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QUESTIONS CONCERNING REGULATION: AN IMPROVED LIBERAL THEORETICAL PERSPECTIVE

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Abstract

The emergence of liberal states have historically occurred alongside the proliferation of regulatory capture; immoral markets; and offshoring practises. Despite this, liberal theorists have hardly approached questions concerning regulation. Critics have claimed this is testament to the unworkability of the justifications they offer for values and norms pertaining to political authority, and the rights and freedoms of citizens. This thesis disputes this criticism by extending Perfectionist and Anti-Perfectionist liberal political justifications towards real world cases of these behaviours. This illustrates the viable liberal theoretical perspective towards regulation, and provides a means to adjudicate conflicts that emerge between perfectionist and anti-perfectionist liberal theorists. Once one extends these stances towards questions concerning regulation, far less separates the perspectives. The anti-perfectionist commitment to state neutrality and public reason, and the perfectionist commitment to forwarding specific conceptions of the good, and using the state to pre-empt action of the desired kind can recognise the need to regulate against these behaviours, and justify a theoretical process for formulating regulatory principles. Thus, when it comes to questions bearing on the implementation of liberal theoretical ideas, entrenched theoretical disputes between perfectionists and anti-perfectionists can be resolved. However, one remains better off adopting the recommendations of Perfectionist Liberalism when applying liberal political theory to questions concerning regulation. This is because only perfectionist liberal theorists license appropriate forms of paternalistic intervention necessary for counteracting the negative effects of regulatory capture; immoral markets; and offshoring practises.
Introduction

The emergence of liberal democratic states within society has happened in tandem with the emergence and proliferation of regulatory capture; immoral markets; and offshoring practises. However, this does not suggest that the very emergence of liberal theory has caused these behaviours, only that they have emerged near simultaneously. Questions can be asked surrounding whether liberal theory can be applied in any significant way towards these behaviours, and whether a theoretical regulatory perspective can emanate from liberal theory.

This thesis outlines how political justifications that perfectionist and anti-perfectionist liberal theorists offer for their values and norms can be applied to real-world cases of regulatory capture; immoral markets; and offshoring practises. Three significant philosophical implications arise from this:

1. Entrenched theoretical disputes between perfectionist and anti-perfectionist liberal theorists regarding the legitimacy of state neutrality, and the prioritisation of public reason can be adjudicated
2. Perfectionist liberal theory is a more preferable theoretical stance as a response to regulatory issues due to its accommodation and justification of paternalistic interference
3. Critics of liberal theory who label the stance as redundant when it comes to solving real-world problems can be adequately responded to

Despite the popularity of the liberal theoretical paradigm, considerations of how liberal theory may respond to questions concerning regulation, or how liberal theoretical stances may be applied to this end has occupied minimal focus. When liberal institutions and idealized liberal societies are theoretically designed, liberal theorists pay limited attention to how they might become unstable or be challenged in real-world circumstances. This means that there is limited guidance with regards to how threats to liberal institutions in the world we inhabit might be contained (Ciepley, 2006, p. 13).

Work on the connection between liberal theory and regulation is therefore sparse, with only a handful of scholars taking up the issue as the focal point of their inquiry. Arnold’s (2009) Essay on Liberalism and Regulation is the most notable. He highlights that ‘the characteristic inconclusiveness of disputes about philosophical principles leaves those who shape public policy stranded on the shoals of uncertainty’ (Arnold, 2009, p. 6). For Arnold (2009, p. 213), the ‘persistent search for ever more abstract principles’ which epitomises a dominant strategy
of twenty-first century liberal theory is a causal factor behind the existing theoretical stalemate surrounding the correctness of any particular liberal theoretical perspective. This makes the shaping of public policy difficult, as liberal theoretical discourse takes place within hypothetical, abstract, idealized scenarios, ill-attuned to the specific challenges faced by liberal societies in the world we inhabit. By focusing on how liberal theoretical stances may formulate and justify principles of regulation, liberal theory can assist with establishing policy initiatives that are implementable and responsive to real-world concerns surrounding regulation. Therefore, the under-representation of this issue among existing work surrounding liberal theory is no grounds for claiming that liberal theory has no viable perspective towards these issues. The regulatory response is implied within the theories of perfectionist and anti-perfectionist liberalism, and stems from the political justifications these theorists offer for liberal values and norms. The liberal theoretical perspective towards regulation thus applies liberal theoretical perspectives to the domain of regulatory issues, viewing this as a natural, viable extension of liberal theory.

Once responding to questions concerning regulation take a central focus, the conflict surrounding the permissibility of state neutrality, and disagreements about the role and prioritisation of public reason which engage liberal theorists dissipates. With respect to regulation, this implies that one is no worse off in accepting the recommendations of perfectionist, or anti-perfectionist liberalism when recognising the need to formulate regulatory principles, or forwarding a theoretical process through which principles of regulation may be generated. This means that a liberal theoretical justification for taking questions concerning regulation seriously can emanate from the requirement of maintaining neutral between competing, reasonable conceptions of the good, or as a natural result of forwarding specific comprehensive conceptions of the good. Similarly, public reason deliberation among reasonable citizens generates an overlapping consensus on the need to bring about regulatory proposals, and on the form these might take. Correspondingly, making use of the state’s privileged position to pre-empt citizens towards certain ends, and offering incentives and directives for individuals, firms and corporations not to carry out the behaviours can achieve the same ends. These points of similarity between perfectionist and anti-perfectionist liberal theory stand out within a combative and polarised theoretical debate.

However, adjudicating the debate does justify a preference for Perfectionist Liberalism when it comes to responding to questions concerning regulation. The attitudes towards the permissibility of paternalistic state action separates the liberal stances. The perfectionist liberal
permittance of paternalistic intervention provides the liberal state with the appropriate scope of power to implement specific regulatory proposals; comparative to the anti-perfectionist stance, which refuses to allow paternalistic intervention on the grounds that this disrespectfully assumes that reasonable citizens cannot ascertain, nor follow their own conceptions of the good. The overall defence of the values of Perfectionist Liberalism as the means through which to respond to regulatory capture; immoral markets; and offshoring practises thus stems from the wider scope of power and interventionist measures it grants the liberal state.

Such a liberal theoretical perspective can meaningfully respond to real-world instances of regulatory capture, immoral markets, and offshoring practises. Attention is targeted towards specific strategies used by individuals, firms and political authorities that practise regulatory capture, proliferate immoral markets, and utilise offshoring practises. With respect to regulatory capture, the liberal theoretical response to regulation can tackle and prevent the negative consequences associated with political lobbying. Prominent case studies include the ways this is utilised by dominant firms, sectors and industries, such as the Banking sector, and how it manifests in interest groups, such as the National Rifle Association. Considerations of immoral market proliferation chiefly focuses upon the propagation of harmful advertising practises, and the controversial commodification of goods, and how these practises are produced by firms, and manifest in prevalent industries, such as the gambling industry. With respect to these behaviours, the liberal theoretical perspective towards regulation is forwarded as a viable alternative to existing forms of regulation embodied in organisations such as the Advertising Standards Authority. Finally, the types of offshoring practises covered in this thesis include deferring tax, and tax avoidance, which contribute to enhancing the Tax Gap (the figure accounting for tax revenues that fail to be paid to national jurisdictions). The extent to which these activities are conducted by powerful individuals and corporations is outlined in the Pandora Papers. These accounts inform the liberal theoretical perspective towards regulation, which in turn recommends stricter regulatory alignment to prevent these practises.

Chapter one begins by defining regulatory capture; immoral markets; and offshoring practises, and shedding light on the specific manifestations of these behaviours which are analysed in the thesis. It considers the ways in which the proliferation of these behaviours in real world societies violates the instantiation of liberal values and norms. This provides the basis for producing a liberal theoretical response to these questions concerning regulation. It mitigates the threat to the instantiation of liberal values and norms pertaining to the rights and freedoms of citizens, and the responsibilities of political authority.
Chapter two clarifies that the political justifications offered by perfectionist and anti-perfectionist liberal theorists for their values and norms can be extended to bear on questions surrounding regulation. This is a testament to the nature of the justifications themselves. As ‘political’ justifications, it is incumbent upon them to pay attention to their instantiation and implementation, and to be able to justify intervention against real-world societal practises that violate them. Perfectionist and anti-perfectionist liberals offer different political justifications for liberal values and norms. As a result, the reasons for why regulatory capture; immoral markets; and offshoring practises are problematic; the processes through which both liberal conceptions may arrive at regulatory principles, and what this entails for the designated domains of permissible and impermissible state action are different for perfectionist and anti-perfectionist liberal theorists. Thus far, liberals have not carried out this extension of their political justifications. However, the lack of attention paid to questions surrounding the instantiation of liberal values and norms does not represent any categorical, defective problems with the values themselves.

After extending the political justifications offered by perfectionist and anti-perfectionist liberals, the chief points of dispute between the theoretical stances can be adjudicated. The points of contention between perfectionist and anti-perfectionist liberals that are relevant for this thesis concern the following:

1. Disagreements surrounding whether the state should adopt a stance of state neutrality between conflicting conceptions of the good life (anti-perfectionist), versus the idea that it is permissible for the liberal state to prioritise and forward specific conceptions of the good, or pre-empt citizens towards specific ways of life (perfectionist).

2. The prioritisation and trust in the proceeds of public reason in determining the domains of permissible and impermissible state action (anti-perfectionist), versus a sceptical approach to public reason as a means to determine the ends of state action (perfectionist)

3. A conflict surrounding the permissibility of paternalism, how paternalistic state action is justified, and what the scope of liberal state action should be. Anti-perfectionists deny that the state should be paternalistic, while perfectionists hold that paternalistic state action is justified under certain circumstances.

Once questions surrounding regulation, which bear upon the implementation and instantiation of liberal ideas occupy a central focus for liberal theorists, far more unites than separates the perfectionist and anti-perfectionist liberal positions. Both perfectionist and anti-perfectionist perspectives can recognise the need to respond to questions concerning regulation, and initiate
a theoretical process for formulating principles of regulation. This provides grounds for the participants to lessen the severity and emphasis they place on their points of difference. Dispute (1) and (2) can be adjudicated. Consequently, if one analysed whether liberal theory could recognise that questions concerning regulation need responding to, or inquired as to how whether liberal theories could formulate regulatory principles, one would be no worse off for adopting the perfectionist or anti-perfectionist liberal theoretical perspective. This is exemplified in chapters III and IV.

This means that with respect to questions bearing on the implementation of liberal ideas, the main point of difference concerns the licensing of paternalistic interference, and the extent to which paternalistic interference is permitted by the liberal conception of political authority. Chapter five highlights that in spite of the similarity between the liberal theoretical perspectives, perfectionist liberal theory is preferable, since it licenses paternalistic state intervention. Illustrating the consequences of regulatory capture; immoral markets; and offshoring practises indicates that any effective response to these behaviours requires paternalistic intervention. The chapter forwards “authoritative nudges” as the form of paternalistic interference that is most appropriate for dealing with the behaviours. The synergy between authoritative nudges and pre-emptive authoritative directives is epitomised by the fact that pre-emptive authoritative directives which can be utilised by the perfectionist liberal state can take the form of authoritative nudges. These can modify and direct the behaviours of individuals and firms in ways which limit instances of the behaviours, and counter their negative effects.

Chapter six indicates the wider positive implications that the liberal theoretical perspective towards regulation has for liberal theory. This revolves around the heightened ability for liberal theorists to respond to some of its prominent critics. The viable theoretical perspective towards regulation helps to rebut the force of some of the claims made. Critics of liberal theory’s ideal theoretical methodology, and its charge of being ill-attuned to the real circumstances of politics are dismissed. Providing a response to real-world instances of regulatory capture, immoral markets, and offshoring practises nullifies this. It also provides grounds to dismiss cosmopolitan political theory as a viable rival to liberal theory. Finally, non-liberal theoretical perspectives and critical theorists that regard liberal theory as unable to solve real world concerns, or who argue that liberal theorists are complicit in or see no problem with the proliferation of these behaviours can be dismissed.
Chapter I

The Basis for the Liberal Theoretical Perspective Towards Regulation

Abstract: This chapter exposes an inconsistency within liberal theory. Effectively implementing liberal values and norms concerning the rights and freedoms afforded to citizens, and the responsibilities of liberal political authority cannot occur alongside real world-practises of regulatory capture, immoral market proliferation, and offshoring practises. This inconsistency is exposed through understanding the processes through which these behaviours manifest, and the direct threat they pose to the implementation of liberal values and norms. The need to safeguard the effective instantiation of liberal values and norms is a worthwhile aim of liberal theory. This aim manufactures a liberal theoretical basis to respond to this inconsistency. Effectively implementing liberal values and norms is consistent with counteracting real-world practises which discredit them.

This thesis focuses upon three modern, real-world behaviours that act to significantly undermine the effective instantiation of liberal theoretical values and norms

(1) Regulatory capture - This illustrates methods utilised by financial institutions, interest groups and multi-national corporations to direct, influence and modify the aims and intentions of political authority. This leads to the prioritisation by political authority of private, vested interests over public interests/needs of citizens. Specific focus is paid to political lobbying, as practised by the National Rifle Association, and the Banking and Finance sectors.

(2) Immoral markets – This focuses upon the controversial commodification of goods, and the effects of intrusive, harmful advertising practises in shaping the choices of consumers. These effects are illustrated in the gambling industry.

(3) Offshoring practises – These centre around the negative consequences associated with deferring tax, the increasing Tax Gap, and how this effects political authority’s
ability to forward public ends. It also documents controversies associated with tax avoidance and the use of tax havens.¹

The concern is with how the existence of these behaviours, and the negative effects they proliferate represent a challenge to liberal theory. This challenge is epitomised through the active imposition of barriers to effectively implementing liberal theoretical values and norms.

The chief claim of this chapter is that instances of regulatory capture, immoral markets and offshoring practises provide a direct threat to the viability of liberal theoretical values and norms. Section I clarifies the set of liberal values and norms which are under threat as a result of the proliferation of the behaviours. Section II illustrates what regulatory capture, immoral markets, and offshoring practises are. It details the different aims of these practises, and the methods utilised by firms, individuals, and multi-national corporations to fulfil these aims. The proliferation of these behaviours can be seen to violate the effective instantiation and implementation of liberal values and norms. This provides the basis to rebut rival theoretical perspectives which argue against the regulation of these real-world behaviours.

I. Liberal Theoretical Values and Norms Pertaining to the Citizen and Political Authority

There is a specific threat posed to liberal theory by the proliferation of regulatory capture, immoral market proliferation, and offshoring practises. Establishing the set of liberal theoretical values and norms that are violated through the proliferation of these behaviours achieves clarity on this. The threats posed by the behaviours have been under-theorised by liberal theorists. However, that liberal theory has either ignored or overlooked these behaviours does not entail that it is incapable of responding to them, and counteracting their negative effects. The fact that the proliferation of these behaviours provides a barrier to the effective instantiation of liberal values and norms provides the catalyst to theorise towards a liberal theoretical perspective on regulation.

The “liberal values and norms” refer to the theoretical commitments that define and comprise liberal theory. These have been forwarded by prominent liberal theorists throughout

¹ Throughout the thesis, these will be referred to as ‘the behaviours’ in the interests of clarity
the tradition. The liberal theoretical values/norms are divided into two groups: (1) The rights and freedoms of citizens, and (2) The responsibilities and scope of liberal political authority.²

Liberal values and norms pertaining to rights and freedoms attributed to citizens:

(1) **Free and Equal Standard** - A commitment that all individuals are regarded as free and equal, and treated freely and equally under the law (Rawls, 2004, p. 4-9; Quong, 2011, p. 39, 290-315).

(2) **Extensive Basic Liberties** - A commitment to the most extensive scheme of basic liberties, as long as these can be exercised by all equally. These liberties include freedom of expression, association, liberty of thought and conscience (Rawls, 1999, p. 53). The exercise of these freedoms enable individuals to make autonomous decisions, whereby individuals are able to self-direct their lives.

(3) **Political Autonomy** – A prioritisation of the right for individuals to politically participate, encompassing the free voicing of political opinions, and the protection of rights to protest, as well as the freedom to elect rulers, and for sovereignty to be invested in the people (Rawls, 2005, p. 327). These rights are also granted special protection from the state.

(4) **Non-Manipulation** – The exercise of these fundamental rights and liberties cannot be interfered with, exploited, or manipulated by private interests. Citizens must not be exposed to undue intervention from political authority, other citizens, or external bodies. (Rawls, 2005, p. 295) (Mill 2008) (Quong, 2011, p. 12-16).

Liberal theorists emphasise that the justifications for these values encompass their safeguarding from the interference of political authority and other external influence. Consequently, no authoritative body can justify intervening with these rights and freedoms to incur greater economic prosperity, or higher standards for a specific group (Estlund, 1998, p. 252).

The second grouping consists of values/norms pertaining to political authority. These detail the scope of power and influence that the liberal state enjoys; the function and role of political authority with respect to the protection and safeguarding of citizen’s rights and freedoms; and the relationship the liberal state should aspire to have with its citizens:

(1) **Public Good Prioritisation** - A distinction between public and private interests. Political authority should be concerned with promoting the public good, and refrain

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² These liberal theoretical values and norms represent the values most under threat from the proliferation of regulatory capture, immoral markets and offshoring practises. The names given for these values are my own, and ensure clarity of reference throughout the thesis.
from prioritising private ends at the expense of the public good. (Rawls, 2005, p. 10-12).

(2) **Society as a Scheme of Social Cooperation** – Society represents a system of cooperation between individuals and the state. All should mutually benefit from society (Rawls, 2005, p. 256-59; Quong, 2011, p. 186).

(3) **The ‘No Harm Principle’** – It is the responsibility of liberal political authority to protect citizens from harm, and to intervene against the practises of some citizens if this protects others from harm. This can be extended to designing against specific models of the basic structure of society that bring about harm to citizens, or modifying the behaviours of other external bodies, if their actions cause harm (Raz, 1986, p. 413-16).

The chief focus of liberal theorists and their critics relate to the theoretical, abstract justifications given for these values and norms. Matters relating to their effective instantiation by citizens, or barriers to their effective implementation in actually existing liberal democratic societies are often bypassed.

However, questions concerning the regulation of regulatory capture, immoral markets and offshoring practises can occupy a central focus for liberal theorists. This positions the successful implementation of liberal values and norms at the centre of the inquiry. The specific threat to liberal theory these behaviours pose concerns the extent to which citizens can effectively exercise their rights, or act on their freedoms, rather than attacking the inherent or abstract value of the rights and freedoms themselves. Moreover, the observable reality of these real-world behaviours challenges the extent to which political authority can uphold the responsibilities liberal theorists designate to it. The overarching focus of this thesis concerns the real threat these behaviours pose to the way liberal values and norms can be effectively instantiated by citizens, and implemented/safeguarded by the liberal state.

Therefore, when confronting the threat to liberal theoretical values and norms that these behaviours pose, it is the effective implementation and instantiation of these values and norms which is at issue. Thus, concerns about the relative theoretical weighting and prioritisation of these values by liberal theorists are redundant. In other words, justifying that a given liberal value, such as freedom of expression, bears greater importance and justifies greater protection than other liberal values is not of interest in relation to responding to questions concerning regulation. All that matters to precipitate a liberal theoretical response is that the effective
instantiation and implementation of liberal values cannot be upheld, and that this is a direct or indirect result of the prevalence of regulatory capture, immoral markets proliferation, or offshoring practises. Similarly, considerations of the severity with which these liberal values and norms are differentially interfered with by practises of regulatory capture, immoral markets and offshoring practises can be dispelled. Greater focus is paid to the precise nature in which instances of the behaviours act to violate the instantiation of these values. Demonstrating the primacy of one value over another is not a requirement of the perspective.

In addition to this, where questions concerning regulation take a central focus for liberal theorists, just one liberal value or norm needs to be violated by any given instance of the behaviours to be of concern. Observations about whether any given practise violates multiple liberal values or norms, or whether the instantiation/implementation of these norms is affected in a more severe way in a given instance than others is not focused upon. All that matters is that the real-world practises of regulatory capture, immoral markets and offshoring practises violate liberal values and norms, in that they provide a barrier to their effective implementation. Where this is demonstrated, it is incumbent upon liberal theory to respond to these behaviours, on the basis of protecting the instantiation and implementation of these values and norms.

II. Conceptualising Regulatory Capture; Immoral Markets and Offshoring Practises

It is the instantiation and implementation of liberal theoretical values pertaining to the rights and freedoms afforded to citizens, and the responsibilities and scope of political authority that the prevalence of regulatory capture, immoral markets, and offshoring practises threaten. Outlining the precise manner in which this occurs, and demonstrating that it is incumbent upon liberal theorists to respond to these behaviours occupies the rest of the chapter.

This involves detailing what regulatory capture, immoral markets and offshoring practises are, outlining the specific forms and methods comprising their practise, and demonstrating how negative consequences associated with their practise prevents the effective instantiation and implementation of liberal values and norms. Illustrating this connection provides the grounds to dispel critics who regard responding to instances of these behaviours as outside the remit of liberal political theory, and thereby self-defeating. Since the negative effects associated with these behaviours make it incumbent upon liberal theorists to respond with regulatory solutions, questions concerning regulation are not outside the remit of liberal
theories. Secondly, the charge of liberal theory’s regulatory response being self-defeating is unintelligible. The basis for this concern lies with the fact that interfering with firms/individuals/corporations that engage in practices of regulatory capture, immoral markets, and offshoring practices is illiberal, since it restricts their liberal freedoms. The worry is that a controversial form of trumping one’s rights to liberal values and norms over another is inevitable when regulatory responses are considered, and hence is best avoided. However, there is no liberal theoretical basis for this assertion. Firstly, an aspect of defending the instantiation of liberal values and norms pertaining to the citizen and political authority involves designing against and preventing societal practices that actively harm them. Secondly, liberal theorists theorise towards practices that political authority can undergo to ensure that each basic liberty and freedom of citizens is protected. This ensures that all have a feasible scope to exercise their liberties. This entails that practices of regulatory capture, immoral markets, and offshoring practices can be interfered with when they effect the instantiation of liberties for the wider citizen body.

