be some overlap between ethical theories such that, although there might be disagreement about a number of features of the respective theories, they might nevertheless each yield similar results with respect to application of the duty to respect others.

Third, maybe the perceived need to employ a single ethical theory which will not be controversial to many is too demanding. Perhaps it would be satisfactory to develop a conception which depends on an underlying ethical theory which, although not acceptable to all, is capable of providing a justification of the duty to respect others, has sufficient explanatory power to adjudicate application of the duty of respect to individual instances, and is overall well integrated with the general conception of respect for persons.

I shall make a run at mitigating this skepticism in the final chapter by proposing an ethical theory which might satisfy a number of these properties, and thus might serve as a plausible candidate for underwriting a conception of respect.

4.6 The Entitlement To Respect

A fourth manner in which the notion of respect is frequently used and which a conception of respect must be able to explain has to do with the view that a person is “entitled” to respect. Darwall, in “Two Forms Of Respect,” frequently describes recognition respect as that form of respect to which all persons are entitled. The notion that all persons are entitled to respect is pervasive in the literature as well as in popular culture. Because I believe it is in essence derivative of the duty to respect

others, I shall say very little about it, and make only two brief observations concerning it.

First, as I suggested in subsection 3.3.2 of chapter three, whether a right to respect exists, and what the nature of respect is or what it consists in, are two separate questions. That respect might have this or that characteristic says nothing about whether there exists a right to be respected. Some argument must be asserted on behalf of the claim.

Second, as Cranor points out, we must be careful about moving too quickly from the notion that we have a duty to respect others to the claim that the duty justifies certain rights to respectful treatment. Cranor argues:

[T]here are problems with this. It is invalid to argue that because R has a duty to respect (or behave respectfully toward) P that therefore P has a right to be respected (or be treated respectfully).³⁶

As Cranor notes, H.L.A. Hart has likewise argued that it does not follow that P has a right to be benefited merely because R has a duty to benefit P (behave respectfully toward P).³⁷

I do not mean to argue that a right to respect does not exist, or cannot be deduced or inferred from the duty to respect others. I merely mean to suggest that some argument on behalf of the right to respect must be presented, and if such argument consists in inferring the right from the duty to respect others, some attempt to address the general controversy surrounding inferring a right from a duty should be expected.

³⁶ Cranor, 319.

³⁷ H. L. A. Hart, "Are There Any Natural Rights?", *The Philosophical Review* 64 (1955), 175-191.

4.7 Conclusion

I have attempted in this chapter to sketch out a framework that can be used to develop a suitable conception of respect for persons in the public square. As a *framework* for developing a conception, as opposed to an actual specific conception, it leaves a number of important issues open for further discussion and treatment. What I have offered as a framework is just that – a basic analytical structure suitable for future use in developing a comprehensive conception.

The framework I have proposed improves, I believe, upon the conceptions offered by Darwall and Eberle in a number of respects. I will briefly mention four here.

First, and most important, it views respect as a complex concept comprised of the four notions of respect. Doing so allows for important distinctions to be drawn between the different notions of respect, particularly between the attitude of respect and acts done out of respect. Second, my framework recognizes the importance of the attitude of respect for persons, and does not, myopically, conceive of respect simply as obedience to moral duty. Eberle's theory makes no explicit provision concerning the attitude of respect, but, it will be remembered he ultimately ends up smuggling it in through the back door in developing his ideal of conscientious engagement.

Third, my framework appropriately gives pride of place to human dignity as one of the fundamental aspects, if not the central feature of personhood that is (to be) valued. As my discussion in chapter 2 made clear, Eberle invoked the concept of

dignity in a limited fashion as his final principle of constraint (one cannot deny that the other is a person). Fourth, my framework acknowledges that any conception of respect must, inevitably at some point, resort to a broader ethical theory if it is to be complete.

This dependent relationship, I have suggested, arises from three basic states of affairs. Resort to a broader ethical theory is necessary in order to help identify acts of respect which are consistent with the attitude of respect, to justify, in some way, the duty to respect in the first place, and to help explicate, in particular circumstances, what the duty of respect entails (requires one to do).

Finally, I have suggested that the need to appeal to a broader ethical theory to complete a conception of respect is problematic because it requires commitment in an area perennially beset with controversy. There may be no option but to abandon entirely the project of developing a conception of respect suitable for the public square.

5. Respect And Robert Audi's Value-Based Kantian Intuitionism

5.0 Introduction

I concluded the last chapter with a note of skepticism – skepticism concerning the likelihood of being able to formulate a complete conception of respect given the inevitable need to appeal to a broader ethical theory to do so. It appears that any conception of respect, whether one consistent with the framework I have attempted to develop, or a conception such as Eberle's must make a not insubstantial commitment to some ethical theory or set of principles.

My intent in this final chapter is to attempt to temper this skepticism somewhat by proffering for examination an ethical theory that I believe not only possesses the kinds of resources necessary to address the problems raised in the previous chapter, but, more fundamentally, has as a principal element, the very notion of respect itself. I have in mind Robert Audi's value-based Kantian-intuitionism, developed in his recent book, *The Good In The Right*.¹

Audi's theory is of particular interest to my project for a number of reasons, two of which I shall briefly mention here. First, his theory offers a sophisticated account of the nature of the relationship between moral obligation (including the general duty to respect others) and valued human features (primarily human dignity). His theory does not, as do the conceptions of respect advanced by Darwall and Eberle, view respect acts as equivalent to compliance with moral obligation, but rather provides a much more nuanced and developed account of the nature of the

¹ Robert Audi, *The Good In The Right* (New Jersey: Princeton University Press, 2004).

relationship between moral obligation, value, and respect. Second, Audi's theory is also of interest because it attempts to integrate a form of Kant's categorical imperative and Ross's intuitionism – the two ethical theories relied upon by Darwall and Eberle, respectively, in formulating their conceptions of respect.

I wish to emphasize that my presentation of Audi's theory is both exegetical and provisional. My intent is to present it, not defend it. An evaluation of the theory, or even certain narrow aspects of it, is beyond the scope of this dissertation. I present Audi's value-based Kantian intuitionism merely as a candidate deserving of consideration as a potentially auspicious means of addressing some of the problems and thorny issues identified in prior chapters.

I begin, in section 5.1, by providing a brief overview of Audi's value-based Kantian intuitionism. In section 5.2, I discuss the moral epistemology of Audi's theory. I shall be primarily concerned with the manner in which Audi seeks to clarify, revise, and extend Ross's moral epistemology in attempting to devise a theory that avoids a number of the most significant epistemological challenges posed to intuitionist accounts.² I then consider, in sections 5.3 and 5.4 respectively, Audi's integration of his "moderate" intuitionism with an interpretation of Kant's categorical imperative, and with a theory of value. I conclude by outlining some of the ways Audi's theory could be helpful in developing a conception of respect.

² As suggested below, my reason for briefly discussing Audi's treatment of the theory's moral epistemology is not because it bears in some way on his treatment of the notion of respect, but rather as an attempt to preempt immediate rejection of his theory as a naïve form of ethical intuitionism. As discussed below, Audi takes seriously the epistemological challenges that have traditionally plagued ethical intuitionism, and his "moderate intuitionism" is designed to provide a more suitable intuitionistic account.

5.1 Overview of Audi's "Value-Based Kantian Intuitionism"

One means of gaining a basic understanding of Audi's value-based Kantian intuitionism ("VBKI") is by considering three general aspects of the theory: (1) its epistemological commitments; (2) conceived as an overall ethical theory; and (3) its revised Rossian normative principles. I shall discuss each aspect in turn.

5.1.1 Moral Epistemology

Audi attempts to formulate what he characterizes as a "moderate" or a "broadly Rossian" intuitionism capable of meeting some of the common epistemological criticisms leveled against intuitionism. He describes the basic *epistemological conception* of intuitionism, held by Ross and others, as follows:

[T]he view is roughly the thesis that basic moral judgments and basic moral principles are non-inferentially knowable and that, for those who justifiedly hold them non-inferentially, they are justified by, and constitute knowledge on the basis of, the non-inferential deliverances of reason.³

He attempts to develop and refine Ross's view by clarifying certain misconceptions, rectifying certain errors, and extending it in several aspects. Doing so, Audi maintains, makes intuitionism much more plausible than many of its critics have thought.

5.1.2 Conception of Intuitionism As Ethical Theory

VBKI largely endorses what Audi portrays as the three main characteristics of the overall *conception* of intuitionism as an *ethical theory*. These three characteristics are contained in Ross's theory, and "are appropriate to the metaethics of any full-

³ *Ibid.*, 21-22.

blooded version of intuitionism”.⁴ The first element consists of ethical pluralism, understood as an affirmation of an irreducible plurality of basic moral principles or prima facie duties. Second, each principle focuses on a different kind of ground for action. Such grounds imply a prima facie moral duty. Third, each moral principle is understood to be intuitively known by those who appropriately understand it.

Audi’s VBKI modifies Ross’s conception (and the standard intuitionist account), however, in a crucial way. Although Audi is committed to the irreducible plurality of basic moral principles, he seeks to advance the intuitionist position by integrating it with an interpretation of Kant’s categorical imperative. Extending intuitionism in this way, Audi maintains, strengthens Rossian intuitionism while preserving its major benefits.

Incorporating intuitionism into a broad Kantian framework is designed to provide an ethical theory better capable, than either theory individually, of satisfying both of what Audi offers as the two primary quests which drive moral philosophy: (1) the practical need for moral principles which can be readily applied in the give and take of moral life; and (2) a comprehensive moral theory sufficient to provide an adequate basis for its disparate principles, and for mediating conflicts between them. Rossian intuitionism is widely criticized as being deficient with respect to the latter aspect, but has, as one of its primary benefits, its ability to provide moral principles which can be readily usable. Conversely, Kantianism is notoriously difficult to apply

⁴ *Ibid.*, 40.

(in many instances) to basic moral decision-making, but constitutes a fairly comprehensive (although complex) ethical theory.

Integrating a modified Rossian intuitionism with Kant's categorical imperative, yields, according to Audi, the major benefits of both positions: "the moral unification possible through the categorical imperative and other notions prominent in Kant, and the relative closeness to moral practice of Rossian principles of duty."⁵ It is by virtue of this integration of a modified Rossian intuitionism with Kant's categorical imperative that VBKI is properly described as a form of "Kantian intuitionism."

Audi proceeds on step further, and seeks to connect Kantian intuitionism, as a deontological position, with a theory of intrinsic value, and thus connect the right and the good. Audi describes the result as follows:

The result is a value-based Kantian intuitionism that seeks to combine the best elements in Rossian intuitionism with a version of the categorical imperative understood in the light of a theory of value that provides unifying grounds for all of the moral principles in question . . .
..⁶

Audi notes that Kantian intuitionism can be developed without conceiving it as groundable in the theory of value he proposes, but, he maintains, the two combined (Kantian intuitionism and the theory of value) "provide a more plausible, more comprehensive ethical theory".⁷

⁵ *Ibid.*, 81.

⁶ *Ibid.*, 3.

⁷ *Ibid.*

5.1.3 Rossian Normative Principles

Finally, VBKI follows Ross in formulating various normative prima facie principles. Audi reinterprets and revises several of Ross's principles and expands the list to include additional principles which have a "similar intuitive plausibility" and "comparable basis" in the value-oriented Kantian framework constitutive of VBKI.

5.1.4 Things To Come

My interest in Audi's VBKI lies primarily in its integration of intuitionism with Kant's categorical imperative and a theory of value, and the bearing such integration has on the framework for developing a conception of respect. In an attempt to stave off outright rejection of VBKI on epistemological grounds, however, I provide a brief summary of the primary components of the moral epistemology of VBKI in the following section.

I provide a more sustained overview of the second element of VBKI – specifically, the integration of Rossian intuitionism with Kant's categorical imperative, and its grounding in a theory of value – in sections 6.3 and 6.4. I shall not address Audi's revision of Ross's normative prima facie principles. Although an important aspect of VBKI, since they modify Ross's basic moral principles in a manner consistent with VBKI's more moderate intuitionism, these modifications are not, in my view, central to the aspects of VBKI of particular interest to the topic under consideration.

5.2 Moral Epistemology

Audi takes seriously the various epistemological attacks traditionally levied against intuitionism. His treatment of the moral epistemology of VBKI consumes much of the first two chapters of the *Good in the Right*, which constitutes approximately forty percent of the entire book and spans approximately eighty pages. It accordingly is not possible to provide a detailed analysis of his sustained treatment of the topic. Rather, I shall recount those elements of the theory upon which Audi places primary emphasis, and which he maintains makes his moderate intuitionism more plausible to critics. I shall focus principally on Audi's treatment of the notions of intuition and self-evidence, two of the aspects of intuitionism which have proved problematic for most intuitionist accounts, and concerning which Audi devotes much of his discussion.

5.2.1 Rossian Intuition

I begin this subsection by discussing Audi's clarification of two misconceptions typically held concerning intuitionism generally, and Ross's version in particular. I then consider Audi's view of the affirmative elements of an "intuition". I conclude by briefly mentioning the distinction Audi draws between conclusions of inference and of reflection.

5.2.1.1 Two Misconceptions

Audi argues that two criticisms of Ross's epistemology are not warranted. The first is that Ross posited that a part of the mind or special capacity of reason is required for moral thought. To the contrary, he maintained that *prima facie* duties are

recognized in the same way as one recognizes the truth of mathematical axioms and logical truths.

The second is that Ross (and intuitionism generally) posits “indefeasible justification,” the notion that justification cannot be undermined or overridden for a cognition constituting a genuine intuition. Although some intuitionists have sought this status for the intuitively knowable, Audi argues that Ross did not so hold, and there is no principled reason why intuitionism must require it. With respect to Ross, defeasibility should be expected given his (correct) insistence that a certain mental maturity is a prerequisite to apprehending the principles of duty. Additionally, defeasibility is to be expected with respect to moral judgments of particular deeds, which often entail weighing various prima facie duties.

Audi is careful to point out that the notion of defeasibility is not inconsistent with Ross’s view that the self-evident truths at issue (prima facie duties) do not admit of proof. The fact that a proposition possesses the epistemic status of unprovability does not entail that one cannot lose one’s justification for believing it.

5.2.1.2 Four Characteristics of Intuitions

The preceding subsection dealt with two negative aspects about intuitions. Audi maintains that intuitions possess four distinctive characteristics. The first is a non-inferentiality requirement. For an intuition to be non-inferential, the proposition is not at the time it is intuitively held believed on the basis of a premise. Audi emphasizes that the point is not that one could not have a premise for what one intuitively believes, but rather that at the time of the belief, its basis is not inferential.

Ross and other intuitionists have posited what Audi refers to as the “ungroundability thesis”⁸ – which is roughly the notion that what is intuitively known cannot be (evidentially) grounded in premises. As alluded to above, and discussed more fully below, Audi rejects the ungroundability thesis. Such rejection opens up the possibility that intuitionism can be integrated in, and its prima facie duties unified by, Kant’s categorical imperative.

The second characteristic is the “firmness requirement”. Although one may make a gradual approach to forming an intuition, one does not have an intuition without a definite sense that the proposition in question holds. It is akin to “conviction”.

Third, intuitions can be formed only where there exists a minimally adequate understanding of their prepositional objects. Audi refers to this as the “comprehension requirement”. Before one can fully apprehend a self-evident truth, one must get the proposition precisely before one’s mind.

The fourth characteristic is a “pretheoreticality requirement”. According to this requirement, intuitions are not evidentially dependent on theories, and they are not held as theoretical hypotheses.

5.2.1.3 Conclusions of Inference and Conclusions of Reflection

Audi, in a certain fashion, seeks to extend Ross’s view by clarifying the notions of intuitive knowledge and justification. Specifically, Audi notes that while

⁸ *Ibid.*, 33.

an intuition can be not grounded in a proof or argument, it nevertheless can be a conclusion reached through rational inquiry or “searching reflection”.

In making this point, Audi distinguishes between a “conclusion of evidence,” which is premised on propositions noted as evidence, and a “conclusion of reflection,” which emerges through rational reflection. On the former notion, we may read a poem, and based on certain evidential propositions that occur to one, conclude that the language of the poem is artificial. One might, on the second notion, judge from a global, intuitive sense, from thinking about the poem as a whole. This latter notion is akin to a response to viewing a painting. Conclusions of reflection constitute a “non-inferential cognitive capacity,” but not a “non-reflective” one.⁹

5.2.2 Self-Evidence

The notion that prima facie duties are somehow “self-evident” is a core feature of intuitionism, and an aspect of it that has led to much of the criticism of the theory. One of Audi’s primary objectives in formulating VBKI is to articulate a conception of self-evidence that makes a more moderate intuitionism possible. I consider here his: (1) clarification concerning the actual object of self-evidence; (2) basic conception of self-evidence and the distinction between immediate and mediate self-evidence; and (3) most important, what he refers to as “hard” and “soft” self-evidence.

⁹ *Ibid.*, 45-46.

5.2.2.1 *Two Orders of Apprehension*

VBKI attempts to correct an error which Audi believes Ross made in failing to distinguish between apprehending the truth of a proposition that is self-evident, and, on the other hand, apprehending that the proposition is self-evident. The first notion involves simply recognizing, intuitively, that a proposition (which is self-evident) is true. The second notion entails recognizing, not that the (self-evident) proposition is true, but rather that the proposition is self-evident. The first has to do with the proposition's truth, the second has to do with the proposition's epistemic status. This distinction is important because, as critics have rightly pointed out, typical moral agents (non-philosophers) generally are incapable of understanding the epistemic status of self-evident beliefs, and, moreover, self-evidence is not a property that typically can be determined non-inferentially.

But nothing in Ross's intuitionism, or any plausible conception of intuitionism (including VBKI) requires a commitment to positing non-inferential knowledge of the self-evidence, as opposed to simply the truth, of specific moral propositions. Moral agents need intuitive knowledge of basic duties, they do not need knowledge of the epistemic status of the principles of duty. Audi sums up the importance of this distinction as follows:

It is . . . that first-order proposition, the principle that promise-keeping is a duty, and not the second-order thesis that this principle is self-evident, which is the fundamental thing we must be able to know intuitively if a Rossian intuitionism is to succeed in the twofold way in which Ross apparently intended it: as a moral theory and as a practical guide to everyday life.¹⁰

¹⁰ *Ibid.*, 30. Elsewhere, he makes roughly the same point:

Drawing the distinction between the two levels of apprehending a moral principle, and rejecting the notion that intuitionism must require that a person be able to perceive that a moral truth is self-evident, serves to deflect one of the more substantial criticisms of intuitionism.

5.2.2.2 Immediate Self-Evidence And Mediate Self-Evidence

Having clarified that the appropriate object of self-evidence is the truth of a moral proposition, Audi offers the following general conception of a self-evident proposition. A self-evident proposition is a truth such that an adequate understanding of it satisfies two conditions: (1) in virtue of the understanding, one is justified in believing the proposition (which explains why such a truth is evident in itself); and (2) if, on the basis of that understanding of the proposition one believes it, then one knows it.

This proposed conception of self-evidence makes it possible to draw a principled distinction between self-evident propositions that are readily understood by normal adults, and those that are understood only through reflection upon them. Audi refers to the first kind of propositions as “immediately self-evident” and to the second kind as “mediately self-evident” (since their truth can only be ascertained through

[F]or ethical intuitionism as a normative theory, the primary role of intuition is to give us direct, i.e., non-inferential, knowledge or directly justified belief of the truth of certain moral propositions. Neither knowledge of the self-evidence of basic moral propositions nor indefeasible justification for believing those propositions is required for guiding moral conduct.

Ibid., 44.

mediation of reflection). On Audi's account moderate intuitionism only requires mediate self-evidence.

Audi is careful to note that the mediation in question is reflectional and not inferential. That is, the reflection "is not a matter of discerning one or more premises and inferring the proposition from them, but rather of reaching the kind of understanding required to see the truth of the proposition 'in itself'."¹¹ Thus, we might require some time to get the proposition in clear focus, but we do not reach it by way of inference from premises.

5.2.2.3 *Hard and Soft Self-Evidence*

Based on the preceding clarifications and revisions, Audi proposes two types of self-evidence. "Hard" self evidence belongs to self-evident propositions that are: (a) strongly axiomatic, roughly in the sense that there is nothing epistemically prior to them; (b) immediate (in the temporal sense explained above); (c) indefeasibly justified; and (d) compelling, i.e., cognitively irresistible given a comprehending consideration of them. "Soft" self-evidence, on the other hand, belongs to propositions that have none of these properties. Although there are intermediate varieties between the hard and soft kinds of self-evidence, Audi suggests that it has apparently been the hard self-evidence that has most influenced the common conception of the notion as employed by intuitionists.

Audi argues that the kind of self-evidence to which his moderate form of intuitionism is committed lies quite far at the soft end. Although the propositions in

¹¹ *Ibid.*, 51.

question can be known independently of premises, they are not axioms that cannot be known on the basis of something deeper. (As discussed more fully below, Audi maintains that they can be derived in some fashion from Kantian ethics.) All that is needed for morality to be understood and practiced as intuitionists understand it is that basic moral principles can be known independently of relying on premises.

The other three characteristics of hard self-evidence likewise are absent in Audi's moderate intuitionism. Moral principles may be known or justifiably believed mediately, and such knowledge or justified belief need not be indefeasible or irresistible.

Casting self-evidence in this more moderate light, Audi suggests, addresses much of the criticism levied against intuitionism's important notion of self-evidence.

5.2.3 Resources And Varieties of Moderate Intuitionism

Audi maintains that although he prefers a rationalist version of his moderate intuitionism, it does not require rationalism. Audi accordingly considers what I can only note here – the possibility of a non-rationalist intuitionism. He also discusses the evidential role of moral emotion, and epistemically internalist, externalist, and contextualist conceptions of intuitionism.

5.3 Kantian Intuitionism

Audi's VBKI is, at its core, an intuitionist ethical theory. As indicated in the introduction, Audi maintains that VBKI retains the three primary commitments of intuitionism -- ethical pluralism, understood as an affirmation of an irreducible plurality of basic moral principles or prima facie duties, the grounding of such

principles or duties in specific natural properties or actions/events, and that moral principles can be intuitively known by those who appropriately understand them.

The first element is structural and logical in that it affirms the plurality of moral principles, and that none is deducible from any other principle or a master principle. It thus denies the view espoused by Kant and utilitarianism that there is a single moral principle.¹² The second element is ontological in that “each principle is grounded on a different kind of element that constitutes a basis of the obligation the principle expresses.”¹³ The third element is epistemological – it describes the basis of knowability of the basic principles.

Audi maintains, not controversially it would seem, that a major merit of Rossian intuitionism is that it provides moral principles that directly apply to daily life. Such principles include ones governing promissory commitment, truthfulness, beneficence, reciprocity, justice, reparation, etc. Rossian intuitionism, in this regard, has an advantage over other major normative theories such as Kantianism and utilitarianism, which require interpretation and reasoning that is often complex and/or controversial. As Audi puts it, “[f]rom Kant’s categorical imperative or Mill’s principle of utility . . . there is often a long, uncharted distance to moral decision.”¹⁴

Though it possesses the above advantage, intuitionism has been traditionally beset by claims that it is inadequate on at least two primary grounds. The first is that intuitionism lacks a comprehensive moral theory capable of providing an adequate

¹² As discussed more fully below in the next section, the ontic relationship Audi maintains exists between dignity and the categorical imperative and Rossian principles calls VBKI’s strict adherence to this Rossian principle into question.

¹³ *Ibid.*, 20-21.

¹⁴ *Ibid.*, 80.

basis for its disparate ethical principles. Second, Rossian intuitionism has great difficulty in providing a good way to resolve conflicts of duties. Essentially, it is the desire to address and remedy these two weaknesses that leads Audi to attempt to extend and thereby improve his modified Rossian model of intuitionism by integrating it with an interpretation of Kant's categorical imperative. Audi maintains that by integrating Rossian principles with a Kantian moral theory, the resulting Kantian intuitionism can provide the major benefits of both theories: "the moral unification possible through the categorical imperative and the other notions prominent in Kant, and the relative closeness to moral practice of Rossian principles of duty".¹⁵

Kantian intuitionism turns out to be a complex theory, which goes far beyond the simple unification of Rossian principles and the use of the categorical imperative to resolve conflicts in Rossian prima facie duties. Thus, for example, each theory is said to clarify, explain, and justify the other theory. The two theories also are connected in a number of ways. Important for this dissertation, as will be discussed in some detail below, Audi maintains that the two theories are unified by and share a common connection to the goal of preserving the dignity of persons – one through the categorical imperative, and the other by virtue of the Rossian principles. For my purposes, this connection will provide at least a possible means of connecting the Rossian principles with concerns for protecting the dignity of persons, and thereby a possible basis for identification of acts done out of respect for persons.

¹⁵ *Ibid.*

Given the complexity of the theory, I shall not be able to provide a detailed account of Audi's discussion of the integration of (his interpretation of) Kant's categorical imperative with his modified Rossian intuitionism. I shall attempt, rather, to present the basis framework of the integrated theory, with particular emphasis on those aspects which bear on the problems raised in the last chapter concerning the identification of acts done out of respect.

I shall consider: (1) the major elements of Audi's Kantian interpretation of the categorical imperative; (2) how this Kantian interpretation is integrated with Rossian principles and addresses the two problems facing intuitionism referenced above; (3) how Kantian intuitionism can explain, clarify, and justify (Audi's interpretation of) the categorical imperative; (4) several of the dimensions of interconnectedness between the two theories – particularly as they bear on the connection of value/dignity and Rossian principles; and (5) Audi's claim that his account preserves the commitment to a plurality of moral principles.

5.3.1 Audi's Kantian Interpretation

Audi emphasizes that it is his intent to integrate Rossian principles with a "Kantian theory," "not specifically Kant's." The latter, he maintains, would require substantial interpretation of his writings, which are complex and subject to differing interpretations. Rather, he refers to the Kantianism which he uses as a specific interpretation of Kant. I shall briefly outline here what I take to be the primary components of the Kantian theory employed by Audi.

Although Audi discusses both the universality formulation and the intrinsic end formulation of the categorical imperative, he concludes that the latter should be essential in determining what principles can be rationalized from the moral point of view. His translation of the intrinsic end formulation is as follows:

Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.¹⁶

Several clarifications concerning Audi's treatment/characterization of the intrinsic end formulation are in order. First, the central notion of what it means to treat someone as an end is that the relevant acts toward the person are motivated by a concern for the good (e.g., physical/psychological) of the person for its own sake. Second, to treat someone merely as a means is for the relevant acts to be "motivated only by instrumental concerns and accompanied by an indisposition to acquire any non-instrumental motivation toward the person."¹⁷ The intuitive idea, here, is one of exploitation. We are familiar with what it means to use something only as an instrument, useful for getting a job done; it may be damaged in the process, and thrown away thereafter. Third, all other things being equal, the avoidance of treating a person or group merely as a means takes precedence over treating another person or group as an end. Stated differently, it is morally worse to treat someone merely as a means, as opposed to failing to treat someone as an end in themselves.

¹⁶ *Ibid.*, 90.

¹⁷ *Ibid.*, 91-92.

Fourth, Audi interprets the intrinsic end formulation to imply a duty not to treat others with disrespect. There are cases, he maintains, in which a person does not treat another person merely as a means, but also does not *only* fail to treat the other person as an end. Audi offers the example of a person who thoughtlessly talks during the presentation of another as an example. Doing so treats the other person disrespectfully, though the person is not treated as a means, nor is the person only not being treated as an end.

Fifth, Audi draws a close connection between the moral directives contained in the intrinsic end formulation of the categorical imperative, on the one hand, and the value of dignity and the attitude of respect, on the other hand. Dignity, Audi argues, “is central in the status of persons as ends in themselves”.¹⁸ Dignity, he states slightly differently, “is central in grounding the obligation to treat persons as ends”.¹⁹ If dignity is the central value to the categorical imperative, respect is the central “attitude”. Viewed from the other direction, Audi maintains that the categorical imperative is the central principle (though not necessarily the only one) which captures in very general terms what actions express respect for or “befits” the dignity of persons. I shall have more to say concerning Audi’s view of the relationship between respect and dignity, and moral obligation, in the next section.

¹⁸ *Ibid.*, 110.

¹⁹ *Ibid.*

5.3.2 The Kantian Unification and Clarification of Rossian Principles

Audi refers to his combining of his interpretation of Kant's categorical imperative with Rossian intuitionism in (at least) the following three different ways: as the categorical imperative "unifying" Rossian moral principles, as the former "systematizing" the latter, and as Rossian intuitionism being "integrated" with the categorical imperative. The use of each appears to depend on the particular context in which Audi discusses/presents VBKI. Of the three, however, the last description appears best suited to capture the overall breadth of the theory – VBKI is, in its totality, a complex integration of the two theories. Though its starting point, at least polemically, involves the unification of Rossian principles by the categorical imperative, this is but one aspect of the relationship, or integration of the two theories.

In this section, I consider two of the primary benefits Audi maintains results from integrating Kantianism with Rossian moral principles: (1) the unification of Rossian principles by the categorical imperative; and (2) application of the categorical imperative in resolving conflicts of Rossian prima facie duties.

5.3.2.1 The Unification of Rossian Principles

Audi maintains that if we take the categorical imperative as our widest, or at least most basic moral principle, it may be argued that Rossian principles might be just the general moral principles one would derive (even if not by strict deduction) from application of the categorical imperative. Thus, for example, if one is to avoid treating others merely as means, one must recognize (prima facie) duties of non-

injury, reparation, and of fidelity and veracity. If one is to treat others positively as ends, one must recognize such duties as beneficence, gratitude, self-improvement, and justice.

Audi does not have in mind a “strict deduction,” though he suggests that such a strong derivation might be possible with some degree of regimentation on the Kantian side. Thus, his derivability claim is not that every violation of a Rossian (final) duty either fails to treat someone as a means or treats them merely as a means to an end. Rather, it is roughly that violations of these duties tend to do so. In short, the derivation of Rossian duties from the categorical imperative is a weak one – it constitutes a “justificatory rationale” for them, rather than a strict deduction of them.

It is worth noting one way in which the categorical imperative’s unification of Rossian principles helps to systematize or connect the principles. As indicated in the preceding paragraph, several of the principles seem to imply cases of treating others as means only (duties of non-injury, reparation, and of fidelity and veracity). Other principles imply a failure to treat others as ends (duties of beneficence, gratitude, and self-improvement). The Rossian duties are in this fashion organized into two basic categories, consistent with the negative and positive standards expressed in the categorical imperative.

5.3.2.2 A Kantian Approach to Conflicts of Duty

One of the most difficult problems facing standard intuitionist models is the failure to be able to explain, in situations where there exist conflicting prima facie duties, why the final duty consists of one prima facie duty rather than the other. Audi

considers this problem in the context of what he refers to as an ethical theory's "normative completeness". An ethical theory is normatively complete if "it accounts for every kind of deed that, on balance, we (morally) ought (or ought not) to do". (85) Normative completeness is what he refers to as an adequacy condition for any truly comprehensive moral theory. It enables a person to move from knowledge or a plausible assumption of an overall moral obligation to a plausible account of why the action in question is obligatory.

Audi distinguishes between first-order and second order normative completeness. An ethical theory has first order normative completeness if it is able to account for all our basic (prima facie) duties. An ethical theory possesses second order normative completeness only if it accounts for the finality of any (first order) duty that prevails in a conflict between prima facie duties. Rossian intuitionism possesses first-order but not second-order normative completeness.

Audi maintains that the unification or systemization/integration of Rossian principles by the categorical imperative can provide a reasoned basis for adjudicating conflicts between Rossian prima facie duties. He provides two primary examples. I shall briefly discuss each one.

The first, simpler example, involves a thought experiment in which Audi must decide whether to attend to his ill daughter, or keep a promise to meet a friend for lunch. If he fails to attend to his daughter, she may have a serious set back. If he fails to keep his lunch date, his friend will have made a needless trip to the restaurant,

and upon reaching the establishment, will simply call Audi to determine what is wrong.

Audi maintains that if he risked his daughter's health to keep a promise of the kind in question, he would apparently fail to treat his daughter as an end in the relevant sense. He would be putting her health in serious danger for less weighty reasons. Audi makes a connection between the level of care consonant with the relationship and treating another person as an end. He observes:

[T]he point is not that if I kept the promise, I could not still care about the child at all; it is that the treatment is not appropriate to the level of care that goes with treating persons as ends or with my relationship to her.²⁰

On the other hand, if he stays with his daughter, he acts in a way that would express his valuing of her well-being for its own sake, and he would not act in a way that his friend would likely find objectionable. With respect to the latter point, he has not treated his friend as a means only, that is, in an exploitive way.

Audi's second example entails treatment of the "beneficence problem". The duty of beneficence, roughly the duty to contribute to the well-being or good of other persons, is one of the Rossian prima facie duties. Audi describes the beneficence problem roughly as follows:

Why is it that my duty of beneficence does not virtually always outweigh my ordinary fiduciary duties to, say, my family, as well as nearly all my duties of self-improvement?²¹

²⁰ *Ibid.*, 92.

²¹ *Ibid.*, 94.

Audi's treatment of the beneficence problem is lengthy, so I shall only recount the two primary points which he argues emerges from application of the categorical imperative. First, both expressions of the intrinsic end formulation of the categorical imperative will be violated if we regard the duty of beneficence in ways that are intuitively objectionable – as prevailing over other duties, such as those of fidelity or self-improvement. By doing so, we will have treated ourselves, or we will have approached using ourselves, merely as means, and we will have failed to treat certain others, such as a promisee or our friends, as ends. Second, where fulfilling a duty of beneficence would result in one or both of these deficiencies, then one is justified in giving a preference to the other duties, particularly to fidelity, over the duty of beneficence.

5.3.3 Mutual Clarification, Explanation, and Justification

As previously indicated, Audi maintains that the clarification, explanation, and justification is bi-directional. Ross's principles can help explain and clarify Kantian ethics, at least where they are the most abstract, including what it means to treat other people as ends. They can also help provide independent justification for the categorical imperative. I briefly describe two examples of how Rossian principles are said to help clarify, explain, and justify Kantian ethics.

First, we can think of Rossian principles as serving as constraints on the use of the categorical imperative. “[I]nterpretations of it that do not yield them, and applications of it that are inconsistent with them,” Audi writes, “are prima facie

defeated by that fact”.²² Thus, not only does the categorical imperative help explain and clarify the Rossian principles, the latter can assist in the application of the former, which can, in many instances, be difficult to apply in practical moral situations.

Second, more generally, Audi maintains that insofar as we possess justification for Rossian principles, we may gain independent justification for the categorical imperative. The reverse is also, of course, true. To the extent we have independent justification for the categorical imperative, insofar as Rossian principles are derivable from it, we gain justification for the Rossian principles.

Much more could be said about how the integration of the two theories is said to be able to help clarify, explain, and justify each theory, but this brief summary (along with the discussion contained in the previous subsection) is sufficient to suggest the basic manner in which Audi believes integration of the two prominent theories can achieve this result.

5.3.4 Interconnectedness Through Dignity

An important element of VBKI, presented first by Audi in his discussion of the integration of Kantian ethics with Rossian intuitionism, and further developed in his attempt to anchor Kantian intuitionism to a theory of value (discussed in the next section), is the interconnectedness of the two moral theories under the concept of dignity. For Audi, it is the concept of the dignity of persons, and the correlative notion of respect (understood as an attitude toward dignity), which constitutes one of the primary links between the two theories.

²² *Ibid.*, 105-106.

I have already indicated that Audi views dignity as being “central” in the status of person as ends in themselves, or, stated slightly differently, “central” in “grounding the obligation to treat persons as ends”. Given that Audi views violation of the negative expression of the intrinsic end formulation (never treat others merely as means) as being worse than failing to treat others as ends in themselves, it seems fair to assume that Audi understands dignity to likewise be important in the admonition never to treat others merely as means. In any event, Audi clearly draws a close connection between the value of dignity and the categorical imperative.

Rossian principles of duty, Audi maintains, also are closely connected with the concept of dignity. This shared connection with dignity interconnects and unites the two theories at a deep level. Thus, Audi refers to the “interconnection of [Rossian] moral principles under a concept that figures in the grounding proposition [categorical imperative], such as the concept of the dignity of persons.” Just as dignity is central in the status of persons as ends in themselves, he writes, “it is also broad enough to constitute a main basis of Rossian duties.”²³

Of particular interest to my exploration of Audi’s VBKI as a possible ethical theory useful in establishing an analytical framework for developing a conception of respect, is the manner in which dignity (and the notion of respect) is, for Audi, thought to be related to the Rossian principles. This connection appears to run in two directions; from Rossian principles to dignity, and then from dignity to moral

²³ *Ibid.*, 110.

principles. I shall touch briefly on each here, and then further develop this two-fold connection in the next section.

In presenting Audi's view that Rossian principles can clarify and explain the categorical imperative, I discussed his contention that the former can act as a constraint on the latter. Audi maintains that this is the case in substantial part because of the connection each theory bears to dignity. Like the categorical imperative, which seeks to preserve the dignity of persons (by ensuring that they are never treated as means only and as ends in themselves), so too we can think of Rossian principles as "formulating at least the main standards for treating people with the kind respect appropriate to their dignity".²⁴ In other words, if we want to know how we can act in a manner consistent with the value we place on persons (dignity), and thus act with respect, we may look to the Rossian principles for guidance. The principles shed light on what it means to treat someone respectfully.

The relationship between dignity and the moral principles also appears, for Audi, to run the other way as well. Just as dignity is central in "grounding" the categorical imperative (this supplies the connection between the categorical imperative and the Rossian principles), so too dignity constitutes a "basis on which people are owed the [Rossian] duties."²⁵ Just exactly what Audi means by referring to dignity as the "basis" upon which Rossian duties are "owed" is not clear in the passages in which Audi discusses the integration of the two theories. As discussed

²⁴ *Ibid.*, 105.

²⁵ *Ibid.*, 110.

more fully below, however, in the next section, Audi does seem to view this grounding as a type of ontological grounding.

In sum, in discussing the integration of Kant's ethics with Rossian principles, Audi perceives there to be bi-directional (to borrow Audi's phrase) relationship between Rossian principles on the one hand, and dignity on the other hand. Rossian principles provide the main standards necessary for treating people in a manner consistent with their dignity, and thus possibly out of respect, and dignity appears to ground, in some way, the principles. He likewise views a similar bi-directional relationship to exist between the categorical imperative and dignity.

5.3.5 The Preservation of Ethical Pluralism

I close this section by briefly considering Audi's response to the objection that unifying the Rossian principles under an interpretation of the categorical imperative undermines the plausible ethical pluralism that is attractive in Rossian intuitionism. He maintains that Kantian intuitionism does not imply that there is some "general character that makes right acts right," but rather leaves open the ontological thesis about rightness. Kantian intuitionism accepts that there is a plurality of moral reasons for action. These reasons may be viewed as "basic" in least three ways: (1) any such reasons can be known to be a morally relevant reasons for action without resort to other more fundamental considerations; (2) their normative force does not consist wholly in their indicating some other factor, such as enhancement of pleasure; and (3) one's justified level of confidence in the principles of prima facie duty may be higher than one's justified level of confidence in the categorical imperative. If Rossian

prima facie duties are basic in this three-fold sense, Audi maintains that they are in a “certain way” irreducible.

Audi argues that even if they are irreducible in this fashion, it does not follow that dignity cannot constitute a characteristic possessed by all duties such as that expressing respect for persons, or befitting the dignity of persons. Such a property, he emphasizes, is not equivalent to a property that “makes right acts right,” since it need not be a “grounding” property.

Audi’s argument is a bit perplexing given that, in the passages quoted above, he seems clearly to state that dignity is a grounding property for both the categorical imperative and Rossian principles. And, as discussed in the next section, in attempting to anchor Kantian intuitionism with a theory of value, he argues that dignity ontologically grounds Rossian principles. Thus, although Audi wishes to preserve the Rossian commitment to the plurality of moral principles, it would appear that he does in fact end up unifying the principles in some property (dignity) that “makes right acts right”.

5.4 *The Good In The Right*²⁶

Kantian intuitionism, as a model of intuitionism in ethics, is designed to retain the core of a Rossian pluralistic theory of moral obligation. Most notably, it assumes a plurality of basic moral duties, as well as the possibility of non-inferential knowledge of principles expressing them. Audi maintains that Kantian intuitionism

²⁶ Audi advances a particular theory of value based on experience. He maintains, and I agree, that his primary points concerning intrinsic value, particularly concerning its connection with moral principles and with reasons for action, can survive a different account of the bearer of value (other than by experience). Since my main concern here is with these connections, I shall say nothing about his particular theory of value.

(while preserving what is best in intuitionism) can be further strengthened by incorporating it within a wider theory that countenances its basic, non-inferentially knowable principles of duty as grounded (or at least groundable) in considerations of value. Such axiological grounding of Kantian intuitionism's moral principles is viewed by Audi to have merit because a good ethical theory should account for how morality contributes to human flourishing.

I shall address Audi's attempt to connect the "good" with the "right" by considering the following general aspects of his discussion: (1) how it is that the plurality of moral principles are said to be grounded in value; (2) the values Audi identifies as grounding the moral principles; (3) the three-fold integration between the grounding values, Kant's categorical imperative, and the Rossian plurality of moral principles; and (4) the relationship between moral principles and dignity, and the role respect plays in this relationship.

5.4.1 Value As A Basis For Action

Audi appears to advance two basic ways in which value bears on one's actions. First, that something is intrinsically good or intrinsically bad counts toward the rationality of a responsive act. If, for example, we believe that pain is intrinsically bad, we take that view as counting toward the rationality of avoiding an action that will cause pain. Moral value considerations may also serve as reasons. If we believe a particular action is unjust, we are committed to recognizing this fact as a reason to avoid the act.

Such considerations, even moral ones, do not themselves constitute or give rise to moral obligations. They are not, in the strict sense, normative. Audi does characterize them, however, as being normative in a wide sense, in that they count toward the rationality of the action in question.

In short, for Audi, the intrinsic value of an experience provides a basic reason (normative in a wide sense) for action.²⁷

More fundamentally, however, Audi is interested in the “axiological integration of Rossian principles” – that is, in establishing a particular type of grounding of Rossian principles in value. Doing so, he contends, can help further clarify, rationalize, and to some degree unify the principles.

Audi characterizes the *manner* in which he views Rossian principles to be grounded (or “based on,” which he considers to be roughly similar terminology) in value as being a type of “ontic” grounding. He describes what it means for a principle to be ontically grounded as follows:

To say that a (moral) principle is (at least in part) *ontically grounded* in a value is roughly to say that it is *true* at least in part because action in accord with the principle is at least a partial realization of that value.²⁸

I take it that what Audi means is that a principle is true, or is what is – say, for example, the duty not to injure others – at least in part due to the fact that it has the effect of promoting or preserving a particular value – here, for example, in avoiding causing pain to another person. That is, it is the perceived value that gives rise to, and is (at least partially) responsible for the moral duty. But for the value, the duty might

²⁷ I discussed this essentially non-normative basis for action in section 4.5.1 of the previous chapter.

²⁸ *Ibid.*, 140.

not exist. It is important to note here that Audi hedges a bit in referring to the moral principle as being true “at least in part” because action in accord with the principle helps realize the value. Although not entirely clear, he appears to leave open an additional source of grounding other than its ontic relationship with the value.

Audi is careful to distinguish ontic grounding from what he refers to as epistemic grounding and inferential grounding. A principle is epistemically grounded in a value if knowledge of or justification for believing the principle depends on knowledge of, or justification regarding, the grounding value. A cognition (such as a judgment or belief of a moral principle) is inferentially grounded on another cognition if the first is held on the basis of the second. In each of these forms, grounding must be distinguished from groundability. I take it that the former refers to actual grounding, whereas the latter refers to the possibility of grounding. According to Audi, the epistemic independence of moral principles insisted upon by Ross and other intuitionists is compatible with both inferential and epistemic groundability, as well as with ontic grounding.

It is not clear that Audi’s distinction between the three types of grounding fully preserves the Rossian commitment to a plurality of moral principles to which Audi seems so dedicated. While perhaps he has preserved the notion of epistemic independence, it would appear that he anchors the Rossian principles to a single “grounding” property.

5.4.2 *Human Dignity As A Core Value*

Assuming that Rossian principles are groundable in certain values, and that such values provide basic reasons for action, it remains for Audi to determine exactly what the relevant values are. At this point Audi resorts to Kant's view that persons are ends in themselves, and have intrinsic worth. Kant, Audi observes, rightly took the value of a person to be essential to a full understanding of the categorical imperative. More specifically, Audi takes Kant to have regarded the imperative as being grounded in value:

Suppose . . . there were something whose existence has in itself an absolute value . . . then in it, and in it alone, would there be the ground of a possible categorical imperative – that is , of a practical law. . . .²⁹

What is it about persons for Kant in virtue of which they must be treated as ends? Audi focuses on Kant's consideration of dignity. For Audi, dignity requires, as a necessary condition for possessing it, moral agency and our capacity for the experience of moral value. But it also consists in our rational capacities and our distinctive kind of sentience, both of which, Audi maintains, are explicable in non-moral terms and thus provide an anchor for dignity that does not depend on any moral notion. Audi further elaborates on the non-moral properties of dignity as follows:

These capacities are normally present at birth. That human persons can reason, that we can pursue complicated projects, and that we can enjoy some things and suffer from others, are among the capacities essential to our dignity. We can be delighted by poetry, music, and conversation; we can smart from embarrassment and suffer moral anguish. In these and other capacities, we have elements of dignity that even the higher (non-human) animals lack.³⁰

²⁹ *Ibid.*, 142.

³⁰ *Ibid.*, 144.

It is the values associated with these properties of dignity which (ontically) ground, for Audi, the Rossian moral principles.

5.4.3 Axiological Integration With Kantian Intuitionism

Audi argues that if he is correct that Rossian principles can be integrated axiologically as well as deontologically, a unifying, grounding derivation of the principles from a well-developed theory of value may be possible. Although the derivation which might be possible need not be a strict proof, it might nevertheless provide a strong enough connection such that the grounding elements are capable of supplying both a “justification” and a “partial explication” of the principles grounded in them.

Audi suggests two possibilities. First, understanding the values whose realization is central for human dignity helps us justify and understand the categorical imperative, which, in turn, helps us justify and understand Rossian duties. Second, it is possible to proceed directly from an account of the relevant values to a kind of derivation of the Rossian principles. Audi observes that a prior integration of the Rossian duties into a Kantian intuitionism is not necessary for the axiological grounding of the principles, but he prefers the “more comprehensive theoretical grounding in two partially independent domains.”³¹

Finally, Audi observes that under either possible case described above, there is related justificatory and explanatory connections running in the opposite direction – the understanding of Rossian duties helps us to justify and understand the categorical

³¹ *Ibid.*, 145.

imperative and the values “that account . . . for the place of all our duties in human flourishing.”³² In this sense, then, the integration between Rossian intuitionism and Kant’s imperative, discussed in the prior section, is further broadened by virtue of their mutual grounding in the dignity of persons.

5.4.4 Dignity, Moral Principles, and Respect

Having considered Audi’s conception of the axiological integration of Kantian intuitionism with a theory of value, I wish to return to the bi-directional relationship which Audi maintains exists between dignity and moral principles, and, further, the role that respect for others plays in this relationship. In doing so, I believe it becomes possible to see how his integrated theory can begin to address some of the questions left remaining at the end of the last chapter, and be of assistance in establishing a framework for developing a conception of respect.

Beginning from “the bottom up,” I have shown how Audi has stressed, in both his discussion of the integration of the categorical imperative with Rossian intuitionism, and in his discussion of the integration of the latter with a theory of value, the importance of the grounding relationship between dignity, and the categorical imperative and Rossian principles. Dignity is central to, and grounds both sets of moral principles. This grounding is an ontological one. Dignity is at least part of the reason why the moral duties are what they are.

Although Audi does not seem to say much about it, this ontic relationship provides another basis of reason for action. In addition to the intrinsically good or

³² *Ibid.*

intrinsically bad counting toward the rationality of a particular action, we have additional reason for abiding by moral principles if they are understood, as Audi proposes, to be ontically linked to the dignity of persons.

I have further shown how Audi views the moral principles embodied both in the categorical imperative and Rossian principles to have a top-down function. The duties espoused by both theories are viewed by Audi as formulating standards necessary for ensuring that people are treated in a manner consistent with their dignity. Audi's comment on this relationship, previously quoted, is worth repeating: "[W]e can think of Rossian principles as part of that system and indeed as formulating at least the main standards for treating people with the kind of respect appropriate to their dignity."³³ In a subsequent passage, Audi summarizes this important connection between Rossian moral principles and the categorical imperative, and the dignity of persons, as follows:

May we not think of Rossian principles of duty (perhaps including some Ross did not formulate) as expressing *prima facie* requirements on respecting the dignity of persons? And is there not a notion of respect for persons – epitomized in always treating them as ends and ever merely as means – that properly goes with carrying out these duties?³⁴

In short, the moral principles, grounded in the dignity of persons, serve as a means of specifying how one is to act if one wishes to act in a way consistent with the dignity of another person as a person.

³³ *Ibid.*, 105.

³⁴ *Ibid.*, 142.

It is now possible, I believe, to see how Audi's theory, if adopted, could be helpful in developing a conception of respect. At the end of the last chapter I left open the question of how one goes about determining what it means to treat someone with respect. Audi arguably provides a sophisticated ethical theory capable of addressing this question. For Audi, respect is an attitude, and dignity is the object of that respect. A necessary condition for treating someone out of respect is that one act in compliance with the categorical imperative or the Rossian duties. This notion is supported by both the top-down and bottom up views expressed by Audi. With respect to the former approach, he has argued that the principles formulate at least the main standards for treating people with respect, that is, in a manner appropriate to their dignity. Acts in compliance with these principles treat people in a manner consistent with valuing them as persons. Audi's bottom-up analysis provides additional conceptual support for this conclusion, in that the nexus between dignity and moral principles becomes tighter, or more secure, through the ontic connection posited by Audi. If the dignity of persons is at least partially responsible for the duties, there is additional independent reason to believe that the moral principles serve to further and preserve the dignity of persons.

Although Audi views respect as an attitude, he seems to view compliance with Rossian duties or the categorical imperative, *simpliciter*, as being sufficient to characterize the act as one having been done out of respect. To the extent he does think this, his theory would need to be adjusted. Although conforming with the moral principles may be a necessary condition for acting out of respect, I do not believe that

it is a sufficient condition. As I have previously argued, if we understand respect, foundationally, to consist of an attitude, it would seem that we can act in a manner which complies with a moral duty, yet not do so out of respect for the other person. In such a case, as discussed earlier, we would have acted respectfully, but not out of respect. Certainly complying with a Rossian duty is morally a good thing, but doing so out of respect for another (while possessing the attitude of respect), is certainly better still. In short, true acts done out of respect would appear to require both compliance with a moral duty, and an attitude of respect.

One further clarification to Audi's theory might need to be made. Although one must possess an attitude of respect to perform an act out of respect, I do not think that the attitude must, as Darwall seems to suggest, have a clear object of respect in mind. That is, it would seem that a general notion of "respect for the person" would suffice. Perhaps this distinction could best be described in terms of something like the distinction Audi draws between immediate and mediate self-evidence. That is, if a person focused on the basis of the respect, or it was pointed out to him, he would be able to see the more precise basis of the attitude of respect. For example, a person who decides to vote against a law banning same-sex marriage might do so based on the general sense of respect for the other person. Based on further consideration or discussion, the person might see more clearly that voting in favor of such a law might violate some specific anchoring aspect of the dignity of others. In any event, to the extent that Darwall's theory requires a direct correlation of the moral rule to the aspect of dignity, it seems too rigid and unrealistic.

In any event, Audi's value-based Kantian intuitionism, and more specifically his formulation of the bi-directional relationship between the dignity of persons and moral duties, provides a possible basis upon which to build a framework for developing a conception of what it means to treat others out of respect. It is to comply with the moral principles, and in so doing, act in a matter which is consistent with and preserves the dignity of other persons.

5.5 Conclusion

Any attempt to articulate a conception of respect will necessarily entail appeal to a broader ethical theory or set of ethical principles. This is true regardless of whether the conception, like that proposed by Darwall and Eberle, understands respect simply as compliance with moral obligation, or, like my proposed framework, countenances a much looser connection between moral obligation on the one hand, and the attitude of respect and acts performed out of respect on the other hand. Objections to particular conceptions of respect will thus be no less vociferous than objections to the underlying ethical theories upon which they rely or are based.

This, of course, will be true for Audi's value-based Kantian intuitionism. Indeed, given its hybrid nature, and that it is at heart an intuitionist account (even if a "moderate" one), it can be anticipated that it will be the focus of considerable objection and attack. And this is as it should be, particularly given that Audi has only recently published it. Sustained analysis and critique will be necessary before it can be determined whether the theory is a defensible one, and accomplishes the results Audi proposes.

Nevertheless, his theory, as I have attempted to point out, has much to offer by way of situating the concept of respect within two prominent ethical theories (and a basic understanding of value). Beyond these advantages, his theory arguably presents a promising attempt to retain the best of both (a basic interpretation of) Kantianism and Rossian intuitionism, while at the same time addressing many of the major weaknesses commonly associated with both theories. It would seem, at least, to provide a much more suitable framework to develop a conception of respect than that relied upon by Darwall and Eberle.

6. Conclusion

6.0 Introduction

The general issue with which I have been primarily concerned in this dissertation is the extent to which the principle of respect can be said to entail what Eberle has denominated the “doctrine of restraint”. That is, does respect for others in the public square mandate that one refrain from relying on religious reason alone in supporting a coercive policy or law? Many, and probably most, theorists maintain that the entailment relationship does hold. Eberle recently has called the entailment relationship into question. The issue is now fairly on the table for debate.

I have suggested that one way, perhaps the best and only way, to adjudicate between the contrary views concerning the nature of the entailment relationship is to look more closely at the concept of respect itself. By exploring the concept of respect and probing it more deeply, we may be in a better position to determine what the principle of respect actually requires of a conscientious citizen in a liberal democracy when it comes to reliance on religious conviction in the public square.

I have further suggested that a more detailed look at the concept of respect is also warranted given its complex nature. I believe it is fair to conclude that one reason reliance on respect as a moral justification for restraint on religious argument in the public square has hitherto gone mostly unchallenged is largely due to the perception that respect is a simply, widely understood notion. In many senses respect is indeed a simple and basic concept. As I have demonstrated in the first and second chapters, however, it is, below the surface, a highly complex and nuanced one.

It thus has been my intent in this dissertation to attempt to advance the debate concerning the entailment relationship between respect and restraint by looking more closely at the concept of respect. I have not been able, as I had originally hoped, to develop a complete conception of respect. Given this shortcoming, I also am unable to take the next step, which would be to use such a conception to test the entailment relationship. Nevertheless, I believe that I have formulated a useful framework for developing a conception of respect, and have identified the key areas in need of further attention. My purpose in this chapter is to briefly summarize the primary aspects of my account which I believe may be useful in the articulation of a suitable conception of respect for persons in the public square, as well as the limitation of the framework and possible consequences of such limitations.

6.1 Eberle/Darwall

Few theorists, as Darwall has pointed out, have attempted to provide a broad theory of respect for persons. This observation is particularly true when it comes to discussions of respect as it applies to conduct in the public square. Darwall, however, does outline such a concept, in developing his two forms of respect. And, following Darwall, Eberle uniquely attempts to provide a concept of respect in considering the entailment relationship. Eberle's concept of respect, and Darwall's underlying account upon which it is based, are thus deserving of attention in pursuing my project here.

As a potential conception of respect, I have attempted to provide a fair and detailed analysis of Darwall's notion of recognition respect.¹ While I have suggested that his article offers a number of valuable insights into the notion of respect for persons, I have argued that it is fatally defective and must be rejected. The primary root problem with his theory, as I have argued, is that it views respect for persons essentially as compliance with one's moral duties towards others. This myopic conception of respect fails to take into account what I take to be several key features that we commonly understand respect to entail.

Most fundamentally, Darwall's account fails to take into account the fact that respect includes not just action or conduct, but also a psychological component. The failure to recognize this psychological component leads to several other obvious problems with his theory. For example, his theory is incapable of properly addressing the role of value, and, more specifically, dignity, in having respect for persons. Surely these are key components of respect. Additionally, his theory demands compliance with moral duty as a prerequisite to having respect for others. I have argued at length that it is certainly possible to have respect for others (understood as an attitude), yet not treat someone with respect.

My analysis of Darwall's account thus establishes two things. First, for the above as well as other reasons discussed in detail in chapters three and four, Darwall's notion of respect cannot be accepted as a satisfactory account of respect for

¹ I wish to offer a bit of an apology here. I am probably guilty of over analyzing Darwall's article, and in faulting him for not providing a more detailed analysis in certain areas. The primary purpose of his article, or so I take it, was simply to draw a clear distinction between recognition respect and other forms of respect. Some of the deficiencies I have emphasized are surely a result of this narrow focus, and the shortness of the article.

persons. While it is a helpful starting place, and there is much to be learned from studying it, it is fundamentally flawed. Second, by extension, we can draw a similar conclusion about Eberle's account of respect, which is derived from and based on Darwall's recognition respect. By way of example, perhaps the most glaring deficiency with Eberle's notion of respect is that, like Darwall, in presenting his formal articulation of the notion of respect, he includes no reference to or incorporation of a psychological aspect of respect. Yet, in defending his conception of respect against challenges by justificatory liberals, he resorts to arguments which depend for their success on attitudinal aspects of respect.

I have not argued, and do not mean to suggest, that Eberle's reliance on Darwall's (unacceptable) notion of recognition respect means that Eberle's rejection of the doctrine of restraint should itself be rejected. Eberle may very well turn out to be correct. I suspect he is correct. Nevertheless, if we wish to make a fair and informed adjudication of the exclusivist – inclusivist debate concerning the entailment relationship, we will need to look elsewhere for a satisfactory concept of respect.

6.2 A Framework For Developing A Conception of Respect

In addition to providing an informed basis for rejecting the Eberle/Darwall account of respect, I have attempted to provide a framework which can be used to develop a more suitable conception of respect. I believe this framework identifies a number of key components which any conception of respect must entail. The framework is, however, limited in a number of ways. In this section, I briefly review

some of the primary components of a conception of respect identified by the framework, as well as two of the framework's limiting features.

6.2.1 Essential Ingredients Of A Conception of Respect For Persons

In this subsection, I wish briefly to summarize a number of aspects of the framework I have identified which I believe are helpful in coming to grips with just what the concept of respect entails.

First, talk of respect for persons often has to do with something different than having respect for persons as persons, or because they possess some essential qualities as persons. The framework I have developed takes these other forms of respect into account, and explains how the several objects of respect differ and are alike. Doing so helps clarify analysis of the concept of respect as it applies to persons as such, and assists in avoiding confusion over similar but different usages and applications of the term "respect".

Second, perhaps one of the points to which I am most committed is that the concept of respect cannot be adequately understood or properly analyzed as a homogenous concept. It is, I have stressed, a variegated concept, consisting of at least four separate notions, two of which are non-normative (the attitude of respect and acts done out of respect for others), and two of which are normative (the duty to respect others and the right or "entitlement" to respect from others). Failing to make these distinctions will lead to the problems manifest in Darwall's analysis, and prevent a proper analysis of the attributes of the different notions of respect and the interrelationship between them.

Third, I believe my analysis of the attitude of respect provides a number of crucial insights concerning the attitude of respect. Unlike Darwall's account, I provide a brief discussion of the nature of the attitude of respect as a type of complex mental or psychological state. Further, I take Cranor's four elements of respect, and his definition of respect, which he employed for analyzing respect for abilities and character traits, and modify them to incorporate the object of respect for persons as persons – the dignity of persons. I believe these two analytical tools, modified to give proper place to respect for persons as such, provide an appropriate means of laying bear the essential features of the attitude of respect.

Separating out the four components provides an appropriate basis for conducting an independent investigation of the objects of respect, which consist in abilities, character traits, and essential features of persons. It is in doing so that I have suggested that while the nature of abilities and character traits are fairly straightforward, further work must be done to identify exactly which essential features of persons are respected or are “deserving” of respect.

Adapting and utilizing Cranor's four-pronged definition of the attitude of respect, in turn, is helpful in a number of regards, in particular the manner in which it draws attention to the complex relationship between the attitude of respect, acting out of respect, and the duty to respect. It will be remembered that the fourth prong of the definition requires that the attitude of respect will include a disposition to act in ways appropriate to the object of respect. With respect to abilities and characteristics, it is not that difficult to determine what such actions would consist in, given this or that

ability or characteristic. Not so, with respect for essential features of persons. As discussed in a bit more detail below, it is here that I maintain that the duty of respect is essential, for it may help determine how one is to act out of respect.

Fourth, I believe my analysis of acts done out of respect identifies several important aspects of the relationship between the attitude of respect and acts done out of respect. I have argued that the attitude of respect is both psychologically and conceptually prior to acts done out of respect. It is psychologically prior in that when we talk of respect for persons in the public square, what is primarily at issue is what others think about one as a person – that is, whether a person is viewed by others as important. We judge respect for others largely on this basis. It is conceptually prior in that whether an act turns out to be done out of respect depends in the final instance on whether it is consistent with having an attitude of respect. This prioritizing is important. Giving pride of place to the attitude of respect constitutes a rejection of Darwall's recognition respect which distills respect down to correct moral acts.

Fifth, my framework, because it countenances respect as including both an attitude and actions, provides a clarifying explanation of the four possible scenarios in which the two notions of respect may be present or not present. Unlike Darwall's analysis, my framework takes into account situations in which someone might have the attitude of respect, but not act out of respect, and vice versa.

Sixth, as eluded to above, my framework eschews the notion, at the center of Darwall's recognition respect, that respect consists only in correct moral acts, but nevertheless recognizes the important role moral obligation plays in the identification

of what an act done out of respect should look like. I have argued that while respect does not consist only of correct moral conduct, moral obligation or duties may be essential in identifying, particularly in complex situations, what act or acts would be consistent with having respect for certain features of a person.

These are the primary aspects, though not the only ones, of the framework which I have advanced that I hope will provide some insight on what it means to have respect for persons as such.

6.2.2 Limitations To The Framework

There are two important limitations to the framework I have developed. The first has to do with the absence of a definitive statement concerning the exact nature of the object of respect for persons as such, i.e., those features of a person which are said to be the source of respect. The second involves my claim that any conception of respect will need to appeal to some broader set of ethical principles or theory. I will briefly address each of these limitations.

6.2.2.1 Essential Features of Persons

I have argued that any conception of respect for persons as persons, if it is to be satisfactory, must provide at least some account of the features of persons which are identified as giving rise to respect. It does not seem sufficient to simply say that persons are entitled to respect because they are persons. We want to know what exactly it is about persons that engenders respect and may require that we act in certain ways towards them.

I have further observed that there is no shortage of views concerning what features of a person actually are thought to be objects of (deserving of) respect. Darwall recites a number of varying accounts, Eberle suggests two such features, and Audi focuses on dignity as the underlying bedrock feature of persons that anchors the notion of respect. The issue, as the numerous accounts on offer manifest, is a complex and controversial one.

Given the numerous views concerning attributes of persons which are said to give rise to respect, and the complexity of this discussion, I have concluded that it is impossible to address the issue properly as a mere sub-issue in this dissertation; the issue is in need of prolonged treatment not possible here.

6.2.2.2 Appeal To Broader Ethical Principles

A second and perhaps even more important limitation to my framework is the absence of a commitment to a set of broader ethical principles of theory. I have rejected Darwall's view that respect consists simply in making appropriate judgments concerning one's moral duties toward another and successfully acting upon such judgments. I have also, however, expressed commitment to the view that appeal to broader ethical principles, or an underlying ethical theory, is necessary in order to be able properly to identify those acts which are consistent with the attitude of respect.

I cannot possibly, of course, in this dissertation, argue on behalf of one ethical theory or another. I *have* offered, by way of a case study, Audi's hybrid theory as a theory which arguably constitutes an auspicious candidate for filling in the

framework. Nevertheless, I simply am not in a position in this dissertation to be able to address the issues raised by the need to appeal to broader ethical principles.

6.3 Possible Applications Of The Framework

When I set out to develop a concept of respect for persons, my intent, as I have indicated above, was to try to develop a full and complete conception which could then be used to adjudicate the competing claims concerning the entailment relationship between respect and restraint. The inability to provide a comprehensive analysis of the proper objects of respect for persons as such, and the conclusion that any conception must appeal to a broader set of ethical principles or theory, however, has made the development of a complete conception unmanageable in this dissertation. I thus have no complete conception in hand with which to return to the original question and make a dispositive or at least reasoned determination concerning the viability of the entailment relationship.

Nevertheless, I believe the framework I have developed may be helpful, even in its current state as an incomplete conception, and as it may be further developed, in analyzing the connection between respect and restraint. I accordingly conclude this chapter by briefly considering the extent to which the framework I have developed may be useful, both in its current state, and as it might be further developed in the future, in addressing the question of whether respect for others can be said to entail restraint on reliance on religious reason in the public square.

6.3.1 Immediate Application

I have already suggested two general ways in which the framework I have articulated for developing a conception of respect can be helpful notwithstanding its current limitations. First, as outlined in section 6.2, I have enumerated a number of essential components any suitable conception must contain. Thus, although the framework leaves open the identification of the exact nature of the object(s) of respect, and recognizes that appeal to other broader ethical principles is necessary, it nevertheless is still capable of providing considerable guidance in considering the concept of respect.

This leads to the second manner in which the framework has proven immediately useful. It may be used to test potential theories of respect. In this regard, I have applied the framework to Darwall's two forms of respect and Eberle's derivative account, and have demonstrated a number of ways in which their respective accounts are defective. The framework, even if incomplete, is accordingly useful for identifying necessary elements which must be present in any account of respect for persons as such, and for analyzing potential theories and winnowing out those which may be defective.

6.3.2 Potential Application(s)

Notwithstanding the benefits of the framework summarized above, the framework is importantly incomplete because it leaves open identification of the precise nature of the objects of respect for persons, and due to its recognition of the unavoidable appeal to broader ethical principles of concepts. Aside from the benefits

described in the preceding subsection then, the question arises whether there exists a realistic possibility that the framework can be sufficiently filled out such that it can be used in a more thorough going fashion for adjudicating the differing views concerning the entailment relationship.

It seems to me that there are only two basic outcomes possible. Either the framework cannot be suitably completed and it is thus futile to attempt to try to complete it, or the questions concerning the nature of the objects of respect and appeal to some broader set of ethical principles can be dealt with in a meaningful fashion such that the framework may be completed in some satisfactory way.

6.3.2.1 Effect If Completion Is Futile

I wish to suggest that, to the extent it is concluded that it is futile to attempt to complete the framework, that is, that it is not possible to reach a reasoned conclusion concerning the objects of respect, and the need to appeal to broader ethical principles cannot be resolved in one way or the other, reliance on respect for others as moral justification for restraining reliance on religious conviction in the public square must be abandoned. Given the diametrically opposed conclusions about the entailment relationship between respect and restraint reached by Eberle and other inclusivists on the one hand, and exclusionists on the other hand, and the obvious complexity of the concept of respect, I fail to see how the notion of respect can reasonably be relied upon as moral justification for restraint without the articulation of some underlying concept of respect that would require such reliance. How can respect be cited as a moral justification for restraint when it is not even clear what respect for persons is?

Without some idea of what respect is, it does not seem possible that it can be said what respect might actually require.

It might well turn out to be the case that the framework cannot be developed further. If it does, my analysis, and the framework itself, will have proved successful in establishing the limitations imposed on the development of a suitable concept of respect. In so doing, it will have demonstrated that the argument from respect, as a basis for restraint in the public square, should be abandoned.

6.3.2.2 Potential For Further Development

The extent to which the framework is viewed as being capable of meaningful further development turns, it seems to me, on the level of success in terms of agreement that is demanded. On the one hand, if some type of Rawlsian “overlapping consensus” is required, I expect that further development, particularly as it pertains to appeal to some broader ethical theory or set of principles is concerned, is unlikely. Requiring such Rawlsian universal agreement about all but the most remedial principles, however, as has been shown by a number of theorists, including Gaus and Eberle as discussed in this dissertation, is not realistic.

If more modest expectations are employed, I believe there is room for some optimism for thinking that the framework can be completed in a meaningful fashion. This is true on two possible levels -- plausibility and some degree of overlapping consensus.

First, there is no reason to think that one or more plausible arguments cannot be developed concerning the proper objects (and their priority) of respect. True, as

discussed above, much ink has been spilled over the identification of such objects, and it certainly is likely that there will not be universal consensus regarding such identification and ranking. Nevertheless, most arguments that have been advanced present plausible accounts which could be used to develop the framework. The same is likely to be true with future accounts. Similarly, in completing the framework, plausible appeals may certainly be made to specific ethical theories or principles.

The result would be competing plausible concepts of respect. The plausibility and appeal of such concepts would likely turn, at least in part, on the underlying views concerning appropriate objects of respect and the commitments to one ethical theory or another. But such concepts could then be used to adjudicate the legitimacy of the doctrine of restraint.

Second, there may also be reason to think that the divide which one might anticipate would exist between concepts based on say, different ethical theories, may not turn out to be so wide after all. One of the primary reasons I introduced Audi's hybrid theory in the previous chapter was to demonstrate the possibility of such coming together of two disparate ethical theories. It thus may be possible that two conceptions of respect, though they appeal to two different ethical theories or set of principles, might nevertheless converge on what respect requires by way of restraint.

Much additional analysis must be conducted, however, before it can be determined whether the framework can be filled out on either one or perhaps both of these levels. If it turns out that the framework cannot be further developed to fill in adequately the two incomplete areas, a strong argument can be made that invocation

of respect as moral justification for demanding that a conscientious citizen refrain from relying on religious conviction alone in supporting coercive laws in the public square should be abandoned.

References

- Adams, Robert. *Finite and Infinite Goods*. Oxford: Oxford University Press, 1999.
- Alston, Robert. *Perceiving God: The Epistemology of Religious Experience*. Ithaca, N.Y.: Cornell University Press, 1991.
- Audi, Robert. *Religious Commitment and Secular Reason*. Cambridge: Cambridge University Press, 1997.
- Audi, Robert, and Nicholas Wolterstorff. *Religion in the Public Square: The Place of Religious Convictions in Political Debate*. Lanham, MD: Rowman and Littlefield Publishers, 1997.
- Benn, S. I. "Privacy, Freedom and Respect for Persons," in *Nomos XIII: Privacy*. New York, 1971.
- Bolte, Angela. "Do Wedding Dresses Come in Lavender?: The Prospects and Implications of Same-Sex Marriage." *Social Policy and Practice* 24 (spring 1998), 1.
- Cranor, Carl. "Toward A Theory of Respect For Persons." *American Philosophical Quarterly* 12, no. 4 (October 1975): 309-319.
- Darwall, Stephen L. "Two Kinds of Respect." *Ethics* 88, no. 1 (October. 1977): 36-49.
- Downie, R. S., and Elizabeth Telfer. *Respect for Persons*. London: Allen & Unwin, 1969.
- Eberle, Christopher. *Religious Convictions In Liberal Politics*. Cambridge: Cambridge University Press, 2004.
- Galston, William. *Liberal Purposes: Goods, Virtues, and Duties in the Liberal State*. Cambridge: Cambridge University Press, 1991.
- Gaus, Gerald. *Justificatory Liberalism*. Cambridge: Cambridge University Press, 1996.

- Gauthier, David. *Practical Reasoning*. Oxford: Oxford University Press, 1963.
- George, Robert P. "'Same-Sex Marriage' and 'Moral Neutrality,'" in *Homosexuality and American Public Life*, ed. Christopher Wolfe. Dallas, TX: Spence Publishing, 1999.
- Greene, Abner. "Uncommon Ground." *The George Washington Law Review* 62, no. 4 (April, 1994): 659.
- Gutmann, Amy and Dennis Thompson. "Moral Conflict and Political Consensus." *Ethics* 101 (October, 1990).
- Hart, H. L. A. "Are There Any Natural Rights?" *The Philosophical Review* 64 (1955), 175-191.
- Holmes, Stephen. "Gag Rules of the Politics of Omission." In *Constitutionalism and Democracy*, ed. Jon Elster and Rune Slagstad. Cambridge: Cambridge University Press, 1988.
- Kant, Immanuel. *Foundations of the Metaphysics of Morals*, trans. L.W. Beck. Indianapolis: Bobbs-Merrill Co., 1959.
- Kymlicka, Will. *Contemporary Political Philosophy*. Oxford: Oxford University Press 2002).
- Larmore, Charles. *Patterns of Moral Complexity*. Cambridge: Cambridge University Press, 1987.
- "Political Liberalism." *Morals of Modernity*. Cambridge: Cambridge University Press, 1996.
- Macedo, Stephen. "Homosexuality and the Conservative Mind." *Georgetown Law Journal* 84 (1995): 278.
- *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism*. Oxford: Clarendon Press, 1990.
- Marriage and the Law, A Statement of Principles (A Call to The Nation From Family and Legal Scholars)*. Institute for American Values: 2006.
- Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press, 1971.
- *Political Liberalism*. New York: Columbia Press, 1993.

Schachter, Oscar. "Human Dignity As A Normative Concept." Editorial Comment, *The American Journal of International Law* 77 (1986).

Solum, Lawrence. "Faith and Justice." *DePaul Law Review* 39 (1990).

"The 28th Amendment: It is Time to Protect Marriage, and Democracy, in America." *National Review* (July 23, 2001).

Williams, A. O. "The Idea of Equality." *Moral Concepts*, ed. Joel Feinberg. Oxford: Oxford University Press, 1970.

Legal References

Constitutions

Alaska Constitution, art. I., sec. 25.

California Constitution, art. I., sec. 7.5.

Hawaii Constitution, art. I., sec. 23.

Nebraska Constitution, art. I., sec. 29.

Nevada Constitution, art. I., sec. 21.

Statutes

Federal

Defense of Marriage Act, Pub. L. No. 104-199 sec. 1, U.S. Statutes at Large 110 (1996): 2419, codified at 1 U.S.C. § 7 (1997).

Defense of Marriage Act, Pub. L. No. 104-199 sec. 2, U.S. Statutes at Large 110 (1996): 2419, codified at 28 U.S.C. § 1738(C) (1997).

State

Hawaii Statutes sec. 572-1, 3.

Maine Revised Statutes tit. 22, sec. 2710.

Cases

Federal

Bowers v. Hardwick, 478 U.S. 186 (1986).

Gonzales v. Carhart, 550 U.S. 124 (2007).

Lawrence v. Texas, 539 U.S. 558 (2003).

Perry v. Schwarzenegger, Federal Dist. Ct., N. Dist. Cal., Case No. CV09-2292 (May 25, 2009).

Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992).

Roe v. Wade, 410 U.S. 113 (1973).

Stenberg v. Carhart, 530 U.S. 914 (2000).

State

Anderson v. King County, 158 Wn.2d 1, 138 P.3d 963 (2006).

Baehr v. Lewin, 74 Haw. 645, 852 P.2d 44, *reconsideration granted in part*, 64 Haw. 645, 875 P.2d 225 (1993).

Baker v. State, 744 A.2d 864 (Vt. 1999).

Conway v. Deane, 401 Md. 219, 932 A.2d 571 (2006).

Goodrich v. Department of Publ. Health, 440 Mass. 309, 798 N.E. 2d 941 (2003).

Hernandez v. Robles, 7 N.Y.3d 338, 855 N.E.2d 1, 821 N.Y.S.2d 770 (2006).

In Opinion of the Justices, 440 Mass. 1201, 802 N.E.2d 565 (SJC-09163, February 4, 2004).

In Re Marriage Cases, 43 Cal.4th 757, 76 Cal.Rptr.3d 683 (2008).

Kerrigan v. Comm. Of Publ. Health, 289 Conn. 135, 980 A.2d 845 (2009).

Lewis v. Harris, 188 N.J. 415, 908 A.2d 196 (N.J. 2006).

Strauss v. Horton, 46 Cal. 4th 364; 207 P.3d 48; 93 Cal. Rptr. 3d 591 (2009).

Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).

Biography

Thomas A. McWatters III was born in Bethpage, New York on January 26, 1959. He received a B.S. in mathematics in 1982 from Taylor University, graduating *cum laude*, earned a J.D. from the University of Toledo, College of Law in 1986, graduating *magna cum laude*, and received an M.A. in the philosophy of religion and ethics from Biola University in 1998, graduating *summa cum laude*. He is the author of Comment, “An Attempt to Regulate Pornography Through Civil Rights Legislation: Is It Constitutional?,” 16 *U. Tol. L. Rev.* 231 (1984).

After graduating from the University of Toledo, College of Law, he was elected to the Order of the Coif and the Order of the Barristers. While at the College of Law, he was a member of the Law Review, was named the Outstanding Oral Advocate in the Twelfth Annual Charles W. Fornhoff Moot Court Competition, was a Meffley Scholar, and received several American Jurisprudence Book Awards.

Prior to commencing graduate studies at Duke University, he served as a federal law clerk to the Honorable James Harvey, Senior District Judge, U.S. District Court, Southern Division of the Eastern District of Michigan, law clerk to the Honorable Charles Wiggins, U.S. Court of Appeals for the Ninth Circuit, and practiced law with the Los Angeles office of Sidley Austin LLP.

At Duke University he held a Duke Fellowship, and received a Jenkins Summer Research Fellowship.