Diversity and Rights: The Possibility of Public Reason

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1. Introduction

Public reason liberalism takes as its starting point the deep and irreconcilable diversity we find characterizing contemporary liberal societies. This deep and irreconcilable diversity creates problems for social order: given that we disagree with one another so sharply we often make conflicting claims on one another, claims that must be adjudicated. When Althea advances claim \( x \) and Bertha advances claim \( y \) where one and only one such claim can be satisfied, we need some kind of dispute-adjudication mechanism for deciding whether to give priority to Althea’s claim \( x \) over Bertha’s claim \( y \), or whether to give priority to Bertha’s claim \( y \) over Althea’s claim \( x \).\(^1\) Of course, public reason liberalism does not merely seek to adjudicate the sorts of disputes that arise out of our deep and irreconcilable disagreement – a Hobbesian sovereign could suffice for that. Rather, public reason liberals hope to solve the problem of social conflict and cooperation in a manner that treats all citizens as free and equal moral persons.

One method for adjudicating disputes in a manner that treats all parties as free and equal is through the use of jurisdictional rights. By jurisdictional rights we mean rights that give the rightsholder “authority or sovereignty in relation to some specific matter” (Hart 1955: 184).

Consider an example. Althea is a Christian, Bertha a Hindu, and Cassidy an atheist. There is disagreement as to what it is persons should worship (if anything at all) and in what manner persons should worship (if they even should at all). One solution to this problem is to grant dictatorial

\(^1\) We thus follow Rawls (1951) in our understanding of what it means to adjudicate conflicting claims.
prerogative to one person’s preferences: perhaps Althea gets her way and everyone must be a Christian; or maybe Cassidy gets her way and no one may worship at all. And indeed, for much of human history such was the case. But a different solution to the problem gives each citizen a jurisdictional right to do as she wishes: Althea may spend Sundays in church; Bertha may worship Shiva and refrain from eating cow; and Cassidy can go about her business unconfronted by the divine.

One striking feature about the contemporary public reason project started by Rawls is how the boundary of what counts as reasonable disagreement is continually extended. Initially reasonable disagreement was circumscribed to questions concerning conflicting conceptions of the good life. Towards the end of his life Rawls admitted not only the possibility of reasonable disagreement over conceptions of the good but also reasonable disagreement about justice itself. Most recently, Gerald Gaus and Ryan Muldoon have begun taking seriously a kind of diversity that has hitherto not been granted due attention: not only do we adopt conflicting conceptions of the right and the good, but we also face what shall be called (and explicated in detail below) perspectival disagreement. The most pressing challenge for public reason liberals is to determine whether and to what extent we can adjudicate disputes in societies characterized by this form of diversity in a manner that treats all citizens as free and equal moral persons.

This paper takes up the challenge. More specifically, the paper asks to what extent jurisdictional rights as devices of public reason are capable of adjudicating disputes when we face perspectival disagreement in a manner that treats all as free and equal. It formally proves that the ability of jurisdictional rights to adjudicate perspectival disputes is more robust than one might initially think, using the social choice theoretic tradition of Amartya Sen and Allan Gibbard to do so. More specifically, if jurisdictional rights are defined properly, then cases of perspectival disagreement
can be collapsed into cases of disagreement about the right. Since there is already an expansive literature offering different solutions to this troubling problem (something to be discussed below), our paper shows that perspectival disagreement requires less theoretical innovation than might initially be thought. Though it seems to be a new and troubling problem in the literature, our paper shows that the problem of perspectival disagreement can be solved by appeal to old solutions to already existing problems.

The structure of this paper is as follows. The next section presents three different kinds of diversity those in the public reason tradition theorize about: conflicting conceptions of the good, which began the public reason project; conflicting conceptions of the right, which was Rawls’s final twist added to the public reason project; and perspectival disagreement, which is the public reason literature’s newest focus. To get a feel for how jurisdictional rights function as an important tool for the public reason liberal, §3 shows how jurisdictional rights offer elegant resolutions for many disputes that arise due to our conflicting conceptions of the good. Yet sometimes we disagree over which scheme of jurisdictional rights we ought to implement to perform this adjudicative task, thus raising the problem of disagreement about the right. §4 examines a few responses present in the contemporary public reason literature for how one might respond to this problem.

§5 then goes on to examine to what extent jurisdictional rights are capable of adjudicating disputes once we add in perspectival disagreement. Though it seems that rights cannot perform their function given this kind of diversity, §6 formally proves that if certain conditions are met in terms of how rights are defined, then jurisdictional rights will always be able to successfully adjudicate between the conflicting claims we make on our shared institutional order, even when there is perspectival disagreement. Meeting these conditions, we argue, essentially turns cases of perspectival disagreement into cases of disagreement about the right. Thus, those resources highlighted in §4 can
surprisingly solve this new class of disputes so long as we are able to define a rights structure in the appropriate manner. §7 concludes.

2. Three Kinds of Diversity

Public reason liberalism’s guiding question was set by Rawls, who sought to derive a political conception of justice that could adjudicate disputes between reasonable comprehensive doctrines in a manner all such doctrines could endorse. The governing assumption of the public reason project is that society characterized by “a diversity of conflicting and irreconcilable—and what’s more, reasonable—comprehensive doctrines” (Rawls 2005: 36). Taking seriously this fact of reasonable disagreement sets us on a path in search of a political conception of justice: “political liberalism looks for a political conception of justice that we hope can gain the support of an overlapping consensus of reasonable religious, philosophical, and moral doctrines” (Rawls 2005: 10). Finding one such political conception of justice would show “how citizens, who remain deeply divided on religious, philosophical, and moral doctrines, can still maintain a just and stable democratic society” (Rawls 2005: 10).

Yet when Rawls admits that pervasive and irreconcilable disagreement is a permanent feature of liberal democratic societies it is important to note just where the boundary of this reasonable disagreement lies. Reasonable disagreement is thought to obtain among competing comprehensive doctrines, or competing conceptions of what it means to live a good life. Importantly, it is still assumed that this pervasive and irreconcilable disagreement does not extend to questions about justice. In defining the well-ordered society – which is the kind of society political liberalism theorizes about – Rawls stipulates that “it is a society in which everyone accepts, and knows that everyone else accepts, the very same principles of justice” (Rawls 2005: 35) (emphasis ours). Indeed, the
project of trying to find one and only one political conception of justice to govern a society of
diverse comprehensive doctrines would be incoherent if we disagreed about the nature of justice
itself.

But in the introduction to the paperback version of Political Liberalism Rawls does admit that
not only do reasonable people adopt conflicting conceptions of the good, they also adopt conflicting
conceptions of the right as well. That is, Rawls began to “recognize that in any actual political
society a number of differing liberal political conceptions of justice compete with one another in
society’s political debate” (Rawls 2005: xxi). As a result, “citizens will of course differ as to which
conceptions of political justice they think the most reasonable” (Rawls 1999: 578). Though Rawls
did sketch a response to this new problem, much recent work in the tradition discusses just how
public reason liberals should respond to this problem of disagreement about the right. We briefly
survey these responses in §4 below. Since we largely work within Gaus’s public reason framework,
when we discuss disagreements about the right we do not refer to the disagreements about abstract
normative principles of justice as Rawls did, but rather disagreements concerning which concrete
rules – in our case, which scheme of jurisdictional rights – we should adopt to help us regulate our
collective lives.

If disagreements about the right and the good exhausted the kinds of conflicts we confront
then the existing literature shows how a just and stable liberal order can exist over time despite our
irreconcilable differences. However, recent work by Gaus and Muldoon notes that disagreement can
manifest itself in other forms besides the currently emphasized conflicting conceptions of the right
and the good – forms that cause worries for the prospect of stable social order (Gaus 2016; Gaus
and Hankins 2016; Muldoon forthcoming). Besides diversity concerning conflicting conceptions of
the good and diversity concerning conflicting conceptions of the right we also face diversity in terms of our perspectives.

Perspectives are mental schemata or internal languages we impose on reality; they mediate our experience. More formally, Scott Page defines perspectives as mappings between objects in the external world and one’s internal language (Page 2007: 31). We can think of these mappings as imposing a sort of ontology: though we all confront the same reality, the way we code this reality in our internal languages can be different for we may employ different mapping functions – when this happens, individuals will “see” different worlds even though, at rock bottom, it is the same external world they confront. To put it a bit technically, the domain of everyone’s perspective function is the same, yet the output of these functions can differ. Another way to think about the issue: disagreement about the good concerns disagreements over what it means to live a good life; disagreement about the right concerns disagreements over which rules we ought to adopt to help us live together; and perspectival disagreement concerns metaphysical disputes – what sorts of things make up reality.

Perspectival disagreement allows us to better explain some of our deepest social conflicts. Take abortion, for instance (Gaus 2016: 162-163). On one reading, pro-life persons and pro-choice persons just have conflicting preferences over what policy should be – it is a mere instance of disagreement about the right. A more charitable reading, though, suggests that many pro-lifers and pro-choicers disagree fundamentally about the nature of reality. According to some, inside a woman’s uterus is a person and bearer of rights. According to others, inside a woman’s uterus is a collection of cells that at first is no different than bacteria and at later stages no different than a parasite. The disagreement between the two parties is over how the world is. Importantly, agreement on a set of rules of right may be insufficient for actually adjudicating these sorts of disputes when
individuals impose different ontologies on the world and thus exhibit perspectival disagreement. Agreeing that persons are endowed with certain rights that take lexical priority over other claims people raise – as articulated by Rawls’s first principle of justice – may fail to resolve our disputes and order our conflicting claims when we disagree over what sorts of things count as people.

Like the abortion case, many of our most heated and what at times seem hopelessly irreconcilable social disputes are best understood as instances of perspectival disagreement. Writes Gaus:

Many of the same points apply to environmentalism and various forms of support for animal rights. Again, some of the claims of environmentalists and animal rights advocates can be translated into, say, a standard Western normalized world, where humans are the sole persons, but pain to all sentient creatures is bad. But many cannot. Those who see nature as an entity to be respected, or who hold that ecosystems have basic rights, do not live in this normalized world. Other examples abound. Even those who embrace almost all the details of the Rawlsian analysis of justice fundamentally disagree on its application to international or global justice, and surely one of the important reasons for this is a fundamental dispute whether “peoples” are entities with moral status. Here we have stark reminder that agreeing on a theory of justice, without agreeing about the social world to which it applies, by no means guarantees agreement in judging social realizations (Gaus 2016: 165).

As an interesting contrast it is worth pointing out that when it comes to the question of “what is owed to animals and the rest of nature” Rawls notes that it is possible that “the idea of political justice does not cover everything, nor should we expect it to” (Rawls 2005: 21). But if one understands justice as laying down norms for how agents of a certain kind ought to interact with one another, and if one’s perspective includes what many refer to as “non-human animals” as agents of
the relevant kind – say, one’s perspective maps an object into the relevant category just in case it can feel pain – then the question of what is owed to animals undoubtedly is a question of political justice.

This latter point raises an important question. While of course clashes of perspectives have long been present in our world, are such problems really that new to the public reason tradition? Though Rawls may have had in mind metaphysical disputes as a part of the more general conflict caused by diverse comprehensive doctrines, the authors can find no explicit mention of this in the text. And even if this is what Rawls implicitly had in mind, he certainly does not spend time analyzing these sorts of conflicts as causing unique problems for just and stable social order. For this reason we do not think the issue of perspectival disagreement has gotten the due attention it deserves, save again for the very recent work pursued by Gaus and Muldoon. This paper hopes to contribute to this investigation by examining to what extent jurisdictional rights in particular can adjudicate disputes when this under-theorized type of diversity is present.

3. Jurisdictional Rights and Conflicting Conceptions of the Good

In what way do jurisdictional rights adjudicate disputes that arise due to our conflicting conceptions of the good? Consider a metaphor given by Gaus. We are confronted with a “moral space” that must be regulated in order to avoid social conflict. To continue the example already used, one such moral space is what persons in society should worship, and how persons in society should worship. One answer is that we adopt one universal rule regulating the entire space. For example, we all follow Althea’s particular religious practices. But another solution is that instead of offering one universal rule regulating the whole moral space, we partition it: “in effect, we say that, in a society with \( n \) individual members, there are \( n \) separate spheres… each of which is, in theory,
inviolable and particular to the individual who, in effect, occupies it” (D’Agostino 2003: 105).

Continues Gaus: “If we partition the moral space in this way, for each and every person, there is some part of the moral space over which her evaluative standards have public standing. In that part of the moral space controlled by a person her evaluative standards are sovereign, and others must respect those standards in that space” (Gaus 2009: 120).

Of course, not all conflicts over how to best regulate the moral space can be solved by appeal to the jurisdictional solution. Much of social order requires uniform rules that we all follow in concert: we cannot all have the authority to decide for ourselves what constitutes stealing or fraud or a legitimate contract. These sorts of questions require common answers for functional social life. But for many questions – and, importantly, for nearly all questions concerning what it means to live a good life – the moral space can be partitioned in a manner that does not threaten social order.

So jurisdictional rights can provide an alternative to universal regulation of the moral space in cases of social conflict, thus adjudicating many of our disputes that arise due to our conflicting conceptions of the good. But recall from the introduction: public reason liberalism does not merely seek to adjudicate social conflict that arises from our irreconcilable diversity, but rather seeks to do so in a manner that treats all as free and equal moral persons. Will systems of jurisdictional rights always treat persons as free and equal? The answer is no, but before seeing why we must fill in some important details of the public reason liberalism framework, following Gaus’s model of public reason in particular. We can think of all citizens as having preferences or rankings over all possible ways of regulating the moral space. Letting Rule_A, Rule_B, and Rule_C represent universally regulating the moral space according to Althea, Bertha, and Cassidy’s evaluative standards respectively, and letting R represent partitioning the moral space according to a scheme of jurisdictional rights, consider the preference profiles in Table 1.
Table 1

Notice that in Table 1 is the option of “blameless liberty.” When blameless liberty obtains there is no rule regulating the moral space, and thus no individual has moral authority to make claims on persons when it comes to how they behave in that specific subset of the space – each person simply follows her own evaluative standards (Gaus 2011: 319). In placing a particular way of regulating the moral space (say, Rule_B) below blameless liberty Althea is saying that she would rather have no rule regulating the space than that rule because, according to her evaluative standards, the regulation placed below blameless liberty is so objectionable that she would rather have no regulation at all than be subject to the moral authority of the particular rule in question. A rule not placed below blameless liberty by every citizen is in what Gaus calls the eligible set (Gaus 2011: 322).²

Implementing a rule that Althea places below blameless liberty and thus is not in the eligible set fails to treat her as a free and equal moral person. On Gaus’s public reason picture which we follow, treating Althea as free and equal requires only claiming authority over Althea that Althea

² It is worth here flagging a major difference between Gaus’s account of public reason (again, which, we follow) and more traditional Rawlsian accounts. On Gaus’s account we seek legitimate rules by finding those rules all prefer to blameless liberty. On the more traditional Rawlsian account, we seek legitimate rules by finding those rules that can be justified by reasons all accept. So, though Althea might rank a rule below blameless liberty, it might be that there are more general reasons she endorses that could justify that rule. Here, Gaus’s account would judge such a rule illegitimate, whereas the more traditional Rawlsian account would not. For more on this distinction see what Andrew Lister calls the “coercion frame” and the “reasons-for-decision frame” in Lister (2013: chp. 1). These differences are further discussed in §4 below.
herself could endorse. But if Althea, after careful consideration, finds a way of regulating the moral space to be so objectionable that she prefers blameless liberty to it, then clearly she does not reflectively endorse that particular regulation, making implementation of that rule inconsistent with treating her as free and equal. Looking back to Table 1, Rule$_A$, Rule$_B$, and Rule$_C$ are placed below blameless liberty by at least one citizen. From this it can be seen that treating all citizens as free and equal in this particular example leads to one and only one solution: implementation of jurisdictional scheme of rights $R$.

We can now return to our question: will systems of jurisdictional rights always treat persons as free and equal moral persons? Given our new framework, jurisdictional rights will only do so if persons always rank jurisdictional rights above blameless liberty. But why would they do this? Now it could be argued that moral agents by definition always have an interest in acting in accordance with their own evaluative standards, which is precisely what any plausible theory of jurisdictional rights will allow them to do. Because moral agents always wish to act in accordance with their own evaluative standards and because jurisdictional rights allow them to do just that it could be argued that preferences profiles like those shown in Table 2 are simply not possible: if Althea is reasonable, she would never place $R$ below blameless liberty, because doing so would fail to definitely secure her the ability to act in accordance with her own evaluative standards, something she values. In other words, jurisdictional rights are always in the eligible set.
Table 2

We should not be too quick here. Though Althea does indeed wish to act in accordance with her own evaluative standards and thus follow Christian doctrine she might have other legitimate interests as well: for example, the fate of Bertha and Cassidy’s souls, which is a bad fate indeed if they are given the prerogative to follow their own (mistaken, in Althea’s view) religious practices. In such a case, Althea could quite reasonably rank $R$ below blameless liberty even though she cares about acting in accordance with her own evaluative standards. It is not that she fails to care about her own agency; it is that she cares about other things as well – namely, Bertha and Cassidy’s salvation.³

If the above line of argument is accepted then what does it mean for the jurisdictional solution to public reason’s problem of a justified shared social morality? The takeaway lesson is that

³Here, we deviate from Gaus’s view. In his work, Gaus argues (i) that, when viewed from the perspective of agency, all rational agents would endorse *The Presumption in Favor of Liberty* (Gaus 2011: 341), and (ii) that when agents’ full evaluative commitments are brought in and added to the perspective of agency, this presumption would be maintained, which would seem to imply that jurisdictional rights would never be rejected by being placed below blameless liberty (Gaus 2011: 360). Our concern here is with step (ii). Though a full discussion of this step would take an entire paper unto itself, we here note a problem we have with Gaus’s argument. Central to Gaus’s argument is a conception of what it means to be a free person (Gaus 2011: 360). Essentially, Gaus believes first, that the commitment to being a free person entails endorsing the Presumption in Favor of Liberty and second, that the commitment to being a free person will *always* be placed above other commitments that a rational person could hold. We do not think this second move can be made so quickly. Indeed, when describing the potential controversy in employing the perspective of agency in step (i) Gaus notes that “not all of us place our status as free moral agents at the core of our self-understanding. For many, that one is a child of Christ may be more fundamental; for others, that one is a part of an ecosystem” (Gaus 2011: 340). The example above is precisely a case when Althea places her status as a child of Christ above her own agency as a free moral person, and thereby denies a system of rules that is too far a deviation from what she believes her religion requires even when doing so may inhibit her ability to exercise her own agency.
public reason approaches to a justified social morality best succeed in societies where persons hold
certain kinds of attitudes towards others – where persons are non-meddlersome. In societies where
there are significant classes of individuals like Althea who would prefer to possibly forgo the
exercise of their own agency via jurisdictional rights in order to deny others the ability to exercise
their own agency – as is the case in Table 2 – then public reason liberalism falls silent, in the sense
that there will be some groups of individuals for which the jurisdictional rights approach to
regulating the moral space will not be justified, meaning we cannot legitimately claim authority over
such individuals. This should be no shock. There is no guarantee that public reason approaches are
capable of justifying a shared social morality in all possible worlds, let alone our own actual world
for that matter. But, when individuals do prefer the exercise of their own agency even when this
allows others to exercise their agency in a way they might find distasteful – as is the case in Table 1 –
then jurisdictional rights will be publicly justified.

4. Disagreeing about Jurisdictional Rights

The above section simplified things to a great degree. When talking about jurisdictional
rights it was assumed there was only one such possible scheme of rights that Althea, Bertha, and
Cassidy must evaluate. But this is not so. Because jurisdictional rights function by partitioning the
moral space, and because there are many different ways this space can be partitioned, it follows that
there are many different schemes of jurisdictional rights that can be implemented. The upshot here
is that even if citizens agree that the only way of regulating the moral space justified to all is by
partitioning it according to a scheme of jurisdictional rights, they still have not agreed on which
scheme of jurisdictional rights to implement. This is illustrated in Table 3. Here, Althea, Bertha, and
Cassidy disagree about which scheme of jurisdictional rights is best: though rights structures $R, R'$,
$R^*$, and $R^\wedge$ are all schemes of jurisdictional rights and thus ways of regulating the moral space via partition, they are all different ways of dividing up the relevant partitions.

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<th>Althea</th>
<th>Bertha</th>
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Table 3

Even though a citizen might, generally speaking, think jurisdictional rights are a reasonable way of adjudicating disputes that arise due to our conflicting conceptions of the good, they might still think that certain ways of defining jurisdictional rights are unacceptable. Returning to Table 3, though Althea thinks jurisdictional rights are more or less an appropriate method of dispute adjudication, there are some ways of defining the relevant permissions that she simply finds intolerable (namely, scheme of rights $R^*$). In this case, suppose scheme of rights $R^*$ allows a robust right to income on bodily parts: given the way the scheme of rights is defined, Cassidy may sell a kidney for cash. It is not a necessary feature of jurisdictional schemes of rights that they grant such a permission – $R$, $R'$, and $R^\wedge$ do not grant such a right to income, let us suppose. Because Althea finds this particular permission so objectionable she ranks $R^*$ below blameless liberty: according to her, she would rather have no regulation of the moral space than that particular scheme of rights. So even though citizens may generally speaking endorse jurisdictional rights as solutions to the problem of conflicting conceptions of the good, they need not endorse every logically possible scheme of rights.
Now there are two possible outcomes we must consider when it comes to disagreement about the right. First – and this is illustrated in Table 3 above – it could be that the eligible set is non-empty but not a singleton. (If the eligible set was non-empty but also a singleton then there would be no disagreement about which scheme of rights is best.) And second, it could be – and this is illustrated in Table 4 below – that though there are some schemes of jurisdictional rights all citizens place above blameless liberty, every scheme is placed below blameless liberty by some citizen. This means that no scheme of jurisdictional rights is justified. When this occurs there is not much for the public reason liberal to say. As we noted in the section above, it will not be case that public reason approaches to justification will be able to yield a non-null result in all possible worlds, let alone our actual world. Though Gaus offers convincing arguments as to why an empty eligible set is unlikely (Gaus 2011: 323), we here flag it as a possibility and leave it to the side.

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<td>$R$</td>
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Table 4

When it comes to disagreements about the right we are thus interested in cases like Table 3, where there is indeterminacy as to what is publicly justified: given that we need one and only scheme of jurisdictional rights to clearly and definitively adjudicate the disputes that arise due to our conflicting conceptions of the good (it would not do for Althea to regulate her actions according to $R$ and Bertha to regulate her actions according to $R'$), how do we go from indeterminacy ($R$ and $R'$)
to determinacy (one single scheme of rights)? There are several responses available to this problem in the public reason literature, and we now briefly examine two.

In response to this indeterminacy problem Gaus proposes a unique way of narrowing down the eligible set to a single set of principles of right in the face of disagreements about the right: instead of finding a rational procedure to justify the regulation that is ultimately realized, he relies on an evolutionary equilibrium selection mechanism. Actual persons in society, through making choices, can end up coordinating on one way of regulating the moral space through bandwagon effects, increasing returns, path-dependency, and the like. This one method of regulation that citizens coordinate on through such an evolutionary process is ultimately justified (so long as it is in the eligible set), for “consulting simply his or her own evaluative standards, each has decisive reason to freely endorse whichever moral requirement they have coordinated on” (Gaus 2011: 394). Because this is so, each member of the eligible set constitutes a Nash equilibrium – given that everyone else continues to follow that rule or scheme of rights, each individual also has reason to continue following it. Continues Gaus: “Once society has chosen a rule, if the rule in equilibrium is also a member of the optimal eligible set, we have created through our actual independent choices what impartial reason could not deliver: a unique justified rule” (Gaus 2011: 402). In this way our disagreements about the right are settled, and we settle on one scheme of rules or rights capable of adjudicating the disputes that arise due to our conflicting conceptions of the good in a manner that treats all as free and equal moral persons.

In his final paper Rawls also sketched a solution to the indeterminacy problem (Rawls 1999), and many working in the more mainline Rawlsian public reason tradition have followed him in embracing and defending it (Quong 2005; Quong 2011: chp. 7). On this view we select a scheme of rights – or any kind of rule for regulating our collective conduct for that matter – by engaging in
democratic discourse appealing only to those reasons all accept. As an example, if (i) Althea, Bertha, and Cassidy all think reason r is a good reason; if (ii) Althea argues for scheme of rights R on the basis of r; and if (iii) scheme of rights R is implemented through some kind of democratic political process, then R is a justified scheme of rights and we have solved the indeterminacy problem. In many ways, we can think of Gaus’s solution to the indeterminacy problem as relying on an invisible hand process, and late Rawls’s solution as relying on a visible hand political process. There are of course many things to be said in favor or against both solutions, of which we shall not get into. We merely highlight both solutions because our central thesis is that if we can structure jurisdictional rights correctly then problems caused by perspectival diversity simply collapse into disagreements about the right. The resources just sketched (as well as others not sketched) are thus available to help solve this new problem in the literature.

5. Jurisdictional Rights and Perspectival Diversity

We have seen that jurisdictional rights are prime candidates for adjudicating disputes that arise due to our conflicting conceptions of the good in a manner that treats all as free and equal so long as citizens in a liberal order exhibit non-meddlesome preferences. We have also seen that though jurisdictional rights are subject to disagreement about the right, there exist powerful responses to this problem in the current literature. But what about public reason liberalism’s newest

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4 A bit more rigorously, what is required is that citizens “explain to other citizens their reasons for supporting fundamental political positions in terms of the political conceptions of justice they regard as most reasonable” (Rawls 1999: 578). But, since political conceptions of justice are all built from the same values implicit in the public political culture, this essentially reduces to the requirement that citizens appeal to reasons all accept.

5 Note, it is possible on this account of how to solve disagreements about the right that a scheme of rights is selected that, on Gaus’s model, is not in the eligible set. See footnote two above. Since this is the case it is perhaps a misstatement to say that in cases like Table 4 the public reason liberal has little to say – if one adopts the Rawlsian solution, one could justifiably select a scheme of rights outside of what Gaus calls the eligible set.
challenge? Can jurisdictional rights still perform their adjudicative function even when there is perspectival disagreement?

Initially it does not seem they can. Consider an example. Suppose Althea and Bertha both agree that persons have a right to not be killed, and suppose for simplicity Althea and Bertha agree that this is the only right that exists, and that this right is publicly justified in that it is a member of the eligible set. Althea is currently pregnant and seeks an abortion. Bertha does not think Althea should be permitted to receive an abortion and so seeks an injunction preventing her. Given that Althea and Bertha agree in full on the relevant right governing this particular activity and both agree that they would rather have this right regulating the moral space when compared to blameless liberty, why do they make conflicting claims on one another? After all, the point of implementing a scheme of jurisdictional rights in the first place is to settle such disagreements. But in this case we do have an agreed upon scheme of jurisdictional rights regulating the relevant practice that is publicly justified and yet Althea and Bertha still make conflicting claims on one another: Althea tries to perform action φ with the sincere belief that she does not violate anyone’s right to not be killed in doing so; Bertha sees Althea φ-ing and sincerely believes Althea is violating someone’s right to not be killed. Here, the right does not settle the dispute.

The problem is a clash of perspectives. Though Althea and Bertha both agree that the only relevant right regulating the practice in question is the right of persons to not be killed, they still disagree over what sorts of things in the world count as persons. According to Althea’s perspective, the fetus she carries is not a person in any sense of the term – this follows from the unique ontology she imposes on the world. But according to Bertha’s perspective Althea’s fetus is a person and thus seeks an injunction on its behalf. Since the two perspectives disagree in this case jurisdictional rights
initially seem to be incapable of solving the relevant dispute even though Althea and Bertha both agree on the nature and justification of the current scheme of rights.

But can it really be said Althea and Bertha agree on the nature and justification of the right in question given that they do not agree on how the relevant right decides certain conflicts? I think we should answer “yes” to this question for, if we do not, then it will be hard to imagine any two individuals agreeing on a scheme of rights ever. The reason why is that most rights – even when adjudicating disputes involving no perspectival diversity – contain fuzzy boundary cases where it remains unclear exactly who the right grants sovereignty to. Consider, for instance, *Hinman v. Pacific Air Transport* (84 F.2D 755). In this case the plaintiff claimed that his right to property in his land gave him the ability to prevent airplanes from flying over said land. The plaintiff sought an injunction to stop aircraft from flying over his house plus $90,000 in damages. In deciding this case Judge Haney of the Ninth Circuit had to determine whether the plaintiff’s property right in his land extended up to the heavens. For our purposes, it is merely worth noting that, intuitively, it makes sense to say that the plaintiff, defendant, and Judge generally speaking agreed on the nature and structure of property rights in land, even though they disagreed about what the right specifies in this particular case. Indeed, if to agree on a right parties had to agree on who gets the relevant permissions in every possible case of conflict, then it likely becomes impossible for such agreement to ever occur.

Rigorously examining the exact extent to which jurisdictional rights can adjudicate disputes in cases of perspectival disagreement requires introducing some formalism, though we relegate all formal proofs to the appendix. We here employ the tools of social choice theory. Though the use of social choice theory was first employed to examine the use of rights to adjudicate social disputes

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6 This case is frequently discussed in the work of David Schmidtz. See Schmidtz (2011: 784) for an example.
with Amartya Sen’s Impossibility of the Paretian Liberal paradox (1970/1982), we here follow Allan Gibbard’s model of a rights structure instead (1974), because we believe it can more easily be extended to model perspectival disagreement.\textsuperscript{7}

We begin by introducing the notion of a \textit{k-variant}. In lay terms, two states of affairs are \textit{k}-variants of one another just in case they differ with respect to one another in terms of one and only one (the $k^{th}$) feature: two worlds that differ \textit{only} with respect to whether Althea sleeps on her belly or on her back are \textit{k}-variants of one another (with respect to, say, the $k^{th}$ feature), and two worlds that differ \textit{only} with respect to whether Cassidy paints the walls of her house white or yellow are also \textit{k}-variants of one another (with respect to, say, the $k + 1^{th}$ feature). Related to the notion of a \textit{k-variant}, we say that an agent has an \textit{unconditional preference} for some feature (say, sleeping on her belly) if and only if she prefers \textit{every} world where that feature obtains to all other \textit{k}-variants where that feature does not obtain. So, Althea has an unconditional preference for sleeping on her belly if she prefers every world where she sleeps on her belly over all other \textit{k}-variant worlds where she does not sleep on her belly.

We now introduce the notion of a jurisdictional right modeled to account for perspectival disagreements. Like all social choice theoretic treatments of rights, having a right will entail, in some sense, the capacity of one individual to determine the social ordering of two social states $x$ and $y$—such an individual has a right to $x$ over $y$ or $y$ over $x$. Here it might be thought that we cannot make such appeals to social states because perspectival disagreements will entail imposing different ontologies on the same social states: how can we talk about there being one single $x$ and one single $y$? Recall, though, the definition of a perspective: a perspective is a function mapping external reality into internal languages. By social states $x$ and $y$ we thus mean potential elements in the domain of

\textsuperscript{7}For an overview of the differences between Sen’s model of a rights structure and Gibbard’s, see Sen (1976/1982: 299-302). Brahman and van Hees (2014) have recently provided yet another way of modeling rights using the social choice theoretic apparatus. For criticism of this model see Kogelmann and Stich (2015).
such a function – social states refer to the real, external world, before it is encoded in an internal language by a perspective. It is possible that internal languages code these \( x \)'s and \( y \)'s differently resulting in perspectival disagreement; we capture this in our formal model by allowing individuals to assign different features to social states \( x \) and \( y \), and are sensitive to this in our definition of jurisdictional rights, given below.

We say that Althea has a jurisdictional right if there exists a specific feature \( k \) of the social world that she can control. We say that Althea can control feature \( k \) of the social world if she is able to determine the social ordering (say \( x \) is socially preferred to \( y \)) of any two \( k \)-variants \( x \) and \( y \) so long as one of the two following conditions obtains:

(\( \alpha \)) If (i) all individuals in society impose the same features on \( x \) and \( y \), and if (ii) Althea unconditionally prefers \( x \) to \( y \), then \( x \) is socially preferred to \( y \).

(\( \beta \)) If (i) there is disagreement on those features imposed on \( x \) and \( y \), but if (ii) all individuals believe the way Althea orders \( x \) and \( y \) is acceptable even though they impose a different ontology on either \( x \) or \( y \) than Althea does, and if (iii) Althea unconditionally prefers \( x \) to \( y \), then \( x \) is socially preferred to \( y \).

Condition (\( \alpha \)) explains how jurisdictional rights operate in cases of no perspectival diversity: when Althea and Bertha both see worlds \( x \) and \( y \) as the same and Althea unconditionally prefers \( x \) to \( y \), then Althea is allowed to determine that social world \( x \) is socially preferred to social world \( y \) (or vice versa) so long as she has a jurisdictional right to \( x \) and \( y \). Note that when there is no perspectival diversity, our definition of jurisdictional rights operates in the way we normally think rights should operate: the rights-holder’s preferences are socially decisive regardless of the preferences of others.
Condition (β) explains how our notion of jurisdictional rights operates in cases when there is perspectival disagreement. In this case, even though Althea and Bertha see social worlds x and y differently (Althea sees x and y as worlds where she either keeps a fetus or aborts a fetus, whereas Bertha sees worlds x and y as worlds where Althea either murders a person or refrains from murdering a person), if Althea unconditionally prefers x to y, and if Bertha agrees that x is at least as good as y, then Althea is allowed to determine that x is socially preferred to y so long as she has a jurisdictional right to x and y. Here, though Althea and Bertha disagree about the ontologies of worlds x and y respectively, rights can still be operative so long as Bertha minimally goes along with Althea’s preferences: if Althea unconditionally prefers refraining from getting an abortion to terminating the fetus, and Bertha thinks a world in which Althea does not murder a person is at least as good as a world in which she does murder a person, then Althea’s right to x over y goes through.

Even though Althea and Bertha disagree about the relevant ontologies in case (β) Althea’s right to x over y is allowed to go through because there are no conflicting claims remaining after exercise of the right. Recall the very point of jurisdictional rights is to adjudicate disputes in a manner that treats all as free and equal. A natural test in deciding whether jurisdictional rights actually perform this function is to ask whether there remain conflicting claims in the moral space that the right was intended to regulate after the right in question has been exercised. In case (β) there is no such conflict – after Althea’s right to x over y is implemented both Althea and Bertha are satisfied with the resulting state of affairs and thus do not make conflicting claims on one another. But this may not be so if (i) Althea and Bertha see different social worlds x and y, yet (ii) Bertha’s preferences over x and y do not minimally accord with Althea’s. For in this case, after we implement Althea’s right to x over y there still may be social discord: even though Althea thinks she has violated no right in choosing to abort the fetus, because Bertha sees the social world differently and disagrees with Althea’s decision, Bertha will press a claim on Althea. When this occurs, we still have social
conflict even after a publicly justified right has been exercised. In such a case jurisdictional rights fail to perform their intended function. This is why we do not model jurisdictional rights as being operative in these sets of cases. Jurisdictional rights are only operative in cases of perspectival disagreement when (β) obtains, for in such cases exercising the right clearly settles the relevant dispute, allowing jurisdictional rights to perform their intended function.

Note that we use unconditional preferences in both cases (α) and (β) to ensure that the preferences used to implement rights claims are internally consistent. It can easily be shown that allowing conditional (as opposed to unconditional) preferences to define a person’s jurisdictional rights will render the entire scheme of jurisdictional rights incoherent in itself (Gibbard 1974: 392). But restricting our attention to unconditional (as opposed to conditional) preferences to define jurisdictional rights is not a limitation of our model, however. By disallowing conditional preferences to determine a person’s jurisdictional rights what we are in effect doing is disallowing a person’s meddlesome preferences from having the authority to be socially decisive when it comes to implementing a rights claim. Relying on unconditional preferences to determine rights claims is just a way of modeling the fact that we are theorizing about a liberal order in which citizens are

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8 To be clear, we are not claiming that all unconditional preferences are non-meddlesome preferences. Consider an example suggested by an anonymous referee: “Althea might unconditionally prefer worlds where Bertha worships God. She prefers every world where Bertha worships God over all other k-variant worlds where Bertha does not worship God.” The referee then asked whether this would not constitute a meddlesome preference. To reply, such an unconditional preference is indeed meddlesome; but it is not an unconditional preference that is being used to implement a jurisdictional right. In the referee’s example, Althea’s unconditional preference concerns a feature of the world over which she does not have a jurisdictional right – it concerns what Bertha (and not what Althea) worships, which is a feature of the world over which Bertha (and not Althea) has a jurisdictional right. So, Althea’s unconditional yet still meddlesome preference in this case is not used to implement Althea’s right. When relying on unconditional preferences, our main concern is not to rule out the meddlesome preferences of some other party whose jurisdictional rights we are not attempting to define, but rather to rule out meddlesome preferences of the specific right-holder when we are defining her implementable rights. That is, we are primarily focusing on a person’s unconditional preferences over a feature of the world which she is assigned a jurisdictional right over. And, when a person has unconditional preferences over the specific feature which she is assigned a jurisdictional right, this does prevent the person from exercising her jurisdictional right on the basis of meddlesome preferences.
comfortable allowing other citizens to live and let live: we thus only continue an assumption already established above in §3.  

We now examine the formal properties of jurisdictional rights when confronted with perspectival diversity. We begin with the easy case: where there is no perspectival disagreement at all. We call such a case *No Diversity*. It can be shown that in such a case, the jurisdictional rights structure as we defined it is always able to deliver a consistent social choice.

**Theorem One:** In cases of *No Diversity* a jurisdictional rights scheme satisfying properties (α) and (β) is always possible.

*Proof:* See appendix.

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9 An entirely different worry with relying on unconditional preferences (again, pointed out by an anonymous referee) concerns whether the exclusive reliance on unconditional preferences in defining jurisdictional rights rules out too much. Consider again the case of abortion. Althea’s preferences concerning whether or not she would like to have an abortion may depend on her background situation – her spousal status, her occupational/financial situation, her emotional maturity, and so on. Here, Althea’s preferences over whether or not to have an abortion fail to be unconditional, which, given our definition of jurisdictional rights, prevents Althea from determining what happens in her uterus. This is counterintuitive.

The solution to this problem hinges on how we individuate the specific features of social worlds. In the current example, one way of individuating social worlds is to regard whether or not Althea has an abortion and Althea’s various background situations as constituting different features of worlds. In this case, the two worlds ‘good background situation and abortion’ and ‘bad background situation and no abortion’ are not k-variants, as well as the two worlds ‘good background situation and no abortion’ and ‘bad background situation and abortion,’’ for they do not differ with respect to one and only one feature. Under such individuation, Althea’s preferences do fail to be unconditional. However, another way of individuating social worlds is to lump whether or not Althea has an abortion and Althea’s various background situations together into the same feature of the worlds. In this case, the four social worlds, ‘good background situation and abortion,’’ ‘good background situation and no abortion,’’ ‘bad background situation and abortion,’’ and ‘bad background situation an no abortion’ are all k-variants of one another so long as all other features of the worlds remain unchanged. Under such individuation, Althea’s preferences would likely be unconditional preferences: she likely prefers all worlds where she has a bad background situation and gets an abortion to all worlds where she has a good background situation and does not get an abortion.

So, which way of individuating social worlds should we adopt? Two considerations are relevant here. First, one should remember that, under our working definition of jurisdictional rights, each specific feature k is intended to correspond to aspects of the social world over which some individual is being granted a jurisdictional right to be socially decisive. If Althea has a right to have an abortion, she should have a right to have an abortion under various background conditions. This is a reason to regard whether or not Althea has an abortion and Althea’s various background conditions to constitute a single feature of a social world. Conversely, we do not think that another individual – say, Cassidy – should have a jurisdictional right to determine whether or not Althea should live under good or bad background circumstances. This is a reason to not regard Althea’s background condition as constituting a separate feature of a social world.
Note that THEOREM ONE should be of no surprise at all. We already saw informally in §3 that when there is no perspectival disagreement jurisdictional rights adjudicate disputes that arise from our conflicting conceptions of the good in a manner that treats all as free and equal moral persons so long as citizens do not exhibit meddlesome preferences.

We now introduce a condition we call Full Diversity. In contrast to No Diversity, Full Diversity says that for any social alternative – say, world $x$ – there will always be at least two persons – say, Althea and Bertha – who impose different ontologies on this world.

THEOREM TWO: In cases of Full Diversity it cannot be guaranteed there exists a jurisdictional rights scheme satisfying properties $(\alpha)$ and $(\beta)$.

Proof. See appendix.

Like THEOREM ONE, THEOREM TWO should also be of little surprise: for we saw informally at the beginning of this section that when Althea and Bertha assign different ontologies to social worlds jurisdictional rights can fail to actually adjudicate their disputes even when they agree on the nature and justifiability of the currently existing rights structure.

6. Collapsing Perspectival Diversity into Disagreements about the Right

Confronted with THEOREM TWO how do public reason liberals respond? Since the problem of perspectival disagreement is a new problem in the literature few solutions have been put forward. One exception is Gaus (2016). Gaus begins by noting that one often neglected facet of Rawls’s later thought is the role publicly constructed social worlds play: “the parties [in the original position] in effect try to fashion a certain kind of social world; they regard the social world not as given by
history, but, at least in part, as up to them” (Rawls 2001: 118; Gaus 2016: 177). On Gaus’s interpretation, part of constructing a public social world entails developing a shared perspective that all citizens adopt for the purpose of regulating the moral space – though Althea’s internal language codes social worlds \( x_A \) and \( y_A \) when she looks at \( x \) and \( y \) respectively, and though Bertha’s internal language codes social worlds \( x_B \) and \( y_B \) when she looks at \( x \) and \( y \) respectively (where \( x_A \neq x_B \) and \( y_A \neq y_B \)) both Althea and Bertha can construct and endorse a public social world (\( x_P \) and \( y_P \)) that effectively gives them the same \( x \) and \( y \), allowing jurisdictional rights to then effectively adjudicate their disputes. In Gaus’s words: “If each perspective can make sense of the categories of the artificial social world and endorse their use, we can have a shared artificial world without normalization” (Gaus 2016: 178).

In a sense, we can think of Gaus’s solution as taking us from THEOREM TWO to THEOREM ONE: though Althea and Bertha impose different ontologies to social worlds they can agree on the same public perspective for the purposes of defining a rights structure that is actually able to order conflicting claims and thus is actually able to regulate the moral space. And in many cases this solution will work well – many people would rather temporarily adopt a shared perspective that perhaps is not as preferred as their own perspective to gain ordered social life. But it is worth asking whether this necessarily is so; whether Althea will always, in cases of social conflict, rather take up public perspective \( P_P \) than her own personal perspective \( P_A \) for the purposes of coherently regulating the moral space instead of allowing conflicting claims to go unresolved. More formally we can ask: letting \( P_A \), \( P_B \), and \( P_C \) stand for Althea, Bertha, and Cassidy’s unique perspectives, and letting \( P_P \) stand for a constructed public perspective, will reasonable persons always endorse something like the preference profiles in Table 5 (in that \( P_P \) is always ranked above blameless liberty by all citizens)?
Table 5

This question harkens back to discussion in §3. There we asked whether all reasonable agents would always rather have a scheme of jurisdictional rights regulating the moral space when compared to blameless liberty. It was argued that Althea could reasonably rank jurisdictional rights below blameless liberty by having a legitimate interest in not letting Bertha and Cassidy live according to their own evaluative standards – for instance, in the case where Althea is concerned with the fate of Bertha and Cassidy’s immortal souls. As before, it here too seems reasonable for citizens (in some circumstances, at least) to reject the publicly constructed social world Gaus puts forth to address perspectival disputes. In Table 6, for instance, Bertha finds the prospect of not treating fetuses as persons so distasteful and in tension with her other evaluative commitments that she would rather have blameless liberty obtain over the moral space than accept any other perspective. And in such cases public reason liberalism – or at least Gaus’s innovative version of it – will not allow for persons to claim moral authority over Bertha, for the claims grounded in the publicly shared social world will not be justified to her given her evaluative commitments.
Are there any moves left for the public reason liberal to make in response to cases like Table 6? We believe so. We now introduce a new condition we call Restricted Diversity. As with Full Diversity, Althea and Bertha, when they both look at some social world $x$, see that world differently. In the case of Full Diversity, Althea and Bertha can see social world $x$ differently in any number of different ways. In the case of Restricted Diversity, however, though Althea and Bertha see social world $x$ differently, the way in which they see social world $x$ differently is restricted. What Restricted Diversity says is that whenever Althea has a jurisdictional right over some $x$ and $y$, Bertha at least perceives $x$ and $y$ to be different only with respect to the particular feature over which Althea has a right. In other words, the level of perspectival diversity is limited in the sense that even though there may be people who perceive any given pair of two social alternatives differently, whenever a specific jurisdictional right is exercised over two social alternatives by some individual, everyone will at least agree that the two social alternatives are different only with regards to the particular feature over which the jurisdictional rights is being exercised – to get a bit technical, everyone agrees that $x$ and $y$ are k-variants. This means that despite perspectival diversity everyone will at least know who has jurisdictional rights over any two social alternatives.
As an example, suppose that a scheme of jurisdictional rights assigns Althea a right to control the first feature of the social world. Suppose Althea looks at worlds $x$ and $y$ and sees worlds $x_A$ and $y_A$. According to her perspective, Althea thinks $x_A$ and $y_A$ are 1-variants. In a case of Restricted Diversity, when Bertha sees her $x_B$ and $y_B$ when looking at $x$ and $y$ respectively (where $x_A \neq x_B$ and $y_A \neq y_B$) she also sees $x_A$ and $y_A$ as 1-variants. This means that Althea knows that she has a right to determine $x$ over $y$ (or vice versa), and Bertha knows that Althea has a right to determine $x$ over $y$ (or vice versa), even though they disagree over the ontology of $x$ and $y$.

Note that there could still be quite a lot of perspectival disagreement even under Restricted Diversity. The only thing that Restricted Diversity requires is that whenever a jurisdictional right is exercised, everyone sees the two social alternatives as being different only in that particular feature over which the jurisdictional right is being exercised. However, Restricted Diversity does not restrict what specific features each person assigns to the two different social alternatives. As long as everyone sees the two social alternatives as being different only in that particular feature over which the jurisdictional right is being exercised, any two people can see the two social alternatives in very different ways. Since, under condition (β), those who perceive the social alternatives differently from the rights-holder must minimally go along with the rights-holder’s preferences in cases of perspectival disagreement, we are left with the question of whether there exists a scheme of jurisdictional rights that can actually generate a determinate social choice given such a condition. At first glance, it seems likely Restricted Diversity will lead us to a similar impossibility result as Theorem Two.

Note that the working example used in the last section is not a case of Restricted Diversity, but rather a case of Full Diversity. The reason why is that, in the particular conflict given, Althea and Bertha do not agree on who has the right; that is, they are not seeing the two possible states of affairs as k-variants. In the case given, Althea sees herself as having the relevant right, yet Bertha sees the
fetus as having the relevant right. This leads to social conflict or, more formally, our impossibility result. But note, things need not be like this. It could be that instead of the relevant right regulating this particular area of the moral space being a right of persons to not be harmed, the right could be a right to decide when and in what matter the contents of one’s uterus are removed from one’s uterus. If this is the relevant right, then Althea and Bertha will likely see worlds $x$ and $y$ as k-variants of one another, because they agree on who the jurisdictional right grants the relevant permission to: Althea. And if this is the right governing the practice Althea can still see fetuses as parasites and Bertha can still see fetuses as persons – this no longer matters. Because the right is framed in a particular way we turn a case of Full Diversity into a case of Restricted Diversity: Althea and Bertha, though they impose different ontologies, can at least agree on who has the permissions in most cases of conflict. Of course, Bertha may think such a scheme of rights is not publicly justified because of what it allows persons to do to what she considers to be persons. This may be. But note, this is now no longer a problem of perspectival disagreement. Rather, it is a problem of disagreement about the right, as discussed in §4: though Bertha thinks jurisdictional rights are in general a reasonable way of regulating the moral space, she thinks a particular scheme of jurisdictional rights $R$ is not justified.

What happens in cases of Restricted Diversity? It can be shown that in cases of Restricted Diversity the jurisdictional rights structure as we defined it is internally consistent. That is, under Restricted Diversity, our scheme of jurisdictional rights will always generate a determinate social choice. Hence, we arrive at a rather remarkable THEOREM THREE.

**THEOREM THREE**: In cases of Restricted Diversity a jurisdictional rights scheme satisfying properties (α) and (β) is always possible.

*Proof*: See appendix.

THEOREM THREE is important because it shows the robustness of liberal institutions in the face of a new challenge that those in the public reason tradition are finally beginning to take more seriously.
Though Gaus responds to THEOREM TWO’s impossibility result by trying to limit perspectival diversity by constructing an artificial social world, THEOREM THREE’s possibility result either shows both that (i) this is not necessary as well as (ii) when citizens cannot endorse a shared public perspective, all is not lost.

But what is the practical upshot of THEOREM THREE? As can be seen from the example used above, the practical upshot is that how rights schemes are defined matters, particularly when it comes to social orders rife with clashing perspectives. In the running example used throughout §5 Althea and Bertha do not agree on who has the right in the particular case, meaning that Full Diversity obtains. THEOREM TWO thus becomes applicable, meaning jurisdictional rights are unable to perform their function – even if implemented, the exercise of the right will still leave conflicting claims unanswered. But defining the rights structure differently can allow for Althea and Bertha to agree on who has the right in the relevant case. When this is true, we face a case of Restricted Diversity. THEOREM THREE thus becomes applicable, meaning jurisdictional rights are able to perform their function.

Now of course, it can easily be argued that transforming a case of Full Diversity to a case of Restricted Diversity by defining rights in a manner sensitive to perspectival disputes merely pushes the problem back: what are the chances that such a right will be publicly justified? This is precisely our point, and the reason why we discussed different solutions to the problem of disagreement about the right in detail in §4. There are many different ways those in the public reason literature have addressed the problem of disagreement about the right. Our paper – and THEOREM THREE in particular – shows that cases of perspectival diversity can essentially be treated as cases of disagreement about the right so long as one can find a way of defining rights such that cases of Full
Diversity are transformed into cases of Restricted Diversity.\textsuperscript{10} If one can do this, then the problem of perspectival disagreement is not as new and troubling a problem as it once appeared. It can merely be treated as a case of disagreement about the right in disguise.

7. Conclusion

This paper explored to what extent jurisdictional rights as devices of public reason are capable of adjudicating disputes arising from a new kind of diversity those in the public reason tradition are concerned with. Though \textit{prima facie} it seemed that jurisdictional rights run into a good bit of trouble in trying to do this, we formally proved that when a certain condition obtains jurisdictional rights are always able to deliver a coherent social choice. We further argued that the condition under which this occurs — what we called Restricted Diversity — when it obtains, essentially turns cases of perspectival disagreement into cases of disagreement about the right. Since there already exists solutions to this problem in the public reason literature, our paper shows that the new problem of perspectival disagreement — when we are able to define rights properly — requires less theoretical innovation than might initially be thought.

Formal Appendix

Let $N = \{1, \ldots, n\}$ be the set of individuals in society.

Let $X = X_1 \times \cdots \times X_l$ be the set of all social alternatives where each $X_k$ denotes the set of things that can be considered as a particular feature $k$ of the social alternative. Each $X_k$ contains $0$ which serves as a place holder for a missing feature. So, $(x_1, 0, x_3, \ldots, x_l)$ will denote a social alternative that is missing feature 2.

\textsuperscript{10} Here the authors take no stance on whether this can \textit{always} be done — they do not know how one would go about formally proving such a claim.
For each \( x = (x_1, \ldots, x_i) \in X \), let \( x^i = (x^i_1, \ldots, x^i_j) \) be the social alternative \( x \) seen from individual \( i \)’s perspective. When \( x^i \neq x^j \), then this means that individuals \( i \) and \( j \) perceive the social alternative \( x \) differently; inversely, if \( x^i = x^j \), then this means that individuals \( i \) and \( j \) perceive the social alternative \( x \) identically.

Let \( X^i \) be the set of all social alternatives seen from individual \( i \)’s perspective. We assume that each individual \( i \in N \) has a strict preference relation \( P_i \) defined on \( X^i \) that is asymmetric and negatively transitive (i.e. \( P_i \) on \( X^i \) is an asymmetric weak order.)

Let \((P_1, \ldots, P_n)\) be a profile of strict preferences for each individual \( i \) on \( X^i \).

Let \( P \) be the social preference relation on \( X \).

**Definition 1 (k-variants):** We say that \( x = (x_1, \ldots, x_i) \) and \( y = (y_1, \ldots, y_i) \) are k-variants of each other if and only if \((\forall z)[z \neq k \Rightarrow x_z = y_z]\).

**Definition 2 (Unconditional Preference):** Let \( a, b \in X_k \). Then, we say that individual \( i \) prefers \( a \) to \( b \) unconditionally for feature \( k \) if and only if for every pair of \( k \)-variants \( x \) and \( y \), if \( x_k = a \) and \( y_k = b \), then \( x P_i y \). Whenever this happens we may say individual \( i \) unconditionally prefers \( x^i \) to \( y^i \).

**Definition 3 (Jurisdictional Right):** We say that individual \( i \) has a jurisdictional right if and only if there exists a feature \( k \) such that, for all \( x, y \in X \) such that \( x^i \) and \( y^i \) are \( k \)-variants, \( x P y \) is implied by any of the following two cases:

\[(\alpha) \: \forall j \in N, x^i = x^j \text{ and } y^i = y^j, \text{ and } i \text{ prefers } x^i_k \text{ to } y^i_k \text{ unconditionally; or} \]
\[(\beta) \: \forall j \in N \text{ such that } x^i \neq x^j \text{ or } y^i \neq y^j, \text{ and } x^i R_j y^i \text{ and } i \text{ prefers } x^i_k \text{ to } y^i_k \text{ unconditionally} \]

(\text{where } x^i R_j y^i = \neg y^i P_j x^i.)

**Condition L (Liberalism):** Every individual has a jurisdictional right.

We would like to have a way to determine social preferences that respects each individual’s jurisdictional rights defined above. Let us define the liberal social preference relation \( P_L \) as follows:

**Definition 4 (Liberal Social Preference):** \( \forall x, y \in X, x P_L y \) (read as “the social alternative \( x \) is socially preferred to the social alternative \( y \) by liberalism”) if and only if \( \exists k \in N, \exists k \text{ such that } x^i \text{ and } y^i \text{ are } k \)-variants, \( i \) has a jurisdictional right over feature \( k \), and \( i \) prefers \( x^i_k \) to \( y^i_k \) unconditionally.
**Definition 5 (Liberal Social Choice Set):** \( C_L = \{ x \in X \mid \exists y \in X, y P_L x \} \). We call \( C_L \) the liberal social choice set.

We say that a liberal social choice is *possible* if and only if the liberal social choice set is *nonempty* under a given specification of jurisdictional rights.

**Condition U (Universal Domain):** Any profile \((P_1, \ldots, P_n)\) on \( X^I \) is admissible to derive a liberal social choice.

We will now examine the possibility of liberal social choice under different degrees of perspectival diversity.

**Condition ND (No Perspectival Diversity):** There exists no perspectival diversity – that is, everybody perceives any given social alternative in the same way. More formally, \( \forall x \in X, \forall i, j \in N, x^i = x^j \).

**Theorem One:** Liberal social choice that satisfies \( U, L, \) and ND is always possible.

**Proof:** Assume that each individual \( i \in N \) has a jurisdictional right over at least one feature of the social alternatives satisfying Condition \( L \). In order to show that a liberal social choice is always possible, we need to show that the liberal social choice set \( C_L \) will always be nonempty. For this purpose, it suffices to show that the liberal social preference relation \( P_L \) is acyclic (i.e. it does not produce any cycles.) Suppose, for a proof by contradiction, that there exists a cycle, \( x_a^i P_L x_b^i P_L \ldots P_L x_z^i x_a^i \).

Since \( x_a^i P_L x_b^i, \exists i \in N, \exists k \) such that \( x_a^i \) and \( x_b^i \) are \( k \)-variants, \( i \) has a jurisdictional right over feature \( k, i \) prefers \( x_a^i \) to \( x_b^i \) unconditionally, and, either

(a) \( \forall j \in N, x_a^j = x_a^j \) and \( x_b^j = x_b^j \); or
(b) \( \forall j \in N \) such that \( x_a^j \neq x_b^j \) or \( x_b^j \neq x_b^j, x_a^j R_j x_b^j \).

By condition ND, \( \forall j \in N, x_a^j = x_a^j \) and \( x_b^j = x_b^j \), so case (b) does not arise.

For any \( y \), let \( y^* \) be the \( k \)-variant of \( x_a^i \) such that the \( k \)-component of \( y^* \) is the \( k \)-component of \( y \).

Since \( i \) prefers \( x_a^i \) to \( x_b^i \) unconditionally, we have \( x_a^i P_i x_b^i \). Also, since \( x_a^i = x_a^i \) and \( x_b^i = x_b^i \), we have \( x_a^{i*} P_i x_b^{i*} \).
Now, since $x_b^i P_i x_c^i$, $\exists i' \in N$, $\exists k'$ such that $x_b^{i'}$ and $x_c^{i'}$ are $k'$-variants, $i'$ has a jurisdictional right over feature $k'$, $i'$ prefers $x_b^{i'}$ to $x_c^{i'}$ unconditionally, and, by condition ND, $\forall j \in N$, $x_b^j = x_b^i$ and $x_c^j = x_c^i$.

Suppose $i = i'$. If $k = k'$, then, by exactly the same argument as above, we have $x_b^{i'} P_i x_c^{i'}$. If $k \neq k'$, then, since $x_b^i = x_b^i$ and $x_c^{i'} = x_c^{i'}$ are $k'$-variants, the $k$-components of $x_b^{i'} = x_b^i$ and $x_c^{i'} = x_c^i$ will be the same. Hence, $x_b^{i'} = x_b^i = x_c^{i'} = x_c^i$, which implies $x_b^{i'} R_i x_c^{i'}$. In either case, we have $x_b^{i'} R_i x_c^{i'}$.

Now, suppose $i \neq i'$. Then, $k \neq k'$, and, by a similar argument, we have $x_b^{i'} = x_b^{i'} = x_c^{i'} = x_c^{i'}$, which implies $x_b^{i'} R_i x_c^{i'}$. So, in all cases, we have $x_b^{i'} R_i x_c^{i'}$.

We can repeat the same argument for all social alternatives in the cycle, which leads us to

$$x_a^{i'} P_i x_b^{i'} R_i x_c^{i'} \cdots R_i x_a^{i'} R_i x_a^{i'},$$

which implies $x_a^{i'} R_i x_a^{i'}$, which contradicts that $P_i$ is asymmetric, and, thereby, irreflexive. ■

So, THEOREM ONE shows that liberal social choice that grants each individual a jurisdictional right is possible when there is no perspectival diversity. Now, let us grant perspectival diversity in an unrestricted form.

**Condition FD (Full Perspectival Diversity):** $\forall x \in X$, $\exists i, j \in N$ such that $x^i \neq x^j$.

In words, Condition FD – full perspectival diversity – says that for any given social alternative, there will always be at least two people who see them differently. Note that Condition FD does not restrict in what specific way the two individuals will perceive the social alternative differently. Under Condition FD, it is possible for somebody to think two social alternatives are not, say, $k$-variants even when everybody else perceives the two social alternatives as $k$-variants.

**THEOREM TWO:** Liberal social choice that satisfies $U$, $L$ and $FD$ is not always possible.

Proof. The proof will proceed by specifying the preferences, perspectives, and the jurisdictional rights of four individuals that would lead us to a cyclic liberal social preference relation.
By Condition L, each individual has a jurisdictional right – i.e. for each individual \( i \in N \), there exists a feature \( k \) over which \( i \) has control in the sense defined in Definition 3 (Jurisdictional Rights). Without loss of generality, suppose each individual \( i \) has a jurisdictional right over feature \( i \).

Let \( X = \{w, x, y, z\}, N = \{1, 2, 3, 4\} \). By condition U, the following set of individual preferences is admissible:

\[
z^1 R_i w^1 P_1 x^1 R^1 y^1;
\]
\[
w^2 R_2 x^2 P_2 y^2 R_2 z^2;
\]
\[
x^3 R_3 y^3 P_3 z^3 R_3 w^3;
\]
\[
y^4 R_4 z^4 P_4 w^4 R_4 x^4.
\]

Assume

\[
w^1, x^1 \text{ are 1-variants}; x^2, y^2 \text{ are 2-variants}; y^3, z^3 \text{ are 3-variants}; z^4, w^4 \text{ are 4-variants}.
\]

Also, suppose

\[
w^1 = w^3 \neq w^2 = w^4;
\]
\[
x^1 = x^3 \neq x^2 = x^4;
\]
\[
y^1 = y^3 \neq y^2 = y^4;
\]
\[
z^1 = z^3 \neq z^2 = z^4.
\]

So, individuals 1 and 3 share the same perspective while individualls 2 and 4 share the same perspectives. Note that each individual’s preferences form an order, and the level of perspectival diversity satisfies Condition FD (i.e. \( \forall x \in X, \exists i, j \in N \) such that \( x^i \neq x^j \)).

Since individual 1 has jurisdictional right over feature 1; \( w^1, x^1 \text{ are 1-variants}; w^1 P_1 x^1; w^2 R_2 x^2 \) (and \( x^1 \neq x^2 \)); \( x^3 P_3 w^3 \) (and \( w^1 = w^3 \) and \( x^1 = x^3 \)); and \( w^4 R_4 x^4 \) (and \( w^4 \neq w^1 \)), we have \( w P_1 x \).

Since individual 2 has jurisdictional right over feature 2; \( x^2, y^2 \text{ are 2-variants}; x^2 P_2 y^2; x^3 R_3 y^3 \) (and \( y^2 \neq y^3 \)); \( y^4 P_4 x^4 \) (and \( x^2 = x^4 \) and \( y^2 = y^4 \)); and \( x^1 R_1 y^1 \) (and \( x^2 \neq x^1 \)), we have \( x P_1 y \).
Since individual 3 has jurisdictional right over feature 3; \( y^3, z^3 \) are 3-variants; \( y^3 \bar{P}^3 z^3; y^4 \bar{R}^4 z^4 \) (and \( z^3 \neq z^4 \)); \( z^1 \bar{P}^1 y^1 \) (and \( y^3 = y^1 \) and \( z^3 = z^1 \)); and \( y^2 \bar{R}^2 z^2 \) (and \( y^3 \neq y^2 \)), we have \( y \bar{P}^L z \).

Since individual 4 has jurisdictional right over feature 4; \( z^4, w^4 \) are 4-variants; \( z^4 \bar{P}^4 w^4; z^1 \bar{R}^1 w^1 \) (and \( w^4 \neq w^1 \)); \( w^2 \bar{P}^2 z^2 \) (and \( z^4 = z^2 \) and \( w^4 = w^2 \)); and \( z^3 \bar{R}^3 w^3 \) (and \( z^4 \neq z^3 \)), we have \( z \bar{P}^L w \).

So, we have \( w \bar{P}^L x \bar{P}^L y \bar{P}^L z \bar{P}^L w \), a cycle in the liberal social preference relation. Hence, the liberal social choice set \( C_L \) is empty, and, there cannot be any liberal social choice. ■

So, THEOREM TWO shows that liberal social choice that grants each individual a jurisdictional right is impossible when there is unrestricted perspectival diversity. Now, let us grant perspectival diversity in a restricted form.

**Condition RD (Restricted Perspectival Diversity):** Let \( i \in N \) have a jurisdictional right over feature \( k \), let \( x^i, y^i \in X^i \) be \( k \)-variants, and let \( i \) unconditionally prefers \( x^i \) to \( y^i \). Then, for all \( j \in N \) such that \( x^i \neq x^j \) or \( y^i \neq y^j \), \( x^j \) and \( y^j \) are \( k \)-variants.

Condition RD says that, though individuals may see different options \( x, y \) as containing different features, they will always agree that these different options are \( k \)-variants.

**THEOREM THREE:** Liberal social choice that satisfies \( U, L, \) and RD is always possible.

**Proof.** The proof will follow the general strategy employed in the proof of THEOREM ONE, except, now, we need to consider additional cases. So, again, assume that each individual \( i \in N \) has a jurisdictional right over at least one feature of the social alternatives. This satisfies Condition \( L \).

In order to show that a liberal social choice is always possible, it again suffices to show that the liberal social preference relation \( P_L \) is acyclic. Suppose, for a proof by contradiction, that there exists a cycle,

\[ x_a \bar{P}^L x_b \bar{P}^L \ldots P_L x_z \bar{P}^L x_a. \]

Since \( x_a \bar{P}^L x_b, \exists i \in N, \exists k \) such that \( x^i_a \) and \( x^i_b \) are \( k \)-variants, \( i \) has a jurisdictional right over feature \( k \), \( i \) prefers \( x^i_a \) to \( x^i_b \) unconditionally, and, either

(a) \( \forall j \in N, x^i_a = x^i_j \) and \( x^i_b = x^i_j \), or
(b) \( \forall j \in N \) such that \( x^i_a \neq x^i_j \) or \( x^i_b \neq x^i_j \), \( x^i_a \bar{R}^j x^i_b \).
Again, for any $y$, let $y^*$ be the $k$-variant of $x_a^l$ such that the $k$-component of $y^*$ is the $k$-component of $y$.

Since $i$ prefers $x_a^l$ to $x_b^l$ unconditionally, we have $x_a^lP_i x_b^l$. Also, since $x_a^l = x_a^*i$ and $x_b^l = x_b^*i$, we have $x_a^*i P_i x_b^*i$.

Now, since $x_b^lP_L x_c$, $\exists i' \in N, \exists k'$ such that $x_b^{l'}$ and $x_c^{l'}$ are $k'$-variants, $i'$ has a jurisdictional right over feature $k'$, $i'$ prefers $x_b^{l'}$ to $x_c^{l'}$ unconditionally, and, either

(a) $\forall j \in N, x_b^{l'} = x_b^j$ and $x_c^{l'} = x_c^j$; or
(b) $\forall j \in N$ such that $x_b^{l'} \neq x_b^j$ or $x_c^{l'} \neq x_c^j$, $x_b^{l'} R_j x_c^j$.

We need to consider two possible cases:

Case 1: $x_b^{l'} = x_b^l$ and $x_c^{l'} = x_c^l$.

If $k = k'$, then this implies $i = i'$ (as there cannot be two different individuals who have jurisdictional rights over the same feature.) Hence, just as before, since $i$ prefers $x_b^l$ to $x_c^l$ unconditionally, we have $x_b^lP_i x_c^l$. Since $x_a^l = x_a^*i$ and $x_c^l = x_c^*i$, we have $x_a^*i P_i x_b^*i$.

If $k \neq k'$, then, since $x_b^{l'} = x_b^l$ and $x_c^{l'} = x_c^l$ are $k'$-variants, the $k$-components of $x_b^{l'} = x_b^l$ and $x_c^{l'} = x_c^l$ will be the same. Hence, $x_b^{*l'} = x_b^*l = x_c^{*l'} = x_c^*l$, which implies $x_b^{*l'} R_i x_c^{*l'}$.

Case 2: $x_b^{l'} \neq x_b^l$ or $x_c^{l'} \neq x_c^l$.

Then, this implies $i \neq i'$ and $k \neq k'$. By condition RD, $x_b^l$ and $x_c^l$ are $k \neq k'$-variants. As the $k$-component of $x_b^l$ and $x_c^l$ are the same, we have $x_b^{*l} = x_c^{*l}$, implying $x_b^{*l} R_i x_c^{*l}$.

So, in all cases, we have $x_b^{*l} R_i x_c^{*l}$.

By reiterating the same argument, we have $x_a^{*l} P_i x_b^{*l} R_i x_c^{*l}$, implying $x_a^{*l} P_i x_a^{*l}$ contradicting that $P_i$ is asymmetric, and, thereby, irreflexive. ■

Works Cited