Multiple theorists have highlighted negative consequences associated with regulatory capture; immoral markets; and offshoring practices. Firstly, these behaviours are viewed as collectively contributing to ‘financialization’: the process through which financial institutions increase in size and influence (Mehrling, 2017, p. 1). Morgan (2014, p. 185) illustrates this, claiming that:

Financialization is primarily associated with the following phenomena: first, the rise of a more dominant and aggressive definition of the role of the firm […] the growth in scale and scope of financial markets as influences on firm strategy […] with an increased focus on how, when and where the corporation pays taxes on profits, and the use of tax havens etc. to minimize tax liabilities.

The strategies and processes through which financial institutions and corporations become more powerful are illustrated through firms increasing their sphere of influence, leading to increased financial dominance and greater influence over state policy. It also involves corporations and institutions consolidating power, by exploiting new markets and avoiding tax. This leads to an elevated status for financial institutions and corporations, and the domination of their private, vested interests over those of citizens. When the effects of financialization alter the decision-making of political authority, this results in an illiberal state preference for private ends over the public good.
Financialization is brought about partly through activities of regulatory capture, immoral markets, and offshoring practices. One clear result is that the power and influence of financial institutions in our everyday lives is greater than in recent times. This has placed a disproportionate significance on the relationships financial institutions and multi-national corporations have with political authority. Mehrling (2017, p. 1) goes as far as to regard relationships between individual financial institutions and the state as ‘constitutive relationships of the whole system’. This means that changes in this relationship effect the structure of society as a whole. This has been further emphasised by Marcuse (2002, p. xlii). He claims that ‘society’s domination over the individual is immeasurably greater than ever before’. As a result of increasing financial and corporate influence, citizens must compete for the furthering of their ends against the wishes of international, powerful multi-national corporations.

The character of the relationships between political authority and powerful firms, institutions and corporations are defined by Mehrling as ‘hierarchical and inherently unstable’. The financial institution or multi-national corporation tries to widen their scope of power and escape state laws; and the state, in turn, tries to wrestle back some form of order and control. This process never ceases. However, the increase in financialization means that at present, the interests of powerful firms and multi-national corporations are winning. Regulatory capture, establishing market dominance, or engaging in offshoring practises are all methods and behaviours which contribute to this. This adds greater stakes to the debate of what existing liberal theoretical approaches may do to mitigate these activities. When these are left unchallenged by political authority, financial institutions and corporations in modern society enjoy a wider sphere of influence. Resultantly, the main targets for liberal theory when it comes to regulation represent minimising the baleful influence of ‘two overlapping groups, variously organised […] the business community (or maybe just the big business community) and the relatively advantaged, or as they are commonly called, “the Rich”’ (Arnold, 2009, p. 366). Scholarly attention has been dedicated to understanding what regulatory capture, immoral markets and offshoring practises are, and the precise nature of their impact in society. Far less

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3 A “financial institution” refers to any specific company involved in the business of financial/monetary transactions. The financial services offered include managing investments, providing loans, and other banking services. Their influence can operate at a local level, all the way through to managing international investments. The increase in power has come through the dependable demand for financial services within more economically developed countries. Companies such as Allianz, JP Morgan or Goldman Sachs have therefore increased their sphere of influence, and their growing financial thrust has enabled them to become valuable assets to the countries in which they are based. A multi-national corporation refers to an organisation that owns or controls production of goods and services in a multitude of countries. Where a company/group derives 25% of its revenue from a non-home country, it is considered a multi-national corporation. For example, Google, Apple and Amazon are prominent examples of multi-national corporations.
attention is paid to how existing political theoretical approaches may understand and accommodate these realities, and diagnose regulatory responses. Liberal theory’s entrance into the debate begins by clarifying how the proliferation of these behaviours violates liberal values and norms, by threatening their effective instantiation. This provides the basis for a regulatory response.

II.I. Regulatory Capture

The focus upon regulatory capture primarily interrogates strategies of political lobbying, and the negative consequences associated with it. It is incumbent upon liberal theorists to respond and counteract the negative consequences associated with regulatory capture. Its unregulated practise violates liberal values and norms pertaining to a citizen’s instantiation of their “Political Autonomy”. It also prevents the extent to which liberal political authority can implement “Public Good Prioritisation”. Finally, it threatens the implementation of a seminal value pertaining to the responsibilities of liberal political authority: “Society as a Scheme of Social Cooperation”. Highlighting the cumulative violations against liberal values and norms brought about through instances of regulatory capture offers grounds to denounce arguments that claim there is nothing wrong with regulatory capture; on the basis of it being a freedom afforded to those in society that have earned the right to occupy such influence.

Regulatory capture is defined as: ‘the process by which regulation, in law or application, is consistently or repeatedly directed away from the public interest and toward the interests of the regulated industry, by the intent and action of the industry itself’ (Carpenter and Moss, 2013, p. 13). Where successful, it represents a distortion of the original aims and intentions of regulatory agencies, or political authorities. In effect, as Baker (2010, p. 648) claims, when capture has occurred, regulatory bodies tasked with regulating a specific industry, or political authority and governments themselves that have fallen victim to methods of capture ‘cease to serve some notion of a wider collective public interest and begin to systematically favour specific vested interests’. The aims of regulatory bodies and agencies run contrary to the private interests of powerful firms, individuals or corporations. These interests comprise a corporations’ desire to evade certain taxes, or to not pay as much tax as other, smaller firms. Alternatively, they refer to the wishes of financial institutions to have less limitations or checks and balances surrounding their investment activities. Where a regulatory agency is successful,

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4 For example, where a corporation tax is a flat rate of, for example 20%, any multi-national firm with a high turnover has a vested interest in being granted a lower percentage than smaller firms, who have a lower turnover.
it is able to align the desires and wishes of those bodies engaging in methods of capture with the aims and intentions of political authority.\footnote{For clarity, the ‘regulatory agency’ in any instance could be political authority itself}

Where regulatory agencies fail, and ‘capture’ occurs, the vested interests of financial institutions and corporations become accepted by the regulatory agency, and identified as unproblematic. This altering of the intentions of regulatory agencies represents, according to Moss and Carpenter (2013, p. 1) a systemic failure: ‘Agencies tasked with protecting the public interest come to identify with the regulated industry and protect its interests against that of the public. The result: Government fails to protect the public’. This systemic failure increased throughout the twentieth century, as large-scale business and corporate interests made strategies of capture more prominent, increasing the likelihood of regulatory agencies and liberal political authorities falling victim to them (Novak, 2013, p. 41).

Despite the realities of regulatory capture, the view that strategies of regulatory capture require active intervention and prevention from political authority is not universally held. Scholars with libertarian or neo-liberal sympathies regard it as a harmless feature of modern society. Elevating a company’s status and influence to enable it to influence policy decisions is testament to the success of that firm/individual/industry. In other words, it is responsive to demand and has earned an important place within society such that it deserves to hold that influence. For example, successful multi-national corporations are successful because they have been able to monopolise a market, and continue to hold and perform valuable functions that consumers support. As a result, efforts to curb their behaviours or limit methods of capture they engage in are impermissible. Furthermore, holders of this view may appeal to the simultaneity of the longevity of regulatory capture, and the relative stability of society, to add scepticism to the idea that these behaviours actually represent negative features of the modern world. As Novak (2013, p. 48) highlights:

\begin{quote}
If history is any guide (or contemporary politics any indicator), the problems of faction, special interest, special privilege, and private coercion are not going away anytime soon [...] And it is but a chimera to presume that a simple dismantling of an earlier era’s checks and balances and regulatory institutions will somehow automatically and spontaneously vitiate the age-old problems.
\end{quote}

For as long as there has been multi-national corporations, and big business, there has been influential private vested interests in the makings of policy, and this is unlikely to change.
Society has continued to function well, and hence, liberal theorists should focus upon more pressing concerns.

However, understanding regulatory capture from the perspective of liberal theory aids understanding of how its proliferation in modern society violates liberal values and norms. Evaluating these strategies in relation to their threat to liberal values and norms, and epitomising how they represent negative features of modern society corroborates the basis for a liberal theoretical response to these behaviours. This discredits the view that liberal theory need not or should not worry about the proliferation of these activities.

The chief strategy of regulatory capture focused on in this thesis is Political Lobbying. This can engender direct and indirect forms. Direct lobbying refers to communications between lobbyists and lawmakers. The express intention is for lobbyists to influence lawmakers, in order to take a specific position with respect to a piece of legislation. Indirect lobbying represents ‘an attempt to influence policy makers by depending on an external factor, such as the public. This occurs by influencing the public to affect their opinion with respect to specific legislation’ (Musa, 2016 p. 1). Lobbying groups and lobbyists have a cohesive and extensive knowledge of the internal workings of the political system, and understand what is required to enable certain policies to achieve appropriate backing, or rejection. Lobbyists are active in processes to persuade political authority to make certain decisions, and such persuasion is successful when the policies of political authority align with the lobbying group’s own interests. This can exempt them from certain responsibilities and duties that are expected of all other citizens and firms, or give them preferential treatment with respect to a specific policy area. Additionally, successful direct lobbying can grant additional funding and benefits (with respect to greater state subsidies to the lobbied industry, or limitations on their tax requirements). Whether arriving from direct or indirect forms, political lobbying aims to improve the circumstances for the lobbying group, even if this supersedes the intentions of public policy (i.e. that multi-national corporations should pay more tax or have their actions more strictly controlled) (Carpenter and Moss, 2013, p. 19).

A myriad of methods are associated with political lobbying, including “Revolving Doors”, and methods of “Regulatory Arbitrage”. Each of these methods and strategies pose significant challenges to the instantiation of a variety of liberal values and norms. One prominent strategy of direct political lobbying is campaign contribution, involving individuals

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6 The prominent case study for these two types of lobbying consulted in this thesis is the lobbying strategies of the National Rifle Association
and corporations making political donations, or striking financial deals that promote the campaigns of certain political parties, or individual politicians. Where the financially backed candidate/party is successfully elected, the contributor receives regulatory guidelines from political authority which are beneficial for them. Often this amounts to lessening regulatory intervention, or refraining from introducing new regulatory measures against them. It can also include protecting the specific firm that provided financial backing from the imposition of regulatory measures which other firms in the same sector may face. This occurs even if it stifles or delays the solving of specific social problems, or if it runs contrary to the wishes of citizens. Box (2011, p. 181) states that as a result of successful capture through forms of direct lobbying such as campaign contribution, corporate private interests ‘contribute to electing the legislators of their choosing and then lobby them to produce laws and programs for their benefit’. Those who regard regulatory capture as unproblematic would deem these activities as uncontroversial. In effect, it is an extension of a firm or individual’s enhanced and earned status in society that they can financially back specific candidates, or offer funding to political parties, even if the primary aim is to advance their own interests.

However, extensive campaign contribution is at odds with liberal theory, due to their inevitable interference with the democratic process. In other words, a citizen’s utilisation of their “Political Autonomy”, whereby they act on their right to politically participate, and actively elect legislators/representatives is infiltrated. The effective instantiation of these rights are undermined, since the wishes and stated aims of citizens through voting are increasingly balanced by political authority against the aims, intentions and vested interests of lobbying groups who provide financial subsidies. There is no basis within liberal theory, or among the stated liberal values and norms to allow political authority to prioritise the vested interests of a particular group over others. By contrast, a key aim of liberal political authority is to promote and safeguard the rights and freedoms of citizens, including designing against challenges to their effective instantiation. Therefore, liberal theorists should not ignore cases of direct lobbying such as campaign contribution. Because of the threat these practises pose to the effective instantiation of a citizen’s political autonomies, it is incumbent upon liberal theory to take questions concerning the regulation of these lobbying practises seriously. This further implies that neo-liberal and libertarian perspectives which argue against the intervention with strategies of regulatory capture can be dismissed. These perspectives underestimate the extent to which practises of capture undermine and problematise the effective instantiation of a citizen’s right to political participation, and their political autonomies associated with electing their rulers without external interference. Liberal theorists prioritise these values. Hence, failing
to recognise the need to regulate campaign contribution fails to apply liberal theory correctly to real world issues.

Other prominent forms of direct lobbying are “Revolving Doors”. This highlights the regularity with which public officials, i.e. civil service workers, cabinet ministers, or industry regulators, move to work in the private sector. Throughout their careers, regulatory officials, strike up relationships or correspondence with individuals associated with firms or corporations. Firms and industries attempt to entice the regulator away from their regulatory goals by promising lucrative salaries and roles in the industry they are trying to regulate. Through this, the motivation of regulatory agencies and the regulatory aims of political authority can be altered. Regulatory capture takes place because public officials ‘are encouraged to become compliant with industry wishes’ (Baker, 2010, p. 651-53). The possibility of employment opportunities and accompanying financial pay-outs de-incentivises a regulator’s intention to impose tight regulation, even if there is a demonstrable need to do so. This means that cases raised by political authority or public outcry from citizens to tightly regulate a specific firms dealings are increasingly ignored. This practise is prevalent. Kwak (2013, p. 83) states that from 2009 to mid-2010, 148 former employees of financial regulatory agencies registered as lobbyists’ […] the normalcy of moving from an administrative agency to the financial sector and the sheer number of people making the transition imply that the regulators and the representatives of financial institutions are really the same people, only at different points in their careers.

Not every instance of a regulator or public servant taking up a job in the private sector shows evidence of revolving doors. Nevertheless, there are commonalities, and it is reasonable to expect that successful forms of direct political lobbying in the form of “re�olving doors” has helped to bring these commonalities about.

The need for liberal theory to respond to these strategies of political lobbying is apparent on the basis that such practises violate liberal values and norms pertaining to “Public Good Prioritisation”. This liberal norm pertaining to the ends of liberal political authority states that enforcing policy should be done in the best interests of citizens, should be responsive to citizen’s interests (which includes safeguarding the rights and freedoms of citizens), and should aim to advance public goods. This entails that when legislating and executing policy ends, the perspective of legislators and of political authority cannot be swayed from these ends. Where capture through “re�olving doors” occurs, a legislator’s intentions to bring about these ends are
swayed by the promise of lucrative careers or financial pay-outs. Hence, the motivations for bringing about or refraining from implementing certain policies in accordance with furthering public goods have been altered. Therefore, it is inconsistent with the values and norms associated with liberal political authority to allow legislators to fall victim to “revolving doors”. Since the basis for intervention from liberal theory against these practises is clear, this further devalues those who regard regulatory capture as unproblematic. It is difficult to defend any activity that intentionally alters the ends of political authority away from the interests of public goods and advancing citizen’s interests, towards private vested and individual interests of the legislator, or a specific lobbying group. Liberal theorists have a theoretical basis to design against these activities, even if they represent a systemic feature of modern society.

Finally, some strategies of capture act to reinforce or consolidate a position of strength. Once the intentions of regulatory agencies are captured, either through direct or indirect forms of political lobbying, those firms, individuals or corporations responsible employ tactics of regulatory arbitrage. This occurs when amendments to state tax policy or attempts at greater regulatory alignment are modified or dismissed by political authority to appease the now prevailing private interests. These tactics are exercised by multi-national corporations and financial institutions primarily. They often materialise in the form of threats to exert control and influence over political authorities (May, 2012, p. 7). Regulatory arbitrage by corporations and financial institutions can involve issuing threats to re-locate if policies aren’t implemented by political authorities which suit their own ends; either through bringing about new policies which further their ends, or refraining from implementing proposed policies which damage their interests. As Shaxson (2012, p. 24) highlights, to maintain influence over politicians, and to protect against the hiking of tax rates, ‘Financiers threaten politicians […] “don’t tax or regulate us too heavily or we’ll go offshore” […] and the onshore politicians quail and relax their own laws and regulations’.

Due to regulatory arbitrage, Moss and Carpenter (2013, p. 18) argue that ‘a regulator might be inclined to pursue the public interest but is scared off from doing so by industry threats’ of political or legal retaliation. Secondly, once arbitrage occurs, the possibility of implementing future regulatory measures lessens. In effect, where arbitrage is successful, it

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7 The burdens of taxation are increasingly felt less by corporations as a result of the efforts of arbitrage, and the threats to relocate. Shaxson illustrates that in the 1950s, US corporations were responsible for paying two fifths of all incomes taxes; in the modern era, that share is now one fifth. Also, the top 0.1% of US taxpayers saw their effective tax rate fall from 60% in 1960 to 33% in 2007 as their income soared over the same period. If they paid the 1960 rate, the federal government would have received over $281 billion more in 2007. These benefits are a direct consequence of successful regulatory arbitrage (Shaxson, 2012, p. 24-26).
further cements and consolidates the interests of lobbied industries, and makes future regulatory intervention against them less likely. This can be ‘a catalyst for a harmful “race to the bottom”’ in regulations (Karolyi + Taboada, 2015, p. 2396). In response to the threats to relocate, competition ensues between different states to try and achieve the lowest tax rate, or most limited forms of regulatory alignment and supervision, as this is what will lure multi-national corporations to their jurisdiction. Conversely, political authorities where the firm is based are fearful of any flight of capital and corporate activity from their jurisdiction to another. According to Shamir (2008, p. 6), due to the accommodating actions of political authority: ‘governments relinquish some of their privileged authoritative positions and are reconfigured as one source of authority among many’. Furthermore, Shamir argues that when private interests interfere with political decisions, political authority begins to operate ‘within a market of authorities […] changing the role of governments from regulators to “facilitators”’. Specifically, a political authority that falls victim to strategies of regulatory arbitrage can be viewed as a facilitator of private interests.

As with forms of direct and indirect lobbying, consolidation of the interests of lobbyists via forms of regulatory arbitrage violate the effective instantiation of liberal values and norms. This creates a basis for imposing principles of regulation. Where arbitrage is successful, this lessens the extent to which society can be viewed as a “Scheme of Social Cooperation”. The active prioritisation from political authority of the interests of individuals/firms/corporations who engage in arbitrage holds them to a different standard than citizens. This is unjustifiable. Preferential treatment is given to some, meaning all do not mutually benefit in society. The motivation for this seminal liberal value is that in the interests of fairness, and to ensure just regimes and mechanisms within society, no body, whether that be representative of a select group of citizens, or a specific firm or institution, should enjoy greater benefits that cannot be extended to all. The idea is that everyone benefits equally from society, and that no specific facet of society or the citizen body can be exempted from contributing to society. This means that all must pay tax for example, and that all are bound equally by the same laws. It is inconsistent to say that liberal theorists uphold the value of viewing society as a scheme of social cooperation for mutual benefit, while also allowing practises of regulatory arbitrage to go unchallenged. Therefore, when questions concerning regulation take a central focus, and the threat to the instantiation of this value is made clear, it is evident that liberal theorists should act in ways which aim to regulate these practises.
In summary, strategies of regulatory capture relating to forms of political lobbying violate liberal values and norms. The unregulated activities of firms/corporations/individuals who engage in these practices mean that liberal values and norms fail to be effectively instantiated. Recognising this emphasises the importance of liberal theory providing a regulatory response to these behaviours.

II.II. Immoral Markets

Liberal thought is closely affiliated with the idea that market freedom is a positive, progressive feature of society, benefitting both individuals and the state.\(^8\)

However, in the modern world, markets have increased and expanded. Some markets are associated with controversy, specifically regarding the commodification of illicit goods and services. Aggressive advertising strategies employed by firms and corporations to alter the decision-making processes of consumers are also evermore under the spotlight. This has led to fresh questions surrounding the role of the liberal state in regulating market activity. The view that markets are unproblematic, and the defence of the principle of non-interference in the activities of the market remains a strongly held view among liberals. Nevertheless, upholding it involves controversially ignoring or denying any role for liberal theory in mitigating and preventing harmful effects associated with unregulated markets.

When questions concerning regulation occupy a central focus, liberal theorists can advise on the regulation of these controversial features of markets. The controversial commodification of goods, the untamed spread of market reasoning, and aggressive advertising strategies violate the effective instantiation of liberal values and norms relating to the “Extensive Basic Liberties” citizens enjoy, and the “Norm of non-Manipulation” which safeguards their exercise. Controversial features of markets which attempt to shift consumers towards certain ends, or which interfere with their ability to make autonomous decisions problematise the effective instantiation of these liberal values and norms. In relation to political authority, the liberal theoretical basis for taking questions concerning the regulation of markets seriously stems from the violation of “No Harm Principle”. While liberal theorists try to allow

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\(^8\) This found initial traction in the work of Adam Smith (1999), who argued for complete market freedom as the basis for social development. Markets were viewed as self-regulating and able to benefit both the producer and consumer. This has been further developed in the libertarian tradition by Robert Nozick (1977), who regards any intervention in markets to maintain a pattern of distribution as inevitably interfering with freedom. Also, Hayek (2001) regards intervention in these affairs as akin to a tyrannical state, which if left unchecked, will make all state subjects and citizens slaves to political authority. Non-libertarian liberals (Rawls, 1999; Mill, 2008) also rarely condemn market freedom, or design against the development of new markets. Therefore, across the whole liberal tradition, markets have generally been viewed as essential and unproblematic.
market freedom as extensively as possible, in situations whereby the scope of markets and market transactions cause harm to individuals, stricter regulation, or checks and balances against the proliferation of certain markets is required. The justification for this is that the collective harm caused to citizens trumps and outweighs the freedom of corporations, firms, or individuals in engaging in controversial market transactions, or utilising aggressive marketing strategies. This entails that rival liberal theoretical perspectives which champion the benefits of market freedom can be dismissed, as their arguments against any form of regulatory intervention are uncredible.

Those that reject that the role and scope of markets requires close scrutiny are committed to one or more of the following set of claims:

1. One can distinguish between our aims as market actors, which may include the maximization of profits, and decisions about what we believe to be morally right and wrong (Bhagwati, 2011, p. 63).
2. There is no essential, underlying meaning to markets. The way we interpret markets depends on whether we gain or lose from market transactions (Brennan, Jarwoski, 2015, p. 1055-58).
3. ‘Markets are inert’ and ‘they do not affect the goods they exchange’. Furthermore, ‘our economic system is one vast network of reciprocal relations’ (Graeber, 2012, p. 114-15), in which all benefit. This means that market transactions are self-regulating, and balance is restored without any intervening forces.
5. A fair market transaction does not force consumers to buy or sell a good they did not wish to; and the rules of transaction must be followed through, i.e. the good purchased must be provided (Sandel, 2013, p. 27).

Theorists faithful to these claims denounce the idea that there are any negative consequences to furthering market freedoms. On the contrary, engaging in market transactions free from interference is a means of enhancing the instantiation of liberal values. In effect, citizens can freely exchange goods, and engage in market transactions in consistency with their wishes. Imposing limits on the ways in which citizens can engage in market transactions therefore imposes a limitation on their exercise of free thought and free association. Consequently, intervening against the free activities of markets on the basis of safeguarding liberal values and norms is counterproductive. However, this ignores clear negative
consequences associated with unregulated markets, in particular with regards to the way they violate the effective instantiation of liberal values and norms. As Sandel (2012, p. 7) argues, ‘the reach of markets, and market-oriented thinking, into aspects of life traditionally governed by nonmarket norms is one of the most significant developments of our time’. Liberal theorists should recognise that markets are playing ‘a greater and greater role in social life’, and that there are controversial elements to this. On this basis, the harm caused to citizens by specific market transactions, and the threats to the effective instantiation of a citizen’s basic liberties are clear.

Turning first to claim (3), the idea that market transactions will always restore balance is incorrect. Individual market actors can dominate the market if they possess greater purchasing power. Dominant market players subsequently exercise increased influence, providing them with an advantage when negotiating transactions. A multi-national corporation has more of a chance of succeeding in market transactions than smaller, less well-resourced market players. Due to their vast financial resources, multi-national corporations can crowd out or buy out smaller market players. This challenges the image of markets as level playing fields, and as self-regulating and reciprocal. Structurally, they are hierarchical, and encompassed by relations of domination.9

Liberal values pertaining to the “Norm of non-Manipulation” are stifled under these circumstances. Inevitably, the dominance of a select few multi-national corporations entails that these firms can occupy a disproportionate influence upon the decision-making processes of individuals. Far from engaging in a free and open marketplace, several multi-national corporations hold a disproportionate influence over the consumer. This leaves individuals more vulnerable to manipulation by these corporations. In effect, by dominating markets and limiting choices available to consumers, a multi-national corporation is better able to engage in aggressive advertising practices to try and cement their influence on consumer decisions within markets.

9 Research from the World Economic Forum has determined that ‘fewer than 10% of the world’s public companies account for more than 80% of all profits’ (Gray, 2017, no pagination). Hence, far from an even playing field, markets and market transactions are dominated by a select few companies. The structural features of this system of dominance is furthered by the prominence of ‘mega-corporations’, referred to as ‘owning the world, given their wide reach’ (Pyluczak-Wasylyszyn, 2012, no pagination). These companies, including Unilever, PepsiCo and Craft (see full list at URL: https://www.dividend.com/how-to-invest/9-companies-that-own-the-worlds-most-popular-brands/) maintain dominance by monopolising and buying out all the dominant brands within their specific industry. Therefore, despite a range of choices of products of, for example, fizzy drinks, all brands are owned by the same parent corporation. The appearance of choice is therefore manufactured, as all profits from all products go to the same company. This falls foul of the image of a fair and level playing field of market competition.
Those that argue against more stringent regulation of markets also overlook the threats that controversial markets pose to the effective instantiation of liberal values and norms. Sandel highlights that in the modern world, there are several examples of existing and emerging markets which have raised questions of legitimacy. Long-standing controversial markets include the trade in human organs or in sex. However, emerging markets and the infiltration of market reasoning has also spread to domains of life which were previously market-free. Controversial emerging markets include those in tradeable pollution permits. These trialled markets allow countries to buy and sell their rights to pollute. Countries that wish to pollute more can buy the pollution rights off of other countries who are willing to sell them (Sandel, 2012, p. 75-76), or earn the rights to pollute more by simultaneously increasing investment in renewable, greener energy projects. Also, markets in life and death have mutated. These markets have been the backbone of the purchasing of insurance to mitigate potential risk, or investing in pensions to leave behind money after death. Sandel (2012, p. 145-50) claims that in the present era, they are overrunning this social purpose. This is evidenced in niche markets allowing individuals to invest or gamble on the location of future terrorist attacks, referred to as the “terrorism futures market”. The rationale is that since some areas have a higher concentration of bets, this will help predict where terrorist attacks may be more likely. Those bidding are gambling through educated guesses. The market actors may be correct and enjoy return on their investment and theoretically, greater defence can be provided to perceived vulnerable areas to mitigate potential terror threats.

These markets illustrate that the economic view cannot recognise the importance of limiting the spread of market reasoning in some domains. This posits the idea that the emergence and penetration of market reasoning can act to corrupt or spoil some goods. This is referred to as the controversial commodification of goods, which can cause harm. Booth (2018, p. 198) cautions this, stating that commodifying ‘a certain good (or set of goods)’ could ‘lead to our developing defective preferences […] lead to greater overall violence, […] or might encourage the exploitation of the vulnerable’. Understanding how markets lead to these ends is key to understanding their corruptive qualities. The idea is that ‘to corrupt a good or a social practise is to degrade it, to treat it according to a lower mode of valuation than is appropriate to it’ (Sandel, 2012, p. 34). Hence, if one perceives a market as controversial, one does not have to object to the process through which that good is bought and sold. Instead, they object to the fact that ‘introducing a market mechanism may change the character and meaning of a social practise’ or good itself (Sandel, 2013, p. 132-33). For the examples provided, there is a case to be made that the market mechanism does alter the character of the good or social practise. While
market reasoning may wish to be non-judgemental with regards to trade in sex and human organs, this should not overlook the controversies surrounding markets in these goods in the first place. Even if uncontroversial from a market point of view, selling human organs or sexual services involves the exploitation of individuals. Such exploitation could be deemed to have a corrupting quality. One can also claim that a market in the buying and selling of pollution permits makes it easier to view the natural world instrumentally, as a means to be bought and sold, rather than caring for the environment by cultivating habits of restraint and shared sacrifice. Engaging in market transactions cannot replicate or replace the need to develop these skills (Sandel, 2012, p. 75-76). Lastly, successfully investing and increasing capital through correctly gambling where mass loss of life and terror attacks will take place is deemed controversial. Preventing terrorist attacks and mitigating threats is an important social goal, but the prospects of acquiring money by correctly locating their abundance appears controversial and self-interested.

With respect to the instantiation of liberal values and norms, the “No Harm Principle” regulating the activities and circumstances for liberal state intervention is violated. According to this liberal value, intervention with the free actions and engagements of individuals is justified on the basis of preventing harm to individuals. It is evident that some markets have a high propensity of causing harm to individuals. Firstly, controversial markets in organs or the sex trade carry an exploitative element. The decision to sell organs or sexual services has a high propensity to cause harm to those engaging in these transactions. In these cases, the harm caused to participants engaging in these market transactions cause direct harm, in the sense that fulfilling these acts are actively harmful to citizens who engage in them, for example, by losing organs. Therefore, reducing the harm caused to market actors by strictly regulating these markets, or actively ensuring that all citizens possess the means to survive without the need to participate in these market transactions is implied in implementing the “No Harm Principle”.

With respect to other markets in pollution permits, or predicting terrorist attacks, the harm caused is indirect. If sufficient action is not taken to limit pollution, or to actively prevent terrorist attacks, this heightens the possibility of irreversible damage being done to the environment, and fails to sufficiently protect the public from external threats. Therefore, allowing these markets instead of actively solving the problems associated with them (e.g., limiting pollution or ending terrorist attacks) risk catastrophic consequences. Implementing the “No Harm Principle” involves mitigating against cases of both direct and indirect harm. This
involves taking a stricter regulatory approach to these markets, and acting in an interventionist way to limit the harm they cause to citizens.

Some may respond that the potential corrupting forces of specific markets, and controversial goods commodification associated with this is mitigated by the conditions of a legitimate market transaction. This states that for a market transaction to be fair, no market actor is to be coerced into making a decision, e.g. no one is forced to buy or sell a good they did not wish to; and the rules of transaction must be followed through, i.e. the good purchased must be provided. However, these standards and conditions of a legitimate market transaction are violated by controversial strategies engaged in by firms to advertise the availability of these goods, and shape the ends of consumers disproportionately towards their own goods and services. Dominant market players such as multi-national corporations routinely engage in aggressive advertising strategies. These represent marketing communications that are likely to significantly impair the average consumer’s freedom of choice through harassment, coercion, or undue influence, and are therefore likely to cause consumers to take transactional decisions they would not have taken (Advertising Standards Authority, 2020, ASA + CAP).

The point is that where aggressive advertising and marketing strategies are in effect, this can actively coerce citizens into making decisions that are not in their interests. This violates the conditions for a legitimate market transaction.

When effected by the influence of aggressive marketing strategies, the central liberal values of freedom of thought and liberty of conscience embodied in the “Extensive Basic Liberties” norm are violated. The ability of citizens to weigh up certain options and make reasoned decisions, free from external constraint is difficult to instantiate when one’s decision is impaired by the influence of aggressive marketing strategies. Furthermore, the intrusion of market reasoning and the involuntary exposure citizens have to the availability of certain goods and services has the potential to impair their liberty of conscience. This makes it more complicated for citizens to make decisions free from external influence. Moreover, the undue influence epitomised by aggressive advertising strategies can act to manipulate citizens towards the selecting of some choices over others, and such interference can act to move citizens towards ends and market decisions they would not have supported prior to the influence of the aggressive marketing strategies. Therefore, as well as harming the instantiation of “Extensive Basic Liberties”, the “Norm of Non-Manipulation” is also violated by aggressive marketing and advertising strategies. This highlights the importance of establishing a liberal theoretical
response to these real-world realities, which takes the regulation of aggressive advertising strategies and controversial goods commodification more seriously. This can be justified on the basis of limiting the harm these practises cause to citizens, safeguarding their basic liberties, and ensuring that these can be exercised without manipulative interference.

II.III. Offshoring Practises

The cumulative effect of offshoring practises are endemic of a political order which fails to successfully implement liberal values and norms. Values such as the “Free and Equal Standard”, “Public Good Prioritisation”, “The No Harm Principle”, and “Society as a Scheme of Social Cooperation” fail to be successfully applied in tandem with wide-ranging, harmful tax avoidance and other offshoring methods. They collectively point to real world political authorities prioritising the private vested interests of a select few individuals, corporations and firms over the public good, which is inconsistent with liberal theory. Therefore, focusing upon the successful implementation and instantiation of these seminal liberal values and norms helps to facilitate a liberal theoretical basis for effective regulatory proposals.

In onshore jurisdictions, sovereign governments can formulate and enforce laws relating to the regulation of corporate and institutional activities and tax policies. This is justified where the state has legitimate control over a populace and geographical territory. Offshore jurisdictions symbolise places where these tax and financial regulations are relaxed or abolished (Palan, 2003, p. 2). Therefore, an offshore jurisdictions attraction resides in their relaxed financial and tax laws. These act to liberate ‘capital from social responsibility’ (Palan 2003, p. 2-3). The “practise” of offshoring thereby relates to the deliberate attempts by individuals, firms and multi-national corporations to move money from an onshore, to an offshore jurisdiction. It is now well documented ‘that the offshore system is not just a colourful outgrowth of the global economy, but instead lies right at its centre’ (Shaxson, 2012, p. 9). Offshoring is not practised by one or two multi-national companies. Rather, it is an integrated system, practised by a multitude of powerful companies and individuals for private benefit. However, tracking offshore finances is a complex process. Those who practise offshoring tend to maintain anonymity, or at the least, are experienced in hiding this information from law-making authorities. This makes effective regulation against these activities more difficult. It is one thing to locate offshore finances, and another to prove that the suspected offenders are guilty. This means that even if the trace of illicit, unethical offshoring activities becomes visible,

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10 Specific statistical details and real-world cases of offshoring practises which outline these methods will be referred to throughout the thesis (Obermayer, Obermaier; 2016).
accountability remains difficult to pinpoint. These challenges that face the regulator play further into the hands of the actors responsible for offshoring.

Examples of offshoring practises are numerous. This thesis focuses only upon deferred tax, and tax avoidance practises and the use of tax havens. Integrated strategies within this, such as laddering, and double non-taxation are also consulted. The effects of these offshoring practises are known by analysing data which measures the Tax Gap, and through consulting the Pandora Papers, which highlights those responsible for these schemes. Deferring tax occurs once profits are moved offshore. By imposing tax deferring measures, these can remain there indefinitely, as tax can only be levied on these assets by an onshore jurisdiction once it is repatriated. Even then, the deferred tax money may find its way back onshore through a series of loopholes, thus remaining invisible to the regulator. Understandably, regulators seek to identify and repatriate tax revenue that is being deferred. However, other offshoring methods intervene to stall and in some cases prevent this process entirely. One of these is referred to as “laddering”. This is often employed by multi-national corporations with the express intention of hiding their assets from regulators to avoid tax. A multi-national corporation may divide their assets, and distribute them across several different jurisdictions. Each jurisdiction is often a tax haven with a separate set of financial laws. These add further layers of secrecy over the assets. This makes the movement of the asset difficult to detect. The effect of this, as Shaxson (2012, p. 26) clarifies, is that even if the regulator can identify parts of the structure, ‘the laddering stops you seeing it all – and if you can’t see the whole, you cannot understand it’. As a result, only snippets of the whole offshore scheme can be located, and this makes systematic, wide-ranging regulation difficult. Offshoring practises which protect deferred tax revenues also include double non-taxation. This involves companies moving their headquarters offshore to avoid being taxed on their income at their home state’s rate – however, since they often intentionally move to a tax haven, with ultra-low rates, they can avoid paying any tax on any income (Shaxson, 2012, p. 23).

One cumulative goal of all these offshoring strategies involves avoiding or limiting the amount of tax paid to national jurisdictions. Strategies to limit one’s tax burdens are categorised through forms of tax evasion, and tax avoidance. Tax evasion represents ‘a nonpayment or underpayment of taxes actually owed, whether by understating income, overstating deductions or exemptions, or simply failing to pay’ (Green, 2017, p. 63). Tax evasion normally involves deceptive practises, e.g. hiding money, or lying to authorities regarding the amount of tax paid. If detected, measures can be taken to punish offenders and reclaim tax revenues. Tax avoidance
is therefore the preferred strategy of corporations and institutions which engage in offshoring. It represents the attempt to lessen the obligation of tax owed ‘through legal means’ (Green, 2017, p. 74). The mentioned strategies of offshoring earlier referred to represent tax avoidance strategies. All represent processes and means of reducing one’s taxes through manipulations, rather than clear violations of the law.

Effective regulatory measures against offshoring must challenge the idea that tax avoidance measures are outside the scope of regulation because they are not illegal. The urgency for such measures is further illustrated by the extensive and prevalent use of tax havens. These provide a safe space for vast flows of illicit money and offshore wealth. Shaxson (2012, p. 8-9) defines them as places that seek

to attract business by offering politically stable facilities to help people or entities get around the rules, laws and jurisdictions elsewhere. The whole point is to offer escape routes from the duties that come with living in and obtaining benefits from society – tax, responsible financial regulation

A tax haven’s primary focus is furthering the interests of the individuals and corporations who use it to hide their money, meaning that a primary component of a tax haven is an ultra-low tax rate. There is often elevated levels of secrecy surrounding its financial dealings; and a refusal to exchange financial information with other jurisdictions or regulators, (this can be forbidden in their national law). Additionally, a tax haven’s financial services sector is often disproportionately large compared with the size of their local economy, and to their population. Also, alongside this secrecy, tax havens are welcoming of foreign investment and play host to a considerable number of corporate headquarters. Lastly, they are stable in the sense that there is little to no risk that their system of governance could be altered through a revolution or an unexpected election result. This means that the prevailing financial interests within the tax haven remain stable and secure (Shaxson, 2012, p. 9-10).11

The Tax Justice Network (2017, no pagination) has recently claimed that ‘while there are significant uncertainties over the scale of undeclared offshore wealth, there is no longer any doubt that the magnitudes (of tax revenues lost) are substantial’. They comment that the highest

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11 Shaxson (2012, p. 103-47) highlights that Jersey, Guernsey and the Cayman Islands satisfy these criteria. Statistics from the Cayman Islands general registry, a prominent tax haven, claims that as of March 2020, 109,986 companies were registered to the island: https://www.ciregistry.ky/companies-register/company-statistics/ with a population between 67-68000 at the time of submission: https://www.worldometers.info/world-population/cayman-islands-population/. This satisfies the criteria of having a large financial sector comparative to a small population; and an ultra-low tax rate, which has consistently been 0%: https://tradingeconomics.com/cayman-islands/corporate-tax-rate.
estimate of private offshore wealth ‘suggests a range of $21-$32 trillion […] the likely value of assets undeclared for tax purposes lies in between’ (Tax Justice Network, 2017). This highlights a ‘pervasive instability in the underlying norms’ of existing taxation laws; making the modification of laws, a new approach to regulation, or an overhaul replacement of existing measures all possible avenues to effectively regulate offshoring practises (Green, 2009, p. 230).

The need to protect tax revenues and for political authorities to rein in the influence and power of corporations, firms and individuals that engage in offshoring represents the basis upon which a liberal response to the regulation can commence. Acknowledging the threat posed to the instantiation of liberal values and norms from offshoring practises provides a means to dispel those who deem nothing wrong with these practises. This view, epitomised by neo-liberal and libertarian political theorists centres around the idea that avoiding or evading tax is not wrong, as taxation itself is unjustifiable. Prominent libertarians such as Nozick (1977, p. 169) state that ‘taxation of earnings is on a par with forced labor’. Modern neo-liberal scholars such as Adam Moore (2021, p. 363) argue against the accepted bases and purpose of taxation, concluding that ‘many, perhaps most, forms of taxation utilized by modern redistributive democracies are immoral’, involving ‘unjustified forcings and the seizure of value’ (Moore, 2021, p. 362). Accepting these perspectives implies that firms that can avoid paying tax should be lauded, rather than penalised. Green (2009, p. 229) provides the basis for this view. Namely, ‘taxes have been demonized in our political culture’, such that ‘many citizens seem to regard taxation itself as wrongful’. Indeed, some label taxation ‘as “theft” (as opposed to the evasion of taxes)’. If taxation is perceived as wrong, this implies that ‘failure to pay taxes is not wrongful’.

The problem with this view which liberal theorists can appeal to is that it fails to appreciate the important social function which tax plays, and the fact that taxes and tax revenue represent an essential commodity for liberal states. Taxation can be regarded as positive when it meets the following criteria:

(1) an exaction of money; (2) imposed and collected by a government authority; (3) on or from a private person or entity; where (4) such payment is compulsory; (5) imposed for non-punitive purposes; and (6) paid not in return for a specific service or privilege received from the government, but rather as a means to fund government operations more generally’ (Green, 2017, p. 60).

The importance of tax extends even these criteria. Picketty (2014, p. 363) claims that the process of collecting tax represents ‘a way of defining norms and categories and imposing a legal
framework on economic activity’. Stability is created by outlining responsibilities all have towards the state with regards to what portions of their economic intake will be taxed.

Given these positive features of tax, the libertarian charge of taxation representing theft, and an illegitimate burden can be dismissed. By contrast, tax is a means through which the liberal values of maintaining a “Free and Equal Standard” and “Society as a Scheme of Social Cooperation” can be upheld. Society is not a system of social cooperation for mutual benefit if powerful, multi-national corporations are exempted from the responsibility of contributing tax. Part of ensuring that society remains a scheme of social cooperation, is that all should mutually benefit from societal arrangements. However, offshoring practises prevent the possibility of tax revenues being collected, and used to further public ends. As well as this, the differential exemptions in tax responsibilities mean that some within society, namely those engaging in offshoring practises disproportionately benefit at the expense of citizens and other firms who do not engage in such arrangements. Thus, far from mutual benefit, advantage is engineered for some at the expense of others. Similarly, all are not treated freely and equally by political authority if actors conducting offshoring practises can bypass laws and jurisdictions. Rather, this entails that state laws are not bore by all. Where every individual, corporation and institution is taxed fairly, each embody an aggregated responsibility that individuals and corporations undertake and contribute for a collective societal benefit. Allowing offshoring practises without intervention implies that far from being treated as free and equal, the activities of powerful firms and individuals that avoid tax are granted preferential treatment. At the least, they are held to a different standard than other citizens, who would be penalised and legally sanctioned for purposefully avoiding tax.

Understanding the social benefits of tax, and recognising the threat to the instantiation of liberal values associated with the evasion and avoidance of tax aids the liberal theoretical perspective towards regulation. This better equates offshoring practises with illegitimately avoiding tax, and spoiling its social function. Due to the violation of central liberal values and norms, it is clear that offshoring practises should be more strictly regulated by liberal theorists.

Additional negative consequences associated with offshoring practises include the rise in power of financial institutions and corporations. Their ability to avoid or be granted exemptions from their tax responsibilities manifests through preferential treatment they receive from political authority (Graeber 2015, p. 17). Graeber (2015, p. 14-15) further claims that

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12 See Stadola (2011), who highlights the disparity in between the US having one of the highest corporate tax rates in the world, but collecting less corporate tax than Europe or China. This is due to preferential treatment and
‘with the rise of the financial sector, things have reached a qualitatively different level – one where it is becoming almost impossible to say what is public and what is private’. This is echoed by Palan. He (2003, p. 15) claims that the increased dominance of financial institutions and their relationship with political authority has altered ‘the relationship between power, space, and territory’. In other words, the subsidies and preferential treatments that some financial institutions and corporations enjoy challenges the authority of the state. This means that the influence of actors engaging in offshoring practises is vast. This qualifies the need to forward a liberal theoretical response to these behaviours.

The increase in status and influence of those engaging in offshoring practises can also be rejected by liberal theorists, on the basis of violating liberal values and norms relating to “Public Good Prioritisation”. The influence and increased status and power of actors engaging in offshoring practises is twofold. On the one hand, their ability to avoid tax makes them financially better off. More significantly, their ability to escape and be granted exemptions from laws which bind others gives them an enhanced status. They are bound less by authoritative intervention, and have the grounds through which to further their own interests and ends. This strengthens their own private, vested interests. Where tax is avoided, this comes at the expense of the public good, as tax revenues that are collected can be utilised to forward these sorts of ends. Part of effectively instantiating the value of “Public Good Prioritisation” therefore relates to designing against features of modern society which problematise it. This means that a liberal theoretical stance against offshoring practises which promote private vested interests is a natural extension to safeguarding the instantiation and implementation of “Public Good Prioritisation”.

In summary, due to their violation of central liberal values and norms, it is reasonable to expect liberal theory to take questions concerning the regulation of offshoring practises more seriously. The remainder of the thesis sketches out the liberal theoretical perspective towards regulation, and demonstrates how the negative effects associated with offshoring practises can be curtailed.

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III. Conclusion

subsidies by political authority, and the power and influence of these institutions/corporations. These manifest through lower tax rates for the first $50,000 dollars of a corporation’s profits; tax credits of up to 20% for qualified research expenses, where corporations may have conducted this research anyway; or state provisions for deferring tax on profits held by corporations overseas, until it is repatriated. Additionally, Picciotto and Bertossa’s paper (2019) highlights how multi-national corporations take advantage of a lack of interrogation into their inner financial workings, providing an incentive to create tax avoidance schemes
Regulatory capture; immoral markets; and offshoring practises represent pervasive, permanent features of modern liberal democratic societies. The threat to the effective instantiation and implementation of liberal values and norms pertaining to the citizen and to political authority provides the basis for a liberal theoretical perspective on regulation.

Although much attention among liberal theorists has been dedicated to providing theoretical justifications for liberal values and norms, questions relating to the instantiation and implementation of these values can take a central focus. When they do, part of the justifications given for these seminal values entail that real world practises that violate their effective implementation can be combated. This means that harmful consequences associated with practises of regulatory capture, immoral markets, and offshoring practises can be responded to by liberal theorists.

Establishing that questions concerning regulation are a legitimate focus for liberal theorists has been the main aim of the chapter. Demonstrating how Perfectionist and anti-Perfectionist liberal theory can act against specific instances of these behaviours to safeguard the effective instantiation and implementation of liberal values and norms occupies the rest of the thesis.
Chapter II

Perfectionist and Anti-Perfectionist Liberalism: The Key Disputes

Abstract: Three disputes characterise perfectionist and anti-perfectionist liberal theory: (1) The viability of state neutrality; (2) The prioritisation of public reason; and (3) The permissibility of paternalistic interference. The combative nature of these disputes is grasped by understanding each perspectives deviation from the Rawlsian theoretical basis outlined in “Political Liberalism”. It also manifests through the justifications offered by perfectionist and anti-perfectionist liberals regarding the rights and freedoms of citizens, and the roles, responsibilities and scope of power afforded to the liberal state. The use and extension of “political justifications” by both theoretical perspectives facilitates the resolution of these disputes. This ensures that questions relating to the instantiation and implementation of liberal values and norms occupy a central focus for liberal theorists.

This chapter justifies perfectionist and anti-perfectionist Liberalism as the appropriate liberal theoretical perspectives to respond to questions concerning regulation. These neo-Rawlsian liberal theorists affirm the correctness of liberal values in general. Secondly, both perspectives aim towards ‘liberal political justification’ (Quong, 2011, p. 143). This amounts to demonstrating how liberal values can be reflected and effectively implemented in the relationship between the individual and the liberal state. This encompasses discussion surrounding how much the state ought to respect the reasoning processes of citizens; on what ground intervention with the actions of citizens is permissible, and whether and through what means liberal political authority can deal with illiberal/unreasonable features of society. To this end, perfectionist and anti-perfectionist liberal theorists develop and clarify the liberal values and norms as political values. Among their chief concerns are the ways in which liberal values and norms are effectively implemented and safeguarded by the liberal state. This can straightforwardly be applied to consider the ways the liberal state might act against prevalent real-world practises of regulatory capture, immoral markets, and offshoring practises that actively harm the instantiation of these values.
Three key areas of dispute characterise the perfectionist and anti-perfectionist liberal debate. These relate to the viability of upholding state neutrality, the relative prioritisation political authority should give to the proceeds of public reason, and the permissibility and extent of paternalistic interference, including whether imposing paternalistic directives represents permissible authoritative intervention. Understanding the content and the extent of these disputes can be achieved by fully explicating the arguments and justifications given for anti-perfectionist and perfectionist liberalism. This lays the groundwork for the resolution of these disputes, and occupies the chief focus of the chapter.

Section I describes the Rawlsian basis of the perfectionist and anti-perfectionist debate. This articulates the aspects of Rawls’s (2005) theory of Political Liberalism that are developed by perfectionist and anti-perfectionist liberal theorists. Section II illustrates the three key disputes between perfectionist and anti-perfectionist liberal theorists. Understanding the content of these disputes sheds light upon the theoretical commitments of each stance, and the content of each theoretical perspective. Outlining the parameters of the dispute also highlight the significance of the political justifications forwarded by perfectionist and anti-perfectionist liberals in defence of their arguments. This illuminates the points of similarity and difference between the liberal theoretical perspectives, and further qualifies the appropriateness of utilising these theoretical perspectives when answering questions which bear upon the instantiation and implementation of liberal values and norms. The last section foreshadows how the key points of dispute can be adjudicated once questions concerning regulation, and the effective instantiation and implementation of liberal values and norms occupy a central focus for liberal theorists.

I. The Rawlsian Basis

Perfectionists and anti-perfectionist liberals focus on select passages of the corpus of Rawls’s work. Scarce attention is given to Rawls’s ideas as they are presented in A Theory of Justice, and comparison between these arguments and his claims in Political Liberalism are also bypassed. The ‘Rawlsian Basis’ in Political Liberalism is restricted to these specific features of Rawls’s theory:

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(1) What Political Liberalism aims to achieve, and how this links to the fact of reasonable pluralism.

(2) The structure of Political Liberalism: exploring the viability of the overlapping consensus, and the role and function of public reason.

(3) The role of “reasonability” within the justificatory structure of Political Liberalism.

Rawls (2005, p. xviii) begins his inquiry by recognising a material condition of modern liberal democratic societies: that citizens hold a plethora of deeply opposed though uncontroversial, reasonable views about the good. This is acknowledged as the ‘fact of reasonable pluralism’ (Rawls, 2005, p. xxxvi).

One consequence of reasonable pluralism is illustrated through a proliferation of different comprehensive doctrines. These represent sets of ideas and values which constitute one’s conception of the good life, e.g. a utilitarian moral theory and a Christian conception of the good are general and extensive, and able to recommend courses of action regardless of what situation an individual faces in life. A doctrine is partially comprehensive if it is confronted by citizens for advice corresponding to how to model one’s character, or how to develop and maintain associational relationships with others in society who both agree and disagree with one’s conception of the good. Due to their partial commitment, individuals do not follow the doctrine in all cases. By contrast, Rawls (2005, p. 13) argues that a doctrine is fully comprehensive when one confronts their comprehensive ideas of the good and act in accordance with its recommendations in every aspect of their life.

The upshot of reasonable pluralism, according to Rawls (2005, p. xvii), is that liberal democratic societies manifest ‘a pluralism of incompatible yet reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them […] will ever be affirmed by all, or nearly all, citizens’. Rawls (2005, p. xvii) regards this outcome as reflective ‘of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime’. Thus, responding to reasonable pluralism by designing against the outcomes it brings is illiberal. This would require imposing a particular comprehensive view about the good life upon citizens.

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14 For example, a Marxist, a Catholic and an atheist will intuitively disagree on many things, due to their incompatible, comprehensive religious, political and moral views. These disagreements will persist regardless of how comprehensively or partially individual’s hold these doctrines.
Such a move could involve the state definitively claiming the truth or falsity of a particular set of ideas; and/or using coercive or manipulative strategies that force obedience among citizens to a specific comprehensive view of the good. While this response may bring about stability by responding to the existence of a plurality of conflicting views about the good, this stability would exist for the wrong reasons. Namely, it is manufactured through the use of force and coercion. This is not viable for Rawls, as these actions fail to respect the rights of citizens as free and equal to reason towards ends, free from interference.

The question therefore becomes: how is liberal theory to accommodate reasonable pluralism? Rawls’s answer outlines a theoretical procedure through which consensus can be reached on a set of values, establishing ‘a reasonable basis of social unity’ (Rawls, 2005, p. xxxvi). Rawls identifies that there is room for citizen’s to affirm and express allegiance to other ideas besides their comprehensive conceptions of the good. This is because the values providing the basis of social unity are “political”, rather than comprehensive moral, religious or philosophical ideas. As political values, they comprise constitutional essentials, and matters of basic justice. The constitutional essentials refer to fundamental principles which specify the general structure of government, and the basic structure of society. They also cover equal basic rights and liberties of citizenship that political authority must respect (Rawls, 2005, p. 228). Rawls states that values comprising the constitutional essentials include the idea that political authority should not favour any one conception of the good; and should advance the public good in a way that treats all individuals as free and equal. Similarly, political authority cannot exercise arbitrary power (through, for instance, systematically favouring individual private ends, or imposing any one particular comprehensive doctrine) (Rawls, 2005, p. 12-15).

The constitutional essentials are synonymous with several of the liberal values and norms sketched out in the last chapter. Given Rawls’s definition, maintaining and implementing values and norms such as the “Free and Equal Standard”, “Non-Manipulation”, and “Public Good Prioritisation” are all consistent with implementing the constitutional essentials of a liberal democratic regime. The matters of basic justice include ensuring equality of opportunity among citizens, and preventing the growth of unjustifiable inequalities. Furthermore, individual’s reasoning processes should be respected, and individual rights to participate politically by electing rulers, freely expressing their comprehensive views, and associating themselves with others who share their views must not be interfered with (Rawls, 2005, p. 228). These are consistent with the stated liberal values and norms pertaining to “Extensive Basic Liberties”, and “Political Autonomy”. Therefore, consensus on constitutional essentials and
matters of justice involves agreeing to the form political authority should take, the rights and
duties of citizens within the state, and the scope of state power.

Individuals can give allegiance to these political values alongside allegiance to their
comprehensive doctrines. This can occur because the political values are freestanding (Rawls,
2005, p. 11), and distinct from all comprehensive ideas about the good. This means treating that
the “Free and Equal Standard”, “Norm of non-Manipulation”, “Public Good Prioritisation”, etc.,
do not belong to any one, single comprehensive doctrine. Rather, they are a subset of
ideas/values that can be affirmed and agreed to by citizens, in spite of and alongside other non-
political matters they disagree about.

Consensus on this freestanding subset of ideas represents the content of an overlapping
consensus, referred to as such because affirmation of the political values (summarised in the list
of liberal values in norms in chapter I), overlap across different comprehensive doctrines.
(Rawls, 2005, p. 11). Rawls (2005, p. 168) does assume that ‘the comprehensive doctrines of
most people are not fully comprehensive, and this allows scope for the development of an
independent allegiance to the political conception that helps to bring about a consensus’. The
way each citizen does this will depend on the content of their own comprehensive views, and
whether they identify with these fully or partially. Although differences among citizens’ beliefs
is inevitable, for Rawls (2005, p. 156), agreement on these political values pertaining to
constitutional essentials and matters of basic justice is all that the overlapping consensus is
supposed to achieve. Obtaining this provides ‘a political conception of justice for the main
institutions of political and social life, not for the whole of life’ (Rawls, 2005, p. 175). The
overlapping consensus is therefore stable for the right reasons. This is because the values are
affirmed and accepted by each citizen as a freestanding commitment in accordance with their
own comprehensive views. They are not accepted as a result of following an authoritative
directive, or being coerced into doing so.

As more groups affirm the liberal values and norms embodied in the political values, the
initial stability strengthens, and citizens build up trust. This enables an overlapping consensus
on a subset of political ideas to respond to the fact of reasonable pluralism. Importantly, the
caveat of ‘reasonable’ pluralism differentiates this from responding to the existence of pluralism
as such. Pluralism acknowledges the scale of disagreement in the world concerning all matters,
including contributions from those within society who hold abhorrent or harmful views. Rawls

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15 Further details of the ways in which independent comprehensive doctrines could each affirm the political
conception is addressed by Rawls (2005, p. 169-72)
(2005, p. 14) states that ‘in framing a political conception of justice so it can gain an overlapping consensus, we are not bending it to existing unreason’. This means that the political values comprising the overlapping consensus need only be agreeable to those who hold reasonable views about the good. Accordingly, the overlapping consensus is not hindered because those who hold unreasonable views do not agree to it. Effective liberal political justification requires the consensus of reasonable citizens only.

This emphasis on reasonability represents a firm dividing line between the later neo-Rawlsian perfectionist and anti-perfectionist liberal perspectives. For Rawls, what classifies a reasonable doctrine is a set of beliefs, views and ideas which respects and treats people as free and equal, and views society as a system of social cooperation for mutual benefit. Unreasonable doctrines, by contrast, don’t have these features, and individuals who hold them attempt to impose and enforce their views, rather than find mutual agreement. Similarly, an unreasonable doctrine may subjugate against a particular group, or refuse to deliberate with others.

A further caveat for identifying a reasonable from an unreasonable view is whether a citizens comprehensive ideas about the good are acceptable to one’s public reason. The ideal of public reason is described by Rawls (2005, p. 214) as ‘the reason of equal citizens who, as a collective body, exercise final and coercive power over one another in enacting laws and in amending their constitution’. In essence, public reason is the means through which reasonable citizens put forward ideas and deliberate with one another about political matters. If a matter is reasonably justified, it is acceptable and agreeable to each person’s public reason.

This works as follows: when deliberation among reasonable citizens occurs, citizens must propose laws or terms of cooperation in ways that respect the rights of other citizens as free and equal. Hence, a view is not justified in terms of public reason if it is imposed upon another. Neither are citizens abiding by public reason when they draw on comprehensive, non-political conceptions of the good when debating political matters (Rawls, 2005, p. 216). One must exercise public reason when deliberating issues ‘such as who has the right to vote, or what religions are to be tolerated, or who is to be assured fair equality of opportunity. These questions represent ‘the special subject of public reason’ (Rawls, 2005, p. 215) because they relate to ‘the constitutional essentials and matters of basic justice within a liberal democratic society’. In resolving these disputes using public reason, citizens have a duty of civility to put forward arguments in an accessible, clear way, such that those who affirm these ends can understand the reasons why they affirm, since the case for their acceptance has been made clear.
Concerned with the burden public reason places upon citizens’ deliberation, Rawls forgoes its requirement with regards to non-political matters. Deliberations concerning comprehensive conceptions of the good may be solved by non-public reasons (this includes reasoning through the appeal to religious teachings, moral instruction, or associational beliefs). Deliberation through non-public reasons therefore represents the background culture of liberal democratic societies, often reflecting deliberations among citizens regarding the truth and falsity of comprehensive doctrines, and on personal reflections on what constitutes the good. The scope of public reason, and the need to abide by the duty of civility applies only to public deliberations, concerning constitutional essentials and matters of basic justice. The use of public reason is therefore inseparable from the justification of the liberal values and norms which are the subject of an overlapping consensus.

Rawls (2005, p. 137) goes as far as to state that political authority is impermissible once it justifies pursuing ends or forwarding policies on the basis of comprehensive non-political matters. These represent doctrine-specific truths which depend, for their acceptance, on an identification with the truth of the comprehensive doctrine itself. For Rawls, a feature of focusing upon the ‘political’ justifications for liberal values and norms is that debates surrounding the truth or falsity of comprehensive ideas of the good cannot feature. Rather, as mentioned, the values and norms used to form, govern and regulate society and its institutional structure should be the product of what reasonable citizens can agree on. Peter (2013, p. 602) clarifies this, stating that ‘if public justification only draws on political values, and brackets all deliberations on constitutional matters, mutual agreement between reasonable citizens will arise with regards to constitutional essentials and matters of basic justice’. Since this is all that Rawls aims to achieve, other comprehensive or doctrine-specific issues/conflicts are not the concern of Political Liberalism. This removes the burden of justification with regards to showing that these political values are true. Citizens need not identify with these values as core, true values. They need only affirm them, and recognise how they can be held in tandem with their comprehensive views about the good.

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16 In “The Idea of Public Reason Revisited” (Rawls, 1999b, p. 168-208), Rawls refines his view of public reason further. To lessen the strains of public reason, citizens may justify all matters with regard to non-public reasons, as long as in due course, suitable public reasons are found. However, this idea is not adopted by perfectionist or anti-perfectionist liberals. They either deny the role of public reason in political justification wholesale; or extend its role to parameters which extend Rawls’s initial conception. As such, I leave detailed consideration of Rawls’s revised view aside.
II. Disputes Between Perfectionist and Anti-Perfectionist Liberalism

The Rawlsian theoretical basis provides the content of both Perfectionist and anti-Perfectionist Liberalism. Both liberal theoretical perspectives stem from criticism and modification of Rawls’s position. Subsequently, the disputes between perfectionist and anti-perfectionist liberalism stem from their differential interpretations of Rawls. It is Rawls’s views regarding the level of primacy that should be afforded to public reason deliberation, the centrality of reasonable citizens in the justificatory structure of Liberalism, and the precise role that liberal political authority should occupy in safeguarding liberal values and norms, and promoting the good, that are debated. These manifest through the following disputes:

1. Disagreements surrounding the case for maintaining state neutrality versus the state prioritisation and promotion of specific comprehensive views of the good life.
2. Trusting the proceeds of public reason and relying on deliberation among reasonable citizens in mapping out the domains of political authority versus permitting the state to pre-empt citizens towards specific, desired ends.
3. The permissibility of paternalism, and the extent of paternalistic intervention which political authority can pursue.

These disputes can be resolved once questions concerning the effective instantiation and implementation of liberal ideas take a central focus. In effect, the deviations made by perfectionists and anti-perfectionists from Rawls make liberal theory applicable to questions concerning regulation. This is because these theorists prioritise questions relating to the role of the liberal state in bringing about and maintaining central liberal values and norms. Accommodating questions concerning regulation is thereby a natural extension of these theoretical perspectives. Such accommodation is accomplished by extending the political justifications for liberal values and norms put forward by perfectionist and anti-perfectionist liberal theorists.

A central feature of a political justification is that it acknowledges pluralism and other real-world feasibility constraints which challenge the obtainment of ideal principles and ends. They thereby shift the goalposts away from attempting to derive more abstract, idealised and metaphysical forms of justification (Chambers, 2010, p. 893-94), by embedding real world realities and challenges into the justification of principles. A further key feature of political justifications is the specificity of their focus. They attempt to justify matters pertaining to the roles and responsibilities of political authority. This entails protecting the rights and freedoms of citizens. Where appropriate, this can concern the evaluation of political policies, and
removing barriers to the effective implementation of a citizen’s rights and freedoms. To this end, perfectionist and anti-perfectionist liberal theorists utilise political justifications for liberal values and norms. This attempts to outline the permissible and impermissible domains of liberal political authority. Different justifications are offered by the different theoretical perspectives. However, the fact that political justifications are used entails taking questions concerning the effective instantiation of liberal values and norms more seriously. The extension of these political justifications involves evaluating real-world circumstances that challenge their instantiation. In forwarding liberal values and norms, the permissible role of political authority in removing barriers to the instantiation of a citizen’s rights and freedoms, and the scope of power and influence it should occupy to this end can be considered. This opens the door to consider significant questions relating to the implementation of liberal values and norms, such as questions concerning regulation. It is these disputes that the liberal theoretical perspective towards regulation can adjudicate. Understanding the significance of this, requires, as a first step, an acknowledgement of the combative, entrenched reality of the theoretical conflicts.

Once questions bearing on the implementation of liberal values and norms take a central focus, the neglected similarities and points of agreement between the perspectives emerge. The justifications offered for these diverging theoretical perspectives are political. They bear upon the ways in which liberal values and norms are maintained and safeguarded in the construction of political authority, the rights and liberties afforded to citizens, and the permissible and impermissible domains of state action. The arguments given by perfectionist and anti-perfectionist liberal theorists for liberal values and norms meet the conditions of a political justification. Their aim is to justify a set of political values and norms that can regulate the activities of political authority, and ensure and maintain rights and freedoms of citizens. Similarly, they acknowledge feasibility constraints and features of real-world societies. Both perfectionist and anti-perfectionist liberal theorists acknowledge that citizens hold a plethora of different conceptions of the good; that not all individuals will agree with or wish to follow the directives of political authority; and that societies are imperfect, and are comprised of unreasonable, dangerous or harmful attitudes that political authority must actively contain. This makes both perfectionist and anti-perfectionist liberal theorists attuned to questions of implementation. Both acknowledge barriers to the effective instantiation of liberal values and norms. This invites considerations and insight into the appropriate role of liberal political authority in removing these barriers, and safeguarding liberal rights and freedoms afforded to citizens. Hence, extending the political justifications for liberal values and norms involves considering situations which threaten their effective instantiation and implementation.
This thesis thereby ignites a methodological turn, involving focus upon the prospects of implementing liberal values and norms, rather than debating whether the perfectionist or anti-perfectionist theoretical method of justifying liberal values and norms is better. Rather than resolving these disputes by identifying with the abstract quality of certain philosophical principles, this thesis brings the question of regulation to the forefront of the perfectionist/anti-perfectionist debate. Arnold offers support for this approach. He (2009, p. 143) claims that ‘arguments that ascend to the level of philosophical principle are likely to be inconclusive or ascend into even more abstract realms of philosophy where the disputes are even more inconclusive’. Therefore, adjudicating these disputes involves analysing the ways in which liberal ideas can be instantiated, and the potential barriers towards this taking place. The crowded debate as to which conception of liberal theory ought to be regarded as the overarching “correct” approach, or which has the best abstract, hypothetical justification is thereby bypassed.

When turning to instantiation, the question becomes, as Arnold (2009, p. 349) states: ‘whether the imposition of someone or some group’s values, more specifically, someone or some group’s vision of the proper scope of government, is legitimate’. Arnold grappled with this question by analysing accounts of neo-Liberalism, Libertarianism, and early Rawlsian metaphysical conceptions of justice put forward in Theory. This thesis tackles the same question from the perspective of perfectionist and anti-perfectionist liberalism. This is a better approach. Post-Rawlsian accounts of perfectionist and anti-perfectionist liberal theory forward political justifications for liberal values and norms. Therefore, extending these political justifications can be achieved straightforwardly from these liberal perspectives.

II.I. The Viability of State Neutrality

Arguments for and against state neutrality are forwarded by perfectionist and anti-perfectionist liberal theorists. These arguments are political, in that they aim to justify the central roles and responsibilities of the state. This encompasses the scope of power it occupies, and how this contributes to furthering and safeguarding liberal values and norms. Moreover, both perfectionists and anti-perfectionists acknowledge real-world circumstances which threaten the viability of state neutrality. Considerations of how a neutral state can deal with unreasonable doctrines and ideas are underlined. Contrastingly, unshackled from the so-called constraints of neutrality, perfectionist liberals explain the mechanisms through which a non-neutral liberal state can further the good, and help to bring about and maintain liberal values and norms.
The justifications offered for the neutral and non-neutral state respectively accommodate real world contexts. Hence, these justifications can be extended, and applied to real-world instances of regulatory capture, immoral markets and offshoring practises. Through this application, which occupies the focus of chapter III, the overall credibility and applicability of both perspectives in recognising the need to regulate the behaviours illustrates valued commonality between the perspectives. When it comes to questions bearing on the instantiation and implementation of liberal ideas, such as questions concerning regulation, one is no worse off embracing the recommendations of a neutral, or a non-neutral liberal state. The significance of this common agreement is underlined once the combativeness between perfectionist and anti-perfectionist liberal theorists concerning state neutrality is conveyed.

The requirement of the state to remain neutral between reasonable comprehensive conceptions of the good is a central component of the Rawlsian theoretical basis. Rawls (2005, p. 196) argues ‘that the state […] is not to do anything intended to favour any particular comprehensive view’. The state imposition or advancement of specific directives, or directives which prioritise a specific view of the good violates neutrality. Thus, it is not justifiable on liberal grounds. Regardless of the arguments put forward for the imposition of perfectionist authoritative directives, these proposals cannot be as effective as the state remaining neutral, and facilitating deliberation among reasonable citizens. A chief demarcation of Perfectionist Liberalism is its staunch rejection of this perspective, and its emphasis on derivable benefits that emanate from liberal political authority adopting a non-neutral perspective. This is a significant deviation from the Rawlsian theoretical basis.

Perfectionist Liberalism, modelled on the thought of Joseph Raz (1986; 1990), denounces the idea that political authority should be neutral with regards to what constitutes the good. Rather, liberal authority should have a role in promoting the good, involving forwarding core liberal values, and pre-empting citizens towards certain ends. This need not be coercive, and can benefit citizens.

Raz (1990, p. 9) begins by taking issue with Rawls’s rationale for aiming for stability over truth. Raz refers to Rawls’s method as ‘epistemic abstinence’. This represents a refusal to claim that the political values comprising the political conception can be regarded as true. Raz (1990, p. 9) acknowledges that for Rawls, this abstinent approach is intentional. If Rawls claimed that the political values (e.g. “Free and Equal Standard”), were recognised as true, core values, they would become ‘one of many competing comprehensive moralities current in our society, and this would disqualify it from fulfilling its role of transcending the disagreement
among these many incompatible moralities’ (Raz, 1986, p. 9). Gaus (1995, p. 257) reiterates this, arguing that ‘by banishing the epistemological from public justification, political liberals have sought to purify justificatory discourse of any “sectarian” philosophical commitments’. Thus, for Rawls to arrive at a set of stable political values that can be mutually agreed to by reasonable citizens, organise the basic structure of society, and allocate rights to citizens, he must be abstinent as to whether the liberal values and norms comprising it are true, core values.

For perfectionist liberals, liberal values and norms represent more than agreement among reasonable citizens. They represent true, rational ends, which political authority should have a role in promoting. While Rawls’s approach uncovers a consensus on a set of political values, Raz (1990, p. 31) argues that this fails to indicate or recommend a role for political authority in helping to instantiate these ends, or safeguard them from potential threats. The adoption of epistemic abstinence is a corollary to embracing state neutrality. Henceforth, the limitations bestowed on the liberal state which result from adopting epistemic abstinence indicate the shortfalls of state neutrality.

Citizens may welcome state directives that make certain ways of life harder to follow, or which discourage the spread of harmful, illiberal doctrines which target law-abiding individuals or groups. Similarly, so Raz (1986, p. 135) argues, political authority may wish to praise groups who uphold liberal values, or intervene principally to help the vulnerable within society, and to make certain desirable life pursuits more accessible. All of these applications are void if the state remains neutral. Its lack of viable application in real-world contexts limits the political justifications of the stance. However, anti-perfectionists reply that perfectionist liberal theorists must outline how the liberal state quantifies desirable courses of action and life pursuits, and how political authority can be sure that a given directive will further liberal ends.

The concern is that once the state no longer adopts epistemic abstinence, political authority will be able to articulate for itself what constitutes the good. Since political authority isn’t subject or constrained by the deliberations and consent of reasonable citizens either, political authority could act in its own interests, under the guise of promoting the good, and escape accountability for its actions. Hence, when it comes to the application and extension of the non-neutral liberal state to specific contexts, and individual instances, anti-perfectionists remain steadfastly committed to the perspective of neutrality. However, for Raz, this misunderstands the role and purpose of political authority and authoritative directives in facilitating, recommending, and preventing specific actions. Once the shackles of state neutrality are lifted, Raz labels these anti-perfectionist concerns as redundant.
Authoritative directives take different forms, can be targeted towards different groups, and can be held to differing levels of extremity. For example, perfectionist directives can design against certain undesirable, illiberal ways of life. This involves designing against certain pursuits, or imposing measures which makes certain life pursuits more difficult. For instance, since political authority need not remain neutral, and can align itself with a particular set of core liberal values, it is possible for it to restrict the freedoms, or forcibly discourage political/religious groups who preach racist or homophobic views, on the grounds of them violating the “No Harm Principle”. Similarly, political authority could forcibly increase tax contributions against higher earners; providing the surplus for more ambitious benefit programs that help the least well-off. This is justified on the basis of the liberal value of “Society as a Scheme of Social Cooperation”, whereby benefits and wealth are more mutually shared. However, perfectionist goals don’t always take these forms (Raz, 1986, p. 417). Political authority can employ perfectionist directives to subsidise certain activities, reward citizens who pursue them, and advertise their desirability and benefit. This highlights the positive function of perfectionist directives. Raz (1986, p. 161) argues that such actions could include: ‘conferring honours on creative and performing artists, giving grants or loans to people who start community centres, taxing one kind of leisure activity […] more heavily than others’. Hence, perfectionist directives are flexible, in that they can discourage certain ways of life while facilitating others.

Free from remaining neutral, political authority can recognise liberal values and norms as true, desirable values, and actively intervene in and model society and individual behaviour in ways which helps to implement them. For perfectionist liberals, there is therefore no justification for the state to remain neutral, and be prevented from having a positive role to play with regards to the imposition of liberal values and norms. This carries political justification, as it concerns the precise role and makeup of political authority. Moreover, it references specific instances and applications of the non-neutral state, detailing specifically how the advancement of specific ends, and making other life pursuits more difficult to pursue can directly benefit citizens. Extending these political justifications towards questions concerning regulation is viable. It concerns outlining how a non-neutral state that can impose authoritative directives to make certain behaviours more and less complicated can be applied to those engaging in regulatory capture, immoral markets, and offshoring practises.

Quong refutes Raz’s claims, re-emphasising the Rawlsian theoretical basis, and modifying the arguments made for state neutrality. He (2011, p. 291) makes the case for
neutrality in two ways. First, mirroring Rawls’s theoretical basis, Quong labels state neutrality as the only means for liberal political authority to neither affirm nor prioritise a specific reasonable conception of the good. This acknowledges and reflects the fact of reasonable pluralism, and respects all reasonable citizens as free and equal. The other argument made by Quong emphasises the scope for political authority, in spite of remaining neutral between reasonable conceptions of the good. Specifically, the anti-perfectionist neutral state maintains a neutral stance among reasonable conceptions of the good, while containing and limiting the spread of unreasonable doctrines. An unreasonable doctrine of the good rejects either the idea that political society should be a fair system of cooperation for mutual benefit; that citizens are free and equal; or the fact of reasonable pluralism. The fear is that if left unchecked, the spread of unreasonable ideas could topple any hard-earned consensus between reasonable citizens on liberal values and norms. To maintain stability for the right reasons, the liberal state must generate support through acceptance and affirmation among reasonable citizens. Quong (2011, p. 300) argues that the liberal state can act against unreasonable doctrines which undermine this support. Namely, it is ‘essential that doctrines which deny the freedom and equality of persons, or the idea of society as a fair system of cooperation, do not become so prevalent that they threaten to undermine the fundamental ideals of a well-ordered liberal regime’ (Quong, 2011, p. 300). The ‘containing’ of unreasonable views of the good is compatible with upholding a neutral stance, as this ensures that unreasonable doctrines do not interfere with the processes of public reason, or threaten the rights and freedoms of reasonable citizens.

As with Raz, Quong advances political justifications for state neutrality. His arguments relate to the fundamental makeup and scope of power of central political institutions, in this case, liberal political authority. Also, these arguments are applied and considered in relation to the discernible threat posed to reasonable citizens by those that hold unreasonable doctrines and conceptions of the good. The case for state neutrality is thus not made abstractly, in ideal conditions. Rather the reality of unreasonable doctrines and ideas is built into the argument for state neutrality itself. Extensions of these political justifications to questions concerning regulation are thus viable. Instances of regulatory capture, immoral markets and offshoring practises can be characterised as unreasonable features of society, and therefore, the anti-perfectionist liberal state assumes a role in containing and preventing these behaviours.

Critics of anti-perfectionism question the integrity and justification of remaining neutral (Quong, 2011, p. 312). This disproportionately prioritises reasonable citizens, and denigrates and subordinates the experience of those who hold unreasonable conceptions of the good.
However, Quong’s aim is to justify liberal ideas internally, rather than externally. For Quong, the anti-perfectionist liberal state needn’t be justifiable to non-liberals, since these citizens do not affirm the viability of liberal ideas in the first place. As he (2011, p. 313) states, it is not that ‘some actual citizens, ‘the reasonable’, are owed justifications for the way political power is exercised, while other actual citizens, ‘the unreasonable’, can be coerced without justification’. Rather, those who hold unreasonable views fail to accept and affirm liberal values and norms, and so are unsuited to engage in deliberation via the use of public reason to arrive at the ends of state action. It is therefore a fundamental role of the liberal state to carry out containment and limitation of these views.

Other critics such as Raz claim that perfectionist liberalism is preferable because ‘anti-perfectionism in practise would lead […] to a political stand-off from support for valuable conceptions of the good’. (Raz 1986, p. 162). In effect, maintaining neutrality restricts the state. Raz (1986, p. 19) claims that the state ‘should act to promote freedom, and not only sit back and avoid interfering with it. They should keep off certain areas of life, or avoid interfering with them in certain ways, while acting in other areas and in other ways to promote freedom’. However, for Quong, the stance of neutrality is the means through which the prioritisation of the needs and wishes of reasonable citizens are to be protected. Political authority can act, but only on the basis of what is agreed to between reasonable citizens through the use of public reason. Maintaining neutral between reasonable conceptions of the good while containing the spread of unreasonable doctrines is the only means through which to achieve this. It ensures that the state acts on behalf of citizens, preventing liberal political authority from moving citizens towards ends involuntarily.

Several anti-perfectionist liberal theorists have attempted to buttress and reinforce the plausibility of state neutrality in light of these perfectionist criticisms. These responses fall into two camps. They either attempt to discredit perfectionist arguments for allowing the state a role in prioritising the good, or else they re-affirm the benefits of state neutrality as, all things considered, the more desirable option. Firstly, anti-perfectionists argue that it is far-fetched for perfectionists to claim that a single, individual and isolated body such as liberal political authority can quantify what is of value in life for all citizens, then permissibly forward these ends, and expect citizens to abide by and live their lives in accordance with them. This fails to respect citizens as free and equal, by controversially favouring some views of the good over others. Nussbaum (2011, p. 38) sheds light on this, claiming that perfectionists ‘pay too high a price for what we might ironically call their “pursuit of the ideal”: the price of denigrating and
expressively subordinating many citizens who are willing to live with others on terms of
equality and reciprocity’. The presumption that all individuals require perfectionist directives
to live harmoniously, and to know right from wrong ignores the full extent of citizen’s reasoning
faculties, and their ability to live with others respectfully.

Other anti-perfectionist defences of state neutrality re-emphasise the benefits of relying
on the deliberation of reasonable citizens to demarcate the ends of state action. For Nagel (1987,
p. 221-22), what state neutrality and the deliberation of reasonable citizens ensures is more
desirable, and more respectful of the individual as free and equal than the imposition of
perfectionist directives. The justification of state-neutrality is premised on the idea that ‘we
should not impose arrangements, institutions, or requirements on other people on grounds that
they could reasonably reject’. The liberal state cannot act outside of, prior to, or against what
reasonable citizens agree to. This leaves no avenue for imposing perfectionist directives.

The perfectionist and anti-perfectionist arguments for and against state neutrality have
reached deadlock with respect to which stance represents the overarching, categorical “best”
perspective. However, the political justifications offered by these theorists invite questions of
implementation to be considered. Perfectionist and anti-perfectionist theorists attempt to justify
a conception of liberal political authority which outlines the permissible and impermissible
domains of state action. Both theories aim to maintain and safeguard liberal values and norms
pertaining to the rights and freedoms of citizens, and the responsibilities and scope of liberal
political authority. The conflict over the permissibility of state neutrality represents a dispute
over the optimal perspective of the state to bring about these ends. Focusing on the political
justifications forwarded by Raz and Quong open the door to consider how the state may
intervene upon and deal with reasonable and unreasonable citizens/realities in real world
settings. In other words, questions surrounding how the perspective of state neutrality may be
effectively instantiated, and the potential barriers to its effective implementation are natural
subsidiaries and extensions of these theoretical perspectives. Indeed, Raz and Quong begin this
process. They theorise toward potential real-world conditions which effect the application of
their principles. This includes scenarios whereby the versatility and the flexibility of
authoritative directives forwarded by the state are outlined to accommodate different real-world
scenarios; and the theorisation of different circumstances under which the neutral state can
contain unreasonable doctrines in society.

Extending these political justifications to questions concerning regulation extends this
methodological practise. The viability of state neutrality can be considered in relation to its
ability to effectively respond to real-world instances of regulatory capture, immoral markets, and offshoring practises. In this context, the focus turns to whether an anti-perfectionist neutral state or a perfectionist, non-neutral state can recognise the need to respond to prominent instances of the behaviours. Such a recognition emanates from political authority identifying the threat these behaviours pose to the instantiation and implementation of central liberal values and norms. The intractability of the theoretical dispute between neutrality has been outlined in this section. However, this intractability dissipates once questions concerning regulation take a central focus. In other words, once questions relating to the instantiation and implementation of liberal ideas are considered, both liberal theoretical perspectives can recognise a common need to regulate. This means that recognising the need to regulate these behaviours can occur as a result of recognising the need to contain unreasonable elements and features of society, and of expanding the scope and influence of authoritative directives to direct and induce action of the desired kind.

II.II. The Prioritisation of Public Reason

Stemming from the dispute surrounding state neutrality, a broader dispute between perfectionist and anti-perfectionist liberal theorists surrounding the use and scope of public reason materialises. Rawls’s theoretical basis outlines that the ability to deliberate through the use of public reason is a central demarcation between reasonable and unreasonable citizens. The proceeds of public reason thus relate to citizens deliberating and reaching agreement and consensus on the values comprising the political conception of justice. While neither perfectionist nor anti-perfectionist liberals deny that debate through public reason can materialise, they differ with respect to the priority it should be afforded, and crucially, the extent to which it should help to map out the permissible and impermissible domains of the liberal state. Perfectionists argue that it should play a limited role, due to the fact that individuals are already subject to authorities. Resultantly, requiring authoritative intervention to pass the justificatory test of public reason stifles its ability to promote the good, and pre-empt citizens towards state-desired ends. In these instances, the ability of political authority to pre-empt citizens towards beneficial ends that apply to them trumps the use of public reason. Anti-perfectionists aim to reappraise and extend Rawlsian thought. They contend that Rawls underestimates the significance of the consensus reached on liberal values and norms comprising the political conception. Once this is understood, it is possible to extend the use of public reason to all facets of political authority, and expand the role that reasonable deliberation has in mapping out the permissible and impermissible domains of state action.
Raz argues against the prioritisation and use of public reason, due to the fact that all citizens are subject to authorities; even those who do not identify with its ends. This is chiefly because of the scope of power authorities enjoy, and the unavoidable ways in which political authorities and government directives interfere in our lives (Raz, 1986, p. 103). It follows that people have reasons to follow the directives of the state; even those who actively dissent from the values it regards as true (i.e., those who disregard the liberal values upon which the authority is based). In these cases, Raz (1986, p. 103) argues that dissenters ‘may then obey the rules for prudential reasons, or because even though they have no duty to obey, disobedience will do more harm than good’. In effect, one can recognise certain authoritative directives as binding even while expressing dissatisfaction with them. The existence of prudential reasons to follow authority displays the inevitably involuntary influence that authoritative directives have on those subject to it. Accordingly, following an authoritative directive is not dependent on any particular subset of citizen’s affirming and agreeing to the values upon which it is based. Rather, it involves each citizen accepting the authoritative directive as binding.

Having outlined the role political authority has in forwarding the good, Raz turns attention to how authoritative directives achieve this end, and how this effects citizens. Specifically, Raz explores ‘the conditions under which one person can bind another’. For Raz, an authoritative directive is not the de facto power to require action, and the coercive force to implement it. Rather, it works to ‘fill in the gap between the reason, and the action for which it is a reason’ (Raz, 1986, p. 35). In other words, an authoritative directive is able to influence citizens by changing or creating reasons they have to pursue certain ends. Authoritative directives either provide citizens with new reasons for action (they may have a reason to perform an action they hitherto had no reason to perform); or it replaces reasons we already had, (they may have already had a reason to perform a given action, but when faced with an authoritative directive pushing us toward the same end, they realise that it is more efficient to follow this directive than following our own reasons).

By characterising the significance of authority as the power to create reasons for action, Raz attempts to theorise towards a specific conception of liberal authority. Firstly, Raz claims that an authoritative directive must satisfy the Dependence Thesis. This means that an authoritative directive replacing reasons for action for citizens depends on the content of the directive being relevant to them and the situation they are in. It also must correspond to ends that citizens wish to pursue (Raz, 1986, p. 43-46). This creates an incentive for authority to pick out reasons and directives which are appropriate for its subjects, since this heightens the
prospects of imposing effective authoritative directives. Satisfying these dependent conditions is a precursor to what Raz calls the normal justification of authority. This states that an authoritative directive is justified if

- the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly (Raz, 1986, p. 53).

In effect, if an authoritative directive relates to bringing about ends the subject shares, and is relevant to the circumstance they are in, the subject is better off complying with the authoritative directive, and recognising it as authoritatively binding.

Taken together, Raz claims that the Dependence Thesis and Normal Justification Thesis formulate the service conception of authority. This states that the primary function of authorities is to serve the governed (Raz, 1986, p. 56). In effect, Raz states that political authorities role is to help citizens ‘act on reasons which bind them’. This means that a legitimate authoritative directive should have a pre-emptive force, in that it replaces the reasons one has for following certain directives. The role of perfectionist authoritative directives is thus to pre-empt citizens towards certain ends. An authoritative directive is pre-emptive when ‘the fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them’ (Raz, 1986, p. 46). Therefore, rather than rely upon public reason deliberations among reasonable citizens to unlock permissible avenues of action, political authority already has the scope to replace reasons for action citizens may have.

Raz highlights the benefits this has for citizens. Where the pre-emptive force of authoritative directives is effective, citizen’s fare better at achieving their ends by following the authoritative directive than deciding for themselves what to do. This can be useful in situations where an individual does not know how to advance their interests. They may know what they desire, but be unclear as to what specific values this maps on to. Alternatively, they may pursue ends which they falsely presume will advance their interests. Pre-emptive authoritative directives do not involve authority imposing or forcing certain ends upon citizens. All it requires is that in pre-empting citizens, the authoritative directive makes a difference to how those subject to it decide to act, such that those subject to the authority recognise that they take certain decisions because of the authoritative directive. In other words, subjects realise that they should follow the advice of authority, on the grounds that due to the scope of power and influence it
enjoys, it can quantify, understand and act towards desired ends better than individual subjects left to their own devices (Raz, 1986, p. 69).

Political authority is argued by Raz to be in a much stronger position to calculate ends which are beneficial to its subjects. By identifying liberal values and norms as true, core values, pre-empting citizens towards certain ends can be justified on the basis that these ends are synonymous with instantiating liberal values, e.g. it might pre-empt citizens towards ends that better respect the freedom and equality of all, or which allow citizens to exercise their freedom of expression, and association. Since political authority is well placed to forward liberal ends which are beneficial for citizens, to deny it a role in doing so, due to a preference for public reason or the deliberation of reasonable citizens cannot be defended.

Additionally, not all individuals will have reasons to follow perfectionist directives. This is not problematic, since for Raz (1986, p. 100), perfectionist directives are not designed to be universal, or demand compliance in every situation for all citizens. The effect of authoritative, perfectionist directives on each individual is flexible. Raz (1986, p. 73) claims that there are a diversity of ways in which perfectionist directives relate to the individual. Instead of a one-size-fits-all conception of citizens universally requiring the state to understand what ends they should pursue, the way in which any perfectionist authoritative directive pre-empts individuals towards given ends ‘depends on the person over whom authority is exercised: his knowledge, strength of will, his reliability in various aspects of life, and on the government in question’. The extent to which the individual is led by the authoritative directives thus depends on the extent to which the directive provides pre-emptive reasons for individuals to follow desired courses of action. Where it provides no pre-emptive reasons, as outlined, the individual still has prudential reasons to follow authoritative directives. In any case, political authority plays a significant role in influencing action, and forwarding ends which instantiate liberal values and norms. The severity of impact that pre-emptive authoritative directives have depends upon the life choices and values that that individual holds, and the extent to which this conflicts with the values and directives which the state forwards. Regardless of whether citizen’s agree to the directive, or whether it effects their ability to pursue their ends, authoritative directives that the perfectionist liberal state forwards remain binding. This entails that for perfectionist liberals, accepting the pre-emptive aspect of perfectionist authoritative directives over the reliance on the reasoning faculties of citizens licenses political authority to legislate, and take decisions, regardless of whether this gathers the consent of all who are then subject to the decision. As such, a perfectionist authoritative directive needn’t rely on universal consent among reasonable citizens when
forwarding ends. Waiting for this, or even presuming it will arise damages the extent to which liberal political authority can forward effective, beneficial ends.

Though Raz explains the rationale for enabling liberal political authority to enforce pre-emptive authoritative directives, this does not detract from the fact that a perfectionist liberal authoritative directive’s primary aim is to forward liberal values, since it regards these as true, core ends. In fact, it is because the liberal values can be identified as true core ends that a more interventionist model of liberal political authority is forwarded by perfectionist liberal theorists. Additionally, by forwarding liberal ends, perfectionist authoritative directives can establish conventions for citizens which cement and effectively instantiate liberal values and norms. For instance, authoritative directives that pre-empt citizens towards treating all as free and equal, or formulate laws and penalties that help to uphold toleration between groups helps to implement liberal values and norms. This may also arise through the systemic promotion of certain liberal ways of live, or conferring benefits upon those who follow liberal values and norms, while punishing those who fail to abide by them. Even where conventions become ingrained within society, and the practises of citizens, such that one might not recognise an authoritative directive as having a role to play, Raz (1986, p. 50) states that ‘sometimes authoritative intervention creates that prospect, and that it creates it because of its authoritativeness. Similarly, the existence of an authoritative directive may prevent or delay processes which, but for it, would have undermined the convention’. Therefore, conventions which effectively instantiate and safeguard liberal values and norms are dependent upon the initial exercise of authority, and maintained through the sustained presence of authoritative intervention. This, for Raz, is far more effective than relying upon the proceeds of public reason.

Quong and other anti-perfectionist liberals refute the assumed benefits of Raz’s service conception of authority. According to anti-perfectionists, there is nothing which perfectionist authoritative directives provide, nor benefits that pre-empting citizens achieve that reasonable citizens would not have been able to reach through the use of public reason. Quong (2011, p. 116) states that the focus on what we have most reason to do is misleading. ‘Legitimate authority does not track what we have reason to do, it tracks what rights we have, and what duties we may be under’. While Raz may have identified situations where we have reasons to follow authoritative directives, this fails to tackle the more foundational question, namely, why should ‘the brute fact that I have reason to do something […] affect what rights you have with regard to me?’ (Quong, 2011, p. 115). By failing to make this clear, Raz misjudges the purpose of authorities. This is also applicable to Raz’s pre-emption thesis. The pre-emptive force of
reasons imposed by the state, and whether one has reason to follow these directives are separate questions. In other words, expertise in a certain domain is not translatable to one incurring responsibilities to follow this expertise. For Quong, even if citizens would benefit from following perfectionist directives, this does not provide reasons for the state to issue commands, especially not those that take the form of binding duties, or those that move citizens towards certain ends. Thus, the pre-emption thesis which the perfectionist state depends on doesn’t work. Raz mistakenly implies that subjects should abide by state directives as a direct result of their pre-emptive force.

Quong’s preferred approach in mapping out the permissible and impermissible domains of state action rests in the modification of Rawls’s ideas. He re-conceptualises the role of the overlapping consensus; and extends the justificatory role of public reason. Quong highlights two problems with Rawls’s overlapping consensus. Firstly, the subject of the overlapping consensus should not be particular principles and political values which makeup the political conception of justice. Secondly, one cannot expect each comprehensive doctrine to find specific, independent reasons to support the values of the political conception in the way Rawls envisages. What Quong refutes is the idea that the overlapping consensus should represent some further justificatory test that must be met before the liberal political values are justified. He (2011, p. 190) claims that ‘justification must begin from what the parties to the dispute hold in common. We find our common ground and then try to develop our respective political positions from that ground’. Hence, the process of justification involves realising what this common ground consists in. Quong (2011, p. 185) claims that it amounts to a fundamental view of citizens and society. This includes ‘the fundamental idea of society as a fair system of cooperation between free and equal citizens’. For Quong, only reasonable citizens will affirm these ideas about the individual and society. Therefore, the overlapping consensus need only be representative of the common ground which reasonable citizens hold. The recognition of this common ground, on the basis of these values overlapping across different reasonable comprehensive doctrines is the first, rather than the last stage of justification.

The problem for Rawls lies in the fact that for his overlapping consensus to work, citizens must recognise congruence between their particular comprehensive doctrines and the political conception. However, it is difficult to envisage how the diverse range of reasonable comprehensive ideas about the good could meet this standard. There is already enough firm agreement among citizens holding reasonable comprehensive doctrines that can begin the process of justification (Quong, 2011, 185). The consensus is illustrated through the
fundamental ideas of society as a scheme of social cooperation between citizens who are to be treated as free and equal. These values overlap across all reasonable comprehensive doctrines. Hence, this represents the basis from which deliberation towards different political ends can commence.

Starting from this basis heightens the role and scope of public reason. Chiefly, public reason deliberation can operate from the basis of common ground (Quong 2011, p 162). It is no longer needed as a mechanism to reach consensus, since that has been reached from understanding the shared fundamental ideas about citizens and society which are endorsed by reasonable citizens. Quong therefore embraces a broader role for the use of public reason than Rawls. It applies to more than just the constitutional essentials and matters of basic justice of a liberal democratic regime. For Quong, the requirement to use public reason applies to all deliberations between reasonable citizens, especially those pertaining to what constitute the permissible and impermissible domains of the state. Quong thus highlights the benefits that the broader use of public reason entails. He (2011, p. 258-59) states that

When citizens and public officials engage in the practice of public reason, they manifest respect for one another as free and equal citizens, and they directly honour the idea that each person is owed reasonable justifications for the rules and laws that govern their life [...] ensuring that each new piece of information and each new argument is subject to extensive scrutiny, and thereby weeding out ill-informed and poorly reasoned policy proposals

Quong corroborates the merits of this broad, co-operative view of public reason by comparing it to the role that perfectionist authoritative directives play in mapping out the permissible and impermissible domains of the state. He (2012, p. 286) acknowledges that public reason deliberation can be inconclusive. Namely, there may be instances where there are multiple reasonable and conflicting solutions to a given problem, such that deliberation among reasonable citizens cannot be expected to reach consensus on any one course of action. One might be tempted, in these instances, to license perfectionist authoritative directives to settle potential disputes. However, Quong (2011, p. 286-87) argues that

If the choice is between a model of public reason that is sometimes inconclusive, but grounds its decisions in reasons that are reasonably acceptable to these who are bound by them, and a model of perfectionist or non-public reasoning that is conclusive in all cases, but is based on premises and reasons that many people do not accept or even understand, we ought to choose the former.
Accordingly, as anti-perfectionists argue, the requirement that reasonable citizens adhere to the broad use of public reason when they deliberate is more desirable than perfectionist authoritative directives. It ensures that reasonable citizens will not be bound by directives that they had not hitherto agreed to.

The fact that these theorists are justifying the permissible and impermissible domains of liberal authority, and offering political justifications to this effect paves the way to resolve the dispute. Firstly, the dispute between relying on the proceeds of public reason, or enabling liberal political authority to pre-empt citizens towards desirable ends which cultivate liberal values and norms draws attention to the actual operations and functions of the state, and the boundaries upon which it can act in real-world circumstances. To this end, the extent to which the service conception impacts citizens, and creates reasons to follow authoritative directives analyses how perfectionist directives and the imposition of binding authoritative directives can be carried out in specific settings. Similarly, the acknowledged reality of difference in a citizen’s reasoning processes, and how trusting the proceeds of public reason may negotiate this attunes anti-perfectionist liberal theorists to real world realities. Hence, the justifications on both sides are political. They also meet the second condition of a political justification. This theoretical dispute concerns the justification of the actual operations of liberal political authority, and questions the extent to which citizens are involved in this process. It also attempts to justify controversial themes, such as the role of the state in responding to the needs of reasonable citizens, or the means through which political authority can enact different perfectionist directives, and the barriers to their effective implementation. Hence, both theorists forward political justifications, since the justification of the operations of the state and the potential benefits of this in real-world circumstances represents an integral, persistent theme.

These political justifications can be extended towards real world settings which relate to the effective instantiation, implementation, and safeguarding of liberal values and norms. The use of political justifications lends itself to considering, critiquing and evaluating public reason and the viability of pre-emptive authoritative directives in the context of whether they effectively license the state to deal with instances of regulatory capture, immoral markets, and offshoring practises. Therefore, given the severity of the theoretical conflict, the viability of public reason and of pre-emptive authoritative directives can be tested with respect to whether these justifications for state interference generate a robust enough basis for the liberal state to counteract the negative consequences associated with the behaviours. The use of political
justifications make the considering of these questions natural extensions of the justifications offered by Quong and Raz. The adjudication of this debate is carried out in chapter IV.

II.III. The Permissibility of Paternalistic Interference

The third dispute surrounding the state’s use of paternalistic intervention results from the previous disputes. The anti-perfectionist commitment to state neutrality, and the prioritisation of public reason entails that mapping out the permissible and impermissible domains of state action is the responsibility of reasonable citizens, deliberating in ideal conditions through the use of public reason. It follows that political authority acts only on the basis of what can be agreed to and affirmed by reasonable citizens; with the exception of political authority safeguarding liberal values and norms by containing the spread of unreasonable doctrines. By contrast, released from the shackles of neutrality, and able to advance the good in ways which pre-empt citizens towards certain desirable ends, the perfectionist liberal state can intervene paternalistically in the lives of citizens. This is justified as citizens recognise the positive role that political authority has in enabling them to reach desired ends quicker than if they were left to their own devices. Therefore, the permissibility of paternalistic interference represents a seminal point of difference between perfectionist and anti-perfectionist liberal theorists.

For perfectionist liberal theorists, the permissibility of paternalistic interference stems from understanding the benefits of pre-emptive authoritative directives. The justification for paternalism involves recognising that citizens would carry no objection to authoritative directives that took this pre-emptive form. Raz holds that citizens would accept the pre-emptive role of authoritative directives. This is because citizens are often in situations where they don’t know how to advance their interests. Alternatively, they can be unaware of what their interests are, due to a lack of education, attentiveness, or just through not being able to make sense of the many different ends they may wish to pursue. Similarly, citizens may pursue certain ends which don’t advance their interests (Raz, 1986, p. 69). In these scenarios, it makes sense for citizens to follow the advice of political authority if it can quantify, understand, and provide guidance towards desirable ends.

In effect, the pre-emption of citizens towards certain ends is justified ‘in order to stop people from actions which would diminish people’s autonomy and in order to force them to take actions which are required to improve people’s options and opportunities’ (Raz, 1986, p. 416). For Raz, preventing political authority from performing this role is potentially harmful to citizens. It eliminates the prospect of political authority directing citizens towards beneficial
ends. Thus, critics of paternalistic interference and pre-emptive authoritative directives must outline why curtailing the actions of political authority to this degree is justifiable.

Criticism of Raz’s views are formulated by Quong, who deems any form of paternalistic interference as inherently wrong. Quong (2011, p. 80) regards an act as paternalistic when it meets the following two conditions:

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

2. P’s act is motivated by a negative judgment about Q’s ability (assuming Q has the relevant information) to make the right decision or manage the particular situation in a way that will effectively advance Q’s welfare, good, happiness, needs, interests or values.

For Quong, licensing a role for pre-emptive, paternalistic authoritative directives is tantamount to subordinating citizens’ independent reasons for action under the aims and wishes of the state.\(^{17}\) This inevitably leads to a situation whereby ‘the paternalizer believes the paternalizee lacks the necessary level of rationality, or willpower, or emotion management to effectively advance his or her own welfare, values, needs or interests in the particular context’ (Quong, 2011, p. 83). Perfectionist state directives, even if pre-emptive, make a negative judgement about a citizen’s ability to advance their welfare (Quong, 2011, p. 50). This makes the imposition of subsidies, incentives, and other forms of perfectionist, pre-emptive intervention difficult to justify. In all instances, these measures involve the supervening of the wishes of political authority over a citizen’s own reasoning processes, wishes and desires (Quong, 2011, p. 71).

According to Quong, perfectionist liberals cannot adequately respond to this charge. Their reliance upon and justification of the pre-emption thesis, and the notion that the state knows better than citizens how to advance interests that apply to them is not enough to justify paternalistic interference. Billingham (2017, p. 91) clarifies Quong’s criticism with regards to this, stating that ‘the mere fact that obedience to another’s instructions will result in you better complying with the reasons that apply to you does not establish that the other has legitimate authority over you’. Quong (2011, p. 315-16) even takes a harsher line than this, comparing the permittance of paternalistic intervention from the liberal state as treating ‘citizens as if they

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\(^{17}\) Agent P can be thought of as liberal political authority, and Agent Q, the citizen body within a liberal democratic society.
were children, in need of guidance and direction about their own lives’ (Quong, 2011, p. 315-16). In effect, even if anti-perfectionists concede that the pre-emption thesis is true, and that authoritative directives can move citizens towards specific ends, this does not imply that citizens have any reason to follow these directives. Perfectionists thus conflate a definition of how pre-emptive authoritative directives work with the reasons citizens may have to follow these directives. Even if one grants that political authority is better at advancing ends that apply to citizens, the question of whether it is permissible to make citizens follow these ends, or indeed whether citizens would actually follow these ends is separate.

Furthermore, implementing pre-emptive, paternalistic directives involves the state making broad-brush assessments about what all citizens as free and equal require, and instigating measures to move all citizens toward these ends. Quong (2011, p. 104) plainly rejects the notion that the liberal state is able to quantify what all citizens as free and equal require. This is because the liberal state ‘is a blunt instrument which is usually unable to make fine-grained distinctions in the way it treats different citizens’. Moreover, Quong (2011, p. 104) argues, the liberal state ‘is unlikely to be able to assess individual cases to ensure that only those sane adults who, for whatever reason, temporarily lack the ability to rationally pursue their own good, are treated paternalistically’. This refutes Raz’s claim that perfectionist directives can occupy pre-emptive force over citizens in differential degrees. In reality, it is unlikely that perfectionist directives will be specific enough to enable these fine-grained distinctions to be drawn. However, as Nussbaum claims, the perfectionist liberal state can be rejected even it can perform such a role. She (2011, p. 35) highlights the impermissibility of perfectionist directives, claiming that in practise, they reduce citizens to a form of second-class citizenship. This is because ‘government will state, every day, that a different view, incompatible with yours, is the correct view, and yours is wrong. Moreover […] government will be licensed to try to convert you to the correct view’. The upshot of these arguments is that any perfectionist stance arguing that the state should distribute resources a specific way, or forward specific directives will be unavoidably paternalistic, and thereby impermissible. This makes paternalism an inevitably controversial part of perfectionism. In effect, one cannot know with any degree of certainty whether pre-emptive, paternalistic authoritative directives can improve the standard of living for all individuals, or bring about the common good in any generalised, measurable sense. At the least, perfectionist liberal theorists do not do enough to substantiate this claim, meaning that the prescribed benefits of paternalistic interference implied by the pre-emption thesis lack justificatory power.
The dispute surrounding the permissibility of paternalistic interference looks towards the role that the liberal state has in shaping the decision-making processes of individuals. The different perspectives utilise political justifications, since the proposed paternalistic role for the state is implementable to real-world settings. Its concern is with the scope of power that can be afforded to the liberal state, accompanied with justifications for acting in ways which safeguard and promote liberal values and norms. Although the support for paternalism among perfectionist liberal theorists emanates from the prior advocation of specific conceptions of the good, and the permissibility of the pre-empting citizens towards desired ends, the theorists still measure the plaudits of paternalism in specific real-world settings. This pays attention to the precise means through which the perfectionist liberal state may interfere, and the means through which this can occur. Also, the defence of paternalistic intervention given by Raz remains a political one, since its concerns are not with the permissibility of paternalism as a whole, but with the precise level of paternalistic interference that is compatible with the perfectionist liberal state. This encompasses the amount that citizens can be interfered with while maintaining their basic rights and freedoms, and what motivations can justify paternalistic interference from political authority, while it upholds liberal values and norms. Though dismissive of paternalistic interference, the basis of its rejection by anti-perfectionist liberal theorists also meets the standard of a political justification. The claim against paternalistic interference principally made by Quong refers to the actual operations of government in real world settings, rather than treating these questions abstractly. The contention is that in any real-world scenario, liberal political authority cannot superimpose the reasoning processes of citizens. Thus, the actual workings of the state, and the order with which citizens’ rights and freedoms are to stand in relation to state power is clearly construed.

In short, both liberal arguments for and against paternalistic interference refer to the actual operations of the state in real world settings, and relate the justifications of the respective positions to a conception of political authority, with a focus on protecting the rights and freedoms of citizens. This meets the standard of a political justification. Therefore, extending these justifications, and criticising the arguments for and against paternalistic interference in light of their capacity to counteract negative consequences associated with regulatory capture, immoral markets, and offshoring practises is viable. In fact, focusing upon the viability of the attitudes towards paternalism is beneficial. It provides a means to break the deadlock between perfectionist and anti-perfectionist liberal theorists with respect to the permissibility of paternalism, while also demonstrating the role of the liberal state in safeguarding liberal values and norms by actively designing against these behaviours. This is illustrated in chapter V.
III. Conclusion – Foreshadowing the Resolution of the Disputes

In summary, anti-perfectionists claim that the liberal state should remain neutral between competing conceptions of the good (Quong, 2011, p. 12). Additionally, the liberal state cannot entice citizens towards certain ends, nor offer incentives or impose authoritative directives advocating for the pursuit of any particular way of life, or conception of the good. These actions undermine the ability of reasonable citizens to engage in public reason deliberation to ascertain the permissible and impermissible domains of state action. Any state intervention would break this neutral stance, and overrule the reasoning processes of citizens; hence this would be impermissibly paternalistic.

Perfectionist liberalism negates these commitments. This is premised on the need to license a role for the liberal state in advancing the good. To this end, perfectionists conclude that authoritative directives can forward a particular conception or set of comprehensive ideas about the good, and pre-empt citizens towards these ends. This involves offering reasons for following the authoritative directive and accepting it as binding, which can replace other reasons for action that the citizen may have had. Licensing a role for the liberal state in this fashion is consistent with paternalism. In other words, the reason the liberal state can forward directives based around a specific understanding of the good, and pre-empt and direct citizens towards certain ends, is that the liberal state is in a privileged position to advance the good, and can assist citizens reaching their desired ends quicker than if they were left to their own devices. To deny it this role is impermissible.

Both perfectionists and anti-perfectionists utilise political justifications when forwarding their respective positions. These act to justify liberal values and norms by acknowledging and taking note of real-world circumstances; also, each camp is concerned with justifying the makeup of political authority, the rights and freedoms of citizens, and other political concerns. This makes these perspectives compatible to concerns relating to the effective instantiation and implementation of liberal ideas. Hence, these political justifications can be extended, and questions concerning the regulation of instances of regulatory capture, immoral markets, and offshoring practises can take a central focus. In particular, the need to protect liberal values and norms provides a viable motivation for regulation, and initiates a plausible theoretical process through which perfectionist and anti-perfectionist liberals can produce principles of regulation. Therefore, perfectionist and anti-perfectionist liberals disagree in relation to the perspective of state neutrality, and the relative prioritisation of public reason.
However, once the political justifications are extended to consider the regulation of regulatory capture, immoral markets, and offshoring practices, and towards the implementation of liberal values and norms, these differences are felt less intensely.

Focusing on the instantiation of liberal ideas and extending the political justifications towards regulatory capture, immoral markets, and offshoring practices highlights the most significant difference between the liberal perspectives. When questions concerning regulation and the implementation of liberal ideas take a central focus, the significant dividing factor between perfectionist and anti-perfectionist liberalism rests on the attitude taken towards paternalism. On the basis of the illustrations provided of regulatory capture, immoral markets, and offshoring practices in the previous chapter, it is clear that the state must take some paternalistic measures to effectively respond to these behaviours. Accordingly, in ascertaining how perfectionist and anti-perfectionists liberals may approach the issues, it is clear that perfectionist liberalism represents a clearer, more desirable approach, on the basis of its licensing of paternalistic state intervention.

The purpose of the present chapter has been to outline the parameters of the dispute, and illustrate the severity of the conflict between the liberal theoretical perspectives with respect to the three disputes. It also lays out the political justifications forwarded by perfectionist and anti-perfectionist liberal theorists for their liberal values and norms, and highlights how extending these justifications to questions concerning regulation is the means to adjudicate the disputes.
Chapter III

Recognising the Requirement of Regulation: Maintaining State Neutrality vs. Forwarding State Directives

Abstract: Agreement between perfectionist and anti-perfectionist liberals can be reached with respect to recognising the need to regulate. One is no worse off in adopting the recommendations of an anti-perfectionist neutral state, or imposing perfectionist authoritative directives when responding to questions concerning regulation. Recognition of the need to curtail extensive practices of political lobbying is justified on the basis of protecting the exercise of individual political liberties, and prioritising the public good. The perfectionist and anti-perfectionist liberal state also recognises the need to prevent harm to citizens. This justifies limiting deferred tax, and lessening the Tax Gap. Finally, both liberal theoretical perspectives recognise the need to safeguard the values of free thought and liberty of conscience. This justifies the prevention of aggressive advertising strategies, and the controversial commodification of goods.

Effectively regulating real world instances of regulatory capture, immoral markets and offshoring practices from the perspective of liberal theory requires a recognition of the need to regulate, a process for bringing about regulatory principles, and a conception of liberal authority which can implement regulatory proposals. Justifications for these stances emanate from the need to maintain and safeguard the effective instantiation and implementation of liberal values and norms pertaining to the rights and freedoms afforded to citizens’, and the rights and responsibilities of political authority. With respect to recognising the need to regulate against these behaviours, the legitimacy and credibility of the stance of state neutrality comes under the spotlight. Establishing a process for bringing about regulatory principles draws upon the dispute surrounding the permissibility of public reason. Finally, understanding the appropriate scope of the state in preventing these behaviours maps on to the dispute surrounding the permissibility of paternalism which divides perfectionist and anti-perfectionist liberal theorists.

With regards to the first two disputes, perfectionists and anti-perfectionists can reach common ground, giving one clear reason to look favourably upon liberal theories role in
solving modern world issues related to the regulation of regulatory capture, immoral markets, and offshoring practises. However, with respect to the dispute surrounding the permissibility of paternalism, only perfectionist liberalism possesses the tools to justify a conception of political authority that can enact and implement regulatory measures. This means that when approaching questions concerning the regulation of regulatory capture, immoral markets, and offshoring practises, one should favour perfectionist over anti-perfectionist liberalism.

This chapter focuses on the under-emphasised ability of theories of perfectionist and anti-perfectionist liberalism to recognise the need to bring about regulatory principles. A recognition for regulation is realised by anti-perfectionists as an extension of defending a neutral stance among reasonable doctrines. This is implied in political authority’s function of containing unreasonable elements/features of society. This can be done in tandem with maintaining a neutral stance with regards to the doctrines that reasonable citizens affirm. Perfectionist liberals also recognise the need to regulate instances of regulatory capture, immoral markets, and offshoring practises. Imposing perfectionist directives is justified on the grounds that political authority should mitigate against features of society and behaviours which cause harm to individuals, whether this emanates from individuals, or institutions and corporations. Additionally, perfectionist authoritative directives can pre-empt action of the desired kind from individuals and corporations. This illustrates a collective, common recognition among both liberal theoretical perspectives that liberal political authority should regulate these behaviours and counteract the negative consequences associated with their proliferation. This enables the adjudication of the dispute surrounding state neutrality.

Section I reiterates the parameters of the dispute between perfectionists and anti-perfectionists regarding the plausibility of state neutrality. Section II rejects Colburn’s proposal to find a theoretical middle way between state neutrality and imposing perfectionist authoritative directives. His theoretical resolutions lack depth and substantiation, and are ill-equipped to tackle questions concerning regulation. This paves the way to adjudicate the neutrality dispute in section III. Both the anti-perfectionist neutral state and the perfectionist liberal state jointly recognise the need to regulate problematic instances of regulatory capture, immoral markets, and offshoring practises. This is exemplified through case studies of political lobbying, deferred taxation and how this contributes to widening the Tax Gap; and the need to mitigate harmful advertising practises that cause the controversial commodification of certain goods.
I. State Neutrality: The Parameters of the Dispute

Recognising a collective need to regulate regulatory capture, immoral markets, and offshoring practises turns on the question of whether liberal theory should maintain an attitude of neutrality. This theoretical dispute can be adjudicated once questions concerning the regulation of regulatory capture, immoral markets, and offshoring practises take a central focus.

The rationale for the state to remain neutral between competing conceptions of the good is supported by anti-perfectionists. It is predicated on the need to respect the fact of reasonable pluralism, and to enable reasonable citizens to be treated as free and equal. Furthermore, a neutral attitude from liberal political authority enables reasonable citizens to engage in deliberation through the use of public reason. By contrast, perfectionist state directives, and the imposition of certain norms and practises which are not the product of public reason is referred to by anti-perfectionists as political authority over-extending its power.

One supposed benefit of political authority adopting an attitude of neutrality is, according to Quong (2011, p. 257), that it enables liberal political authority to show equal respect to all citizens holding reasonable, comprehensive doctrines. A reasonable view is one which regards all citizens as free and equal, and recognises that society is a scheme of social cooperation for mutual benefit. For anti-perfectionist liberals, it is unjustifiable for the state to use its power or authority to prevent the expression of some reasonable views in favour of others, or to favour a particular view of the good life over others (Quong, 2011, p. 19). The attitude of state neutrality which Quong and anti-perfectionists endorse therefore states that while there are many reasonable, conflicting views, no one specific set of views ought to be imposed upon society by political authority.

Objections to this attitude of state neutrality are made by perfectionist liberals. The common feature of this criticism rests in the idea that forcing the state to be neutral between competing conceptions of the good life limits any potential positive role that political authority can play with regards to solving disputes, or encouraging certain worthwhile pursuits. To this end, perfectionists argue that there are a range of different types of directive that liberal political authority could adopt. These can be non-coercive interventions, and take the form of providing subsidies, or rewarding the performance of certain actions (Raz, 1986, p. 417). Raz goes as far to claim that state neutrality is redundant as a political doctrine. He (1986, p. 111) justifies this by stating the following about state neutrality:
It does not demand that the government shall avoid promoting unacceptable ideals. Rather, it commands the government to make sure that its actions do not help acceptable ideals more than unacceptable ones [...] to see to it that its actions will not hinder the cause of false ideals more than they do that of true ones.

For perfectionists, dropping the commitment to state neutrality unshackles liberal authority from being subject to the agreement of reasonable citizens. Resultantly, directives can be imposed preventing certain ways of life, and favouring certain pursuits over others. The implication of these perfectionist arguments are that to enforce a stance of neutrality upon the state impermissibly prevents it from having a role in furthering the good, and limiting the spread of problematic, harmful doctrines in society.

Though divergent, the justifications offered by Raz and Quong for the imposition of state directives and the advocaton of state neutrality respectively are political. The claim that liberal political authority must adopt neutrality with respect to favouring or disfavouring conceptions of the good acknowledges real world conditions such as reasonable pluralism. Adopting neutrality is forwarded as the justifiable means for the state to respond to this. Also, the arguments for state neutrality have a specific focus, since they concern the proper operations of political authority, and its role in safeguarding central freedoms and rights afforded to citizens. The perfectionist liberal defence of imposing authoritative directives is also politically justified. It acknowledges the same real-world conditions of pluralism, and that individuals will be affected by authoritative directives in divergent ways. The justification for imposing directives amounts to a set of specific guidelines for political authority, determining under what circumstances and to what degree the state may induce or direct citizens towards desired ends. These respective conceptions of the liberal state are viewed by anti-perfectionists and perfectionists respectively as the best means through which to effectively instantiate and uphold liberal values and norms pertaining to political authority, and guaranteeing the rights and freedoms of citizens. Hence, the political justifications given for these values and norms justify the respective conceptions of the liberal state.

Once the political justifications given for these respective positions are extended, and questions concerning regulation take a central focus, common ground and similarity between perfectionists and anti-perfectionists is uncovered. Recognising the requirement to impose regulatory principles can be justified from the perspective of an anti-perfectionist neutral stance, and from the perspective of justifying the imposition of perfectionist directives. The viability of this resolution is clarified by dismissing rival theoretical solutions to the neutrality dispute.
II. Refuting A Theoretical Middle Way Between Neutrality and Imposing Perfectionist Directives

Some liberal theorists advocate for a theoretical resolution to the neutrality dispute, whereby political authority can simultaneously adopt a neutral stance while forwarding perfectionist directives. However, this fails to find theoretical middle ground between neutrality and imposing state directives. This is clarified by refuting Colburn’s (2008, 2010, 2012a, 2012b) theory of ‘Autonomy-minded Liberalism’.

Colburn’s attempt to justify a theoretical middle ground fails to explain the extent to which individuals can take appropriate responsibility for their actions, and fails to articulate a clear role for liberal political authority. Also, the inadequacy of Colburn’s conception of liberal authority in accommodating questions concerning regulation questions whether the autonomy-minded liberal state can appropriately safeguard and maintain liberal values and norms.

Colburn argues that the primary aim of the liberal state is to provide the provisions for individuals to live an autonomous life. To enable this, he advocates for political authority to maintain neutrality with regards to what the autonomous life consists in/of. Colburn (2010, p. 19) defines autonomy as ‘an ideal of people deciding for themselves what is a valuable life, and living their lives in accordance with that decision’. Consequently, one lives an autonomous life when ‘the reason that my life goes that way must be because I made it so, and also I must bear the consequences of the way I choose to live it’ (Colburn, 2010, p. 32). This means that what an autonomous life consists in is up to the discretion of the individual concerned, and what they regard as the right choices for them. The minimum requirement of an autonomous life is as follows: ‘so long as we can say that the individual lives the life they do having decided what is valuable, the content of the life is irrelevant to the question of whether they are autonomous or not’ (Colburn, 2010, p. 33). Colburn (2008, p. 622) thus believes that the following statement holds: ‘we can value autonomy while refusing to specify particular things that people should do to make their lives go well’ or, in other words: ‘autonomy is a content-neutral ideal’. This proposition modifies the perfectionist directives which Raz espouses. Colburn agrees that political authority should impose perfectionist directives, but rather than forwarding specific conceptions of the good, or pre-empting citizens towards specific ends and actions, he advocates for the promotion of provisions/subsidies/directives that enable individuals to live an autonomous life, and to become the author of their own actions.
The position of state-neutrality is thereby advocated in tandem with imposing perfectionist directives. Adopting neutrality represents a precondition to promoting autonomy effectively. If the state categorises particular life pursuits as ‘autonomous’, or entices citizens too strongly towards certain ends, this ruins the sense in which citizens can be autonomous by self-directing their own lives, and living their lives in accordance with their own decisions. If correct, this solves the neutrality dispute, as it entails that political authority can enable the conditions for autonomy in tandem with refraining from designating any particular life pursuits as the correct/most desirable course of action.

The success of Colburn’s proposed theoretical middle way depends upon accepting the more limited scope of perfectionist authoritative directives: that they need not pre-empt or direct citizens towards designated, specific ends. For Colburn, where perfectionist directives become too specific, one cannot foster or develop a sense of evaluative responsibility for their own actions. His claim is that where individuals become self-authors, they will inevitably develop a sense of awareness about the consequences their actions have, and whether certain forms of life may induce harm to others, or warrant praise. This rests upon the acceptance of the following claim:

The self-authored life is one where the individual makes it go a certain way, and also bears the consequences. What matters is not just that someone causes her life to be a certain way, but that she does so in a way makes it appropriate to give her praise, blame, punishment, liability, reward and so on (Colburn, 2012a, p. 25)

Where one takes evaluative responsibility for their own autonomous actions, the state is not required to design against specific life pursuits, or grant subsidies or pre-empt individuals towards other ends. The proposed benefit of this is that it deflects responsibility away from the liberal state should any negative or harmful ways of life begin to flourish. Where this happens, it is not the result of misjudged or mis-informed perfectionist directives; rather, it is due to the inability of citizens to take the appropriate evaluative responsibility for their autonomous choices.

II.I Refuting the Theoretical Middle-Way

The success of Colburn’s proposed theoretical middle way between state neutrality and the imposition of perfectionist directives depends upon the plausibility of two claims:

(1) That perfectionist directives can be plausibly limited to providing the provisions for autonomy (and that it is clear what the ‘provisions of autonomy’ refer too).
(2) It is clear what “evaluative responsibility” refers to, and the individual, rather than the state, should bear the burden for negative ways of life flourishing.

Neither of these conditions can be upheld, as elements of Colburn’s theory are unclear, and unsubstantiated.

Firstly, dealing with (2), the concept of ‘evaluative responsibility’ which is built into the understanding of autonomy is over-simplified. In reality, showing that one can self-direct their life while taking the appropriate evaluative responsibility is a complex process. Colburn forwards it as a general idea, yet he (2010, p. 81) acknowledges that ‘people do indeed differ in respect of ability to judge between values, and power to promote them’. In effect, the extent to which each individual, self-directed autonomous pursuit encompasses evaluative responsibility permits of many degrees. Individuals can make autonomous decisions in a responsible way. However, the means through which this occurs is different and the circumstances within which one can be said to make evaluatively responsible decisions varies. Colburn needs to expand on how one can take appropriate evaluative responsibility in a way that allows the state to remain neutral. In normal circumstances, factors which are key for any measure of evaluative responsibility may not be discernible. For example, the stakes involved in an autonomous decision, and its short- and long-term consequences may be unknown. Equally, one may lack awareness, or lack the appropriate knowledge to make an informed decision. Similarly, one may be under pressure to make decisions quickly, leading them to forgo the time necessary to make reasoned judgements which amount to effective evaluative responsibility. Yet, knowledge of these criteria seem essential in order to be clear that the appropriate evaluative responsibility has been taken. Moreover, one can imagine a range of actions one performs within an autonomous life which are spontaneous; pre-meditated; intentional; unintentional; and many actions result in both foreseeable and unforeseeable consequences. Therefore, it is far-fetched for Colburn to presume that the appropriate level of evaluative responsibility one should take for their autonomous decision-making is clear. The lack of detail surrounding how one ensures evaluative responsibility gives grounds to dismiss Colburn’s theoretical middle way.

Turning to (1), the extent to which the provisions of autonomy can be provided from the state in any universal, generalised way is also unclear. What the “provisions for autonomy” are, and how the liberal state should go about providing them are complex questions. The picture of imposing perfectionist directives to enable autonomous decision-making to flourish is too simplistic. How wide-ranging these perfectionist directives need to be, and whether the provisions for autonomy can be provided universally, so that all individuals can utilise them
requires further attention. With respect to this, the comparative advantages of Raz’s model of perfectionist authoritative directives is that they are specific, and targeted towards the pre-emption of citizens towards designated ends. They are not generalised, and the extent to which a citizen recognises the directive of authority as binding permits of degrees. These depend upon the extent to which the ends forwarded by perfectionist authoritative directives apply to and cohere to the ends that each citizen has.

II.II. The Limited Prospects for Recognising the need to Regulate

Highlighting how Colburn’s approach fails to apply to questions concerning regulation foreshadows the benefits of adjudicating the neutrality dispute in a way whereby regulation takes a more central focus.

Colburn focuses on how autonomy is exercised by individuals self-directing their lives, and how they should exercise evaluative responsibility. However, he fails to demonstrate how ideas of self-authorship and evaluative responsibility should apply to institutions and corporations who engage in practises of regulatory capture, immoral market proliferation, and offshoring practises. This means that whether those responsible for these behaviours should enjoy more or less autonomy than individuals, and whether the processes and conditions of self-directing their actions, or demonstrating evaluative responsibility are different between individuals and corporations/institutions remains unclear. Additionally, by restricting political authority to providing the provisions of autonomy, Colburn does not offer any role for the liberal state in using perfectionist directives or imposing laws to mitigate or prevent potential negative effects associated with these behaviours, such as the violation of liberal values and norms. Colburn’s stance provides provisions for individuals to self-direct their own lives. But this ignores certain societal contexts where one’s ability to pursue their self-authored ends are interfered with by external phenomena/circumstances. This means that Colburn fails to acknowledge that societal conditions external to the individual may inevitably affect the extent to which citizens can self-direct their lives and take appropriate evaluative responsibility.

For example, the existence of immoral markets can affect the extent to which one can make self-authored decisions, and demonstrate evaluative responsibility. This is corroborated by consulting the increased financial expenditure in the UK on advertising; which is itself designed to interfere, influence and in some cases manipulate one’s thinking towards specific ends. Advertising is responsible for the commodification of certain goods, and for the proliferation of consumerist thinking in society. In the UK alone, growth in advertising expenditure rose 7.8% in 2018 to total £20.5 billion, and exponentially rose a further 6.1%
throughout 2019, to total £21.8 billion (Wieser, 2019, p. 36). The increase in advertising falls disproportionately to digital advertising via multi-national corporations such as Google and Facebook (Wieser, 2019, p. 36). Through these platforms, the Advertising Standards Authority (ASA) have commented that aggressive marketing communications are more likely. They regard aggressive marketing as follows:

Marketing communications are aggressive if [...] they are likely to significantly impair the average consumer’s freedom of choice through harassment, coercion, or undue influence, and are therefore more likely to cause consumers to take transactional decisions they would not otherwise not have taken (Advertising Standards Authority, 2020)

With the growth of aggressive advertising, the extent to which citizens can exercise self-authorship without being manipulated or moved towards certain ends is harder to determine. While Colburn wishes to restrict the pre-emptive force of perfectionist directives which Raz favours, he overlooks the extent to which citizens can be manipulated towards ends by external practises present within modern society. Even if one assumes that individuals can self-direct their own ends without undue influence, and take appropriate evaluative responsibility, Colburn does not consider what it might take for multi-national corporations or financial institutions to do the same, or whether this should even be required.

In cases of offshoring practises, evaluative responsibility is also controversial. Take the case of deferred tax. In a 2006 report covering the then fifty companies with the largest market values listed on the London Stock Exchange, the net deferred tax liabilities totalled £9.296 billion in 2000, rising fourfold to over £36 billion in 2004 (The Tax Gap and Tax Justice Network, 2006). When one considers the financial impact of tax avoidance practises of multi-national corporations’ on national governments, it is difficult to claim that those who defer their taxes are exercising appropriate evaluative responsibility.  

In summary, it is not made clear by Colburn whether corporations or collective bodies ought to bear the same, more, or less evaluative responsibility for their actions than individuals. This is despite the wider sphere of influence that institutional/corporate behaviours enjoy. Colburn does not explicitly recognise the activities of financial institutions and corporations as

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18 The forecast predicted a 4.6% growth in 2020, referred to as: ‘more normalized growth’ (Wieser, 2019, p. 36). Though this has been interfered with because of the Covid-19 pandemic, the forecasts up to 2019 show increased expenditure on advertising, and a higher volume of aggressive marketing

19 As mentioned in chapter I, estimations of hidden offshore wealth range from between $21-32 trillion (Tax Justice Network, 2017)
things which ought to be held to a greater standard of evaluative responsibility. His failure to elaborate on this, and his prescribed limiting of imposing perfectionist directives beyond securing the conditions for autonomy means there is no evident way in which these behaviours can be disputed from the perspective of the autonomy-minded liberal state. This means that Colburn’s theory does not improve the prospects of liberal theory in recognising the need to regulate instances of regulatory capture, immoral markets, and offshoring practises. This is largely due to the lack of attention Colburn pays to concepts such as ‘evaluative responsibility’, and how this may be extended/applied/altered when it comes to more closely scrutinising the role and behaviours of financial institutions and corporations within society.

III. Securing a Motivation for Regulation: The Common Ground Between State Neutrality and Imposing Perfectionist Directives

Upholding state neutrality, and imposing perfectionist authoritative directives jointly recognise a need to regulate instances of regulatory capture, immoral markets, and offshoring practises. This common agreement emerges through consultation of the political justifications forwarded by perfectionist and anti-perfectionist liberal theorists in defence of liberal values and norms. These result in arguments for and against state-neutrality. This initiates a change in focus. Instead of asking whether the neutral or non-neutral liberal state represents the best theoretical model of liberal political authority, one tries to ascertain how a theoretical conception of the liberal state can be applied and implemented towards certain controversial features of society (Picketty, 2014, p. 330). Similarly, attention shifts from focusing on what the most important liberal values are. Instead, understanding how agreed upon, consensus liberal values and norms can be safeguarded from external, real-world threats to their instantiation occupies a central focus.

As outlined in chapter I, regulatory capture, immoral markets and offshoring practises effect the integral workings of political authority, and represent dangers to the effective instantiation of liberal values and norms relating to the citizen and political authority. Unchecked practises of political lobbying effects the extent to which citizens can effectively exercise their “Political Autonomy”. Collective voting and political participation can be trumped or overridden by the private vested interests of powerful lobbying groups. If political authority is “captured” by political lobbyists, this also damages the prospects of it abiding by the norm of “Public Good Prioritisation”. It becomes prone to forwarding ends which prioritise and are beneficial to private interests, rather than the public good.
Similarly, offshoring practises related to deferred tax damage the implementation of the norm of “Society as a Scheme of Social Cooperation”. This also effects the extent to which citizens are treated according to a “Free and Equal Standard”. Where select individuals and corporations can absolve or lesson their tax responsibilities, they are prioritising their own benefit, rather than cooperating in society to bring about mutual benefit to all. By failing to prevent these practises, political authority treats legally tax-paying citizens to a different standard than powerful individuals and corporations who defer tax. This violates the extent to which all are respected as free and equal citizens. Successfully implementing these seminal liberal values therefore implies taking a more active regulatory stance against the practise of deferring tax.

Lastly, aggressive advertising practises and the controversial commodification of goods violates the “No Harm Principle”, and damages the instantiation of a citizen’s “Extensive Basic Liberties”. Unchecked manipulative advertising practises disproportionately effect consumer choice and exhibit undue influence upon the reasoning processes of citizens. This interferes with the extent to which they can effectively instantiate individual freedom of thought and liberty of conscience. In effect, decisions may be unknowingly and involuntarily interfered with by the infiltration of market reasoning. Outlawing this influence is unrealistic. Decisions are often made with some degree of undue, involuntary interference. However, the absence of stricter regulatory checks and harsher criteria to restrict the influence of aggressive advertising makes this risk more prominent. Similarly, the controversial commodification of goods and services such as gambling, and the advertising and marketing used to incentivise and glorify its practises enhances the case for regulatory alignment. The imbalance between advertising the attraction of this practise, and failing to comment on the dangers, could potentially harm individuals. Hence, to protect the effective instantiation of these values, liberal political authority should take a more active, regulatory stance.

Extending the political justifications offered for these liberal values and norms demonstrates how the theoretical arguments offered by liberal theorists can reinforce this recognition of the need to regulate. This unearths the common agreement that adjudicates the dispute. With respect to the anti-perfectionist stance of state neutrality, remaining neutral between reasonable conceptions of the good implies taking a more active, containing role against unreasonable elements of society. It follows that where extensive lobbying practises and deferring tax can be regarded as ‘unreasonable’, the anti-perfectionist liberal state has a role in acting against these behaviours, containing them, and limiting their harmful effects. The
upshot is that the liberal state must uphold neutrality among reasonable conceptions of the good. Doing this effectively involves actively designing against unreasonable elements and features of society which undermine the rights and freedoms enjoyed by reasonable citizens. Hence, anti-perfectionist liberals can recognise the need to take a harsher stance against political lobbying, and tax deferral, to uphold the implementation of seminal liberal values and norms. The stance of neutrality is also qualified as important by anti-perfectionists because the liberal values and norms forwarded are significant values. Their instantiation by citizens deserves protection against real-world practises that harm it. The importance of liberal freedoms such as freedom of thought and liberty of conscience go beyond political values that are the object of consensus between reasonable conceptions of the good. They are central values that liberal political authority upholds, and should protect against potentially harmful real-world behaviours.

Perfectionist liberalism recognises the need to regulate these behaviours on the basis of the harm caused to citizens. The imposition of perfectionist authoritative directives to induce or direct citizens towards certain ends, or to impose stricter penalties against certain behaviours is a non-neutral perspective. However, it can be justified on the basis of recognising the need to protect individuals from harm. For perfectionists, the primary responsibility of political authority is to uphold the “No Harm Principle”. Therefore, even the possibility of harm provides reasons to take regulatory alignment more seriously. Designing against features of society that ruin the prospects of citizens fully exercising their liberal freedoms, and actively designing against behaviours that effect the instantiation of liberal values and norms can be straightforwardly recognised.

Perfectionist and anti-perfectionist liberal theorists justify these ends through divergent theoretical means. However, a theoretical basis within liberal theory to counteract harmful instances of these real-world behaviours is a significant point of agreement. This agreement is visible by extending the political justifications given by these theorists for liberal values and norms. It is attainable when questions concerning the effective instantiation and implementation of these values occupy a central focus. The fact that for anti-perfectionists, the justification of the need to regulate arises from extending the implications of state neutrality, and for perfectionists, recognising the need to regulate is an implication of imposing perfectionist directives is secondary. These disagreements may hold value with respect to ascertaining the best, all-things-considered conception of liberal theory. However, the fact that both theoretical perspectives can reach common agreement on the need to regulate against these behaviours
exemplifies the common agreement and compatibility of the perspectives. This bolsters the liberal theoretical perspective towards regulation.

III.I. Combatting Political Lobbying: A Case Study of the National Rifle Association

Strategies of political lobbying threaten the effective implementation and instantiation of liberal values and norms such as “Political Autonomy” and “Public Good Prioritisation”. This encompasses the rights of citizens to vote and politically participate, and organises political authority so it forwards ends consistent with the public good. The threat to the effective instantiation of these values occurs when, through successful political lobbying, the interests and wishes of citizens are subordinated under the aims and intentions of private, vested interests of individuals/firms/corporations. As a result, effective strategies of political lobbying which manufacture and infiltrate the aims and intentions of political authority violate the value of “non-Manipulation”, since successful political lobbying manipulates political authority.

The example of the National Rifle Association (NRA) in the United States clarifies these threats to the effective instantiation of these liberal values and norms. Research on the impact of the lobbying strategies of the NRA have determined the following: ‘In 2013, the NRA spent on lobbying $3,410,000, while in 2014, it spent $3,360,000’ (Musa, 2016, p. 1). Often, the lobbying funds target congress and policymakers, with the aim of influencing their views towards supporting gun ownership, and opposing gun-control legislation. Musa (2016, p. 3) identifies the following in support of this: ‘there is a strong and consistent relationship between a Congressional member’s position on firearm legislation and the amount of money received, political affiliation’ etc. (Musa, 2016, p. 3). Lobbying efforts of the NRA also extend to funding the campaigns of politicians who will forward policies favourable to them, or more often, to encourage politicians to vote down proposals which target their interests. A sub-strand of the NRA, the “Institute for Legislative Action” (ILA), is involved with running campaign ads, as well as being staffed by lobbyists who support and try to forward pro-gun legislation among policymakers. The impact of this is highlighted by Musa (2016, p. 5): ‘The institute focuses on establishing a circle of friends with legislators, so they can have access to lawmaking process. Thanks to ILA’s lobbyists, […] they [The NRA] managed to pass and stop 100s of bills that align with their firearm beliefs’. That these processes happen is not the fault of liberal theorists. However, these issues cannot be ignored by liberal theory. As mentioned, these practises are in violation of liberal values and norms pertaining to a citizens “Political Autonomy”. Citizens can still participate in elections. However, this exists in tandem with powerful private, vested interests of political lobbies, and these powerful lobbying interests disproportionately influence
government action. Therefore, the exercise of one’s political autonomy has less of a say than it should have in influencing the ends of political authority.

The political justifications offered by both perfectionist and anti-perfectionist liberals can accommodate and respond to real-world cases of political lobbying. This generates a common recognition of the need to regulate against these activities to safeguard liberal values and norms from the harmful effects of political lobbying. Beginning with anti-perfectionist state-neutrality, one may immediately question how the state can act against political lobbies. It seems self-defeating for an anti-perfectionist neutral state to bring in stricter laws preventing campaign funding from private bodies, or banning industry lobbyists from interfering in politics. This is because imposing stricter regulatory measures represents an imposition of values.

However, this misrepresents the position of state neutrality. The key justification for maintaining a neutral perspective is, as mentioned, to allow free discourse and debate among reasonable citizens, and for policy-decisions to be agreeable to each reasonable citizen’s public reason. However, this does not eliminate the vital role the anti-perfectionist state plays in containing and limiting the spread of elements of society which can be designated as ‘unreasonable’. Therefore, to maintain a neutral attitude among reasonable perspectives, the threat of unreasonable doctrines and ideas should be countered. This can be to protect citizens from harm, or it can represent intervention to safeguard and maintain the effective exercise of a citizen’s rights and freedoms.

Intervention from political authority against unreasonable features of society begins once a clear understanding of what constitutes an unreasonable doctrine/idea/citizen is made clear. Quong (2011, p. 291) defines this as follows: ‘Unreasonable citizens reject at least one of the following: (a) that political society should be a fair system of social cooperation for mutual benefit, (b) that citizens are free and equal, and (c) the fact of reasonable pluralism’. He defines unreasonable doctrines as doctrines whose ‘beliefs directly contradict the fundamental political values of a liberal democratic regime’. The political lobbying efforts of the NRA violate (a) and (b). A justification for political lobbying is one which fails to view political society as a scheme of cooperation for mutual benefit. The purpose of lobbying that the NRA engage in aims to receive policies which are to their benefit, or at least, which do not directly disadvantage them. Lobbyists have no desire for the mutual benefit for the whole of society in their activities. The purpose of NRA lobbying is designed to benefit a select group; in this case the NRA. Similarly, NRA lobbying upsets the extent to which all are regarded as free and equal.
This is because when successful, political authority disproportionately identifies with the private, vested interests of the lobbying group, rather than the needs, wants or desires of the public. This entails that not all citizens are treated on an equal footing. Rather, a select few groups have more of a say than others in determining political outcomes, and shaping the aims and intentions of political authority. NRA lobbying can thus be regarded as unreasonable for anti-perfectionists, which is tantamount to recognising a need to regulate these activities, and counteract these negative effects, while still maintaining a stance of neutrality among reasonable doctrines.

Quong (2011, p. 299) sheds light on this, claiming that containment must go above and beyond a simple protection of basic rights and liberties. Rather, it must aim to undermine/restrict the spread and articulation of ideas that reject (a) (b) and/or (c), and this is essential to maintain stability within society. He (2011, p. 300) argues that it is ‘essential that doctrines which deny the freedom and equality of persons, or the idea of society as a fair system of cooperation’ do ‘not become so prevalent that they threaten to undermine the fundamental ideals of a well-ordered liberal regime’. For a liberal democratic regime to be stable, it must generate its own support (Quong, 2011, p. 186). In other words, citizens must come to accept and support the society in their own way, according to their own reason. While the state must remain neutral between their reasonably held beliefs, allowing unreasonable features of society to prosper damages the extent to which individuals can accept political authority in this fashion. Therefore, where NRA lobbying proliferates, the state will become less stable, as increasingly, citizens may begin to reject the state on the basis of its failure to accord sufficient weighting to the public good, or safeguarding the credibility and effectiveness of exercising the right to vote and politically participate, by limiting the influence of private lobbying groups. In effect, stability is more likely in situations where unreasonable doctrines/ideas are successfully contained. The policy of containment of unreasonable elements in society is thus not an over-extension of liberal state power. In fact, proceeding with such containment is implied in the political justifications offered for values and norms pertaining to the individual and society. Protecting the instantiation and implementation of the liberal values of “Political Autonomy” and “Public Good Prioritisation” entails that unreasonable elements of real-world societies society that threaten the instantiation of rights, or try to disproportionately impose private vested interests ahead of public goods can be responded to. The fact that these values and norms carry political justifications lends itself to considering real-world questions of implementation. In this scenario, upholding the stance of state neutrality entails designing against the negative
consequences associated with the lobbying practises of the NRA, on the basis of protecting the instantiation of these liberal values and norms.

Imposing perfectionist directives to cases of political lobbying also uncovers a recognition to regulate. As developed in chapter two, a prominent justification for perfectionist directives is that by following them, citizens are better able to reach their ends, or can be pre-empted towards desirable outcomes. Perfectionist directives also prevent harm, and can be imposed to uphold the implementation of the “No-Harm Principle”. Raz (1986, p. 400-01) states that ‘the only purpose for which the law may use its coercive power is to prevent harm’. This extends to the claim that to protect and safeguard citizens’ interests, political authority has a requirement to limit harm, and that it may use and impose perfectionist authoritative directives to this end.

Allowing perfectionist authoritative directives a role in limiting harm provides a robust defence and extension of the harm principle. In its original form, the harm principle focuses on individual actions, and the criteria through which intervention in the lives of individuals is deemed appropriate. In effect, if an individual action causes harm to other individuals, the state can intervene and prevent this. While an important principle for all liberal theorists, the potential harm to individuals that might be caused by institutional and corporate activities is not considered. Moreover, the way in which harmful behaviours limit the potential for individuals to make autonomous decisions, and conceptual clarity about the different gradations of harm is not elaborated on by liberal scholars.

Raz (1986, p. 413) therefore extends the role that considerations of harm caused to citizens might have in licensing a more interventionist role for perfectionist liberal authority: ‘My discussion will revolve round the somewhat wider principle which regards the prevention of harm to anyone (himself included) as the only justifiable ground for coercive interference’. For Raz, harm is no longer restricted to the domain of individual action. He claims the following: ‘harm’ in its ordinary use has a forward-looking aspect. To harm a person is to diminish his prospects, to affect adversely his possibilities’ (Raz, 1986, p. 413-14). Additionally, for Raz, (1986, p. 414), the causing of harm to another can be understood as having the following effect: ‘one harms another when one's action makes the other person worse off than he was, or is entitled to be, in a way which affects his future well-being’. Wherever one is made worse off, or where the prospects of individuals making autonomous decisions and acting in their own interests is interfered with, the need to promote and defend the interests of
citizens licenses intervention. This can be achieved through imposing either coercive or non-coercive perfectionist directives.

This is important with regards to questions concerning regulation. In the case of NRA lobbying, the self-serving interests of political lobbyists interfere with and modify the aims and intentions of political authority in serving the public good, as well as lessening the significance of individual political participation. On Raz’s understanding, political lobbying such as this does bring about harm. Citizens are worse off as a result of political lobbying from bodies such as the NRA. Furthermore, where lobbyists cannot exert influence on the decisions of political authority, it is free from this distraction, and thus more likely to act in accordance with the public interest by imposing directives which help further the ends of citizens. This can also ensure that individual rights to vote and politically participate are exercised to their full effect. If the conflict between responding to the wishes of citizens and accommodating lobbying interests subsides for political authority, citizens will have a more active role in electing governors. Subsequently, political authority faces less of a dilemma over favouring public ends, or private, vested interests (such as those of the NRA).

In summary, the harm caused to citizens through political lobbying illustrates the need for perfectionist liberal authority to impose directives which lessen its impact. A similar agreement on the need to regulate can be reached by anti-perfectionist liberals, on the grounds of containing unreasonable elements of society, and safeguarding the exercise of rights and freedoms of reasonable citizens. These applications are knowable by extending the political justifications offered by the theorists for liberal values and norms relating to “Political Autonomy”; “Public Good Prioritisation”; the “No Harm Principle”; and the “Norm of Non-Manipulation”. This common agreement adjudicates the dispute surrounding state neutrality. While these theoretical stances are applied to real-world problems, and the implementation of liberal ideas becomes a more central focus, disputes are felt less intensely.

III.II. Deferred Tax and the Tax Gap

The adjudication of the neutrality dispute is reinforced when applied to offshoring practises. An anti-perfectionist neutral perspective and a perfectionist liberal stance can recognise the

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20 This is particularly prevalent in the US currently surrounding calls for gun control and regulation. The NRA and NRA lobbied US Senators and Representatives increasingly argue against stricter gun control, on the basis of the US constitution, and the Second Amendment “Right to Bear Arms”. The wider US electorate, effected by mass shootings gun related crimes poll consistently in favour of stricter gun regulation. Political authority is thereby handicapped in balancing public and private wishes, and part of this problem is exacerbated by the disproportionate influence and lobbying of the NRA.
need to regulate against excessive deference of tax. This is further clarified in a UK context given the contribution of deferred tax to the widening Tax Gap.

Her Majesty’s Revenue and Customs (HMRC) define the Tax Gap as follows: ‘The difference between the amount of tax that should, in theory, be paid to HMRC, and what is actually paid’ (HMRC, 2020, p. 3). The latest figures estimate a Tax Gap total of £31 billion (HMRC, 2020, p. 7). There are several processes identified by HMRC (2020, p. 13) that contribute to accelerating its growth:

The tax gap is composed of a range of behaviours: non-payment, use of avoidance schemes, legal interpretation of the tax effects of complex transactions, error, failure to take reasonable care, evasion, the hidden economy and criminal attacks on the tax system.

These figures represent difficult reading for liberal theorists who wish to implement the value of “Society as a Scheme of Social Co-operation”.

The existence of the Tax Gap illustrates that a significant number of individuals and corporations fail to contribute what they owe in revenue to national jurisdictions. It is plausible that if society was a system of cooperation for mutual benefit, a Tax Gap of £31 billion would not exist, as all individuals and firms would recognise the need to contribute. This means that the widening Tax Gap serves the interests of those individuals and corporations that can avoid paying tax. This illustrates a violation of other seminal liberal values and norms, such as the “Free and Equal Standard”, designating that all citizens in society are to be afforded the same rights and responsibilities, and held to the same standards.

Offshoring strategies such as deferred taxation help to widen the Tax Gap. Deferred tax represents a deferral on payment of tax, often granted to or practised by big businesses and multi-national corporations. It is harder to measure the precise figures of this offshoring practise, due to the secrecy bound up with it, and the lack of transparency from corporations and institutions about tax which they may be deferring. Moreover, the legal status of deferring tax is not settled. As a result, political jurisdictions are reluctant to intervene. This has the following consequence: ‘deferred tax charges […] can be, and should be, excluded from any consideration of taxes to be paid when measuring the Tax Gaps’ (Tax Gap; Tax Justice Network, 2006, p. 17). If official measurements of the Tax Gap fail to take deferred tax into account (the 2020 HMRC account fails to take it into consideration, for example), then the Tax Gap could potentially be far higher than estimates predict. As a 2006 report carried out by the Tax Justice Network suggests: ‘It seems very unlikely that most of the […] deferred tax shown
on the balance sheets of the companies subject to this review will be paid’ (Tax Gap; Tax Justice Network, p. 32). One could therefore be sceptical over official HMRC figures which measure the gap. The resultant lack of clarity surrounding how much deferred tax effects national governments, and the low expectations that it will be paid, entail that this is a pressing issue for modern governments. The remedy suggested by the report states the following: ‘It can only be resolved if an indication of the likely timing of the liability is provided, and there is no reason why this should not be done’ (Tax Gap; Tax Justice Network, 2006, p. 32). At present, since no timing is given surrounding deferred tax, repatriation of revenue seems unlikely. Moreover, because there is little idea as to when such tax may become due, corporations who defer tax may be encouraged to keep money offshore, or to engage in other offshore strategies to further conceal tax revenues (Shaxson, 2012, p. 129).

A recognition of the need to impose regulatory measures to reduce the Tax Gap, and prevent and repatriate deferred tax emanates from an anti-perfectionist neutral stance, and a perfectionist conception of liberal authority. As mentioned, deferred tax and other strategies which widen the Tax Gap lead to a situation where the value of “Society as a Scheme of Social Cooperation” cannot be effectively implemented, and the idea that rights and freedoms should be afforded through a “Free and Equal Standard” is difficult to uphold.

The importance of attaining tax revenue is clear. As Sugin (2004, p. 1998) explains: ‘Taxes are the mechanism by which the government raises revenue, so that it can be spent in guaranteeing basic liberties and satisfying the requirements of democratic equality’. Accordingly, though Rawls does not commit his theory to a specific design of the tax system, and neither he, Quong or other anti-perfectionist liberals recommend a specific tax policy, this does not mean that acquiring tax revenue is not important. 21 From the perspective of liberal theory

the only major limitation on a tax system […] seems to arise from the revenue needs of the basic structure as a whole; it would preclude a system of taxation that collected insufficient total revenue to support the public institutions […] The government must raise sufficient resources to provide a social minimum (Sugin, 2004, p. 1999).

Given the clear threat to the instantiation of liberal values pertaining to the idea of society as a scheme of social cooperation for mutual benefit, anti-perfectionists should combat cases of deferred tax and other offshoring practises aimed at widening the Tax Gap. In other words, if

21 There is no specific liberal preference for a flat or proportional tax rate. The analysis of philosophical principles need not entail or require any commitment to a specific tax system (Sugin, 2004, p. 1998)
liberal theorists are to recognise these values as ones worth defending, they would recognise a need to amend situations whereby they are not instantiated or cannot be implemented in the world.

As was the case with NRA lobbying, the anti-perfectionist state can maintain an attitude of neutrality among reasonable doctrines, while recognising the deferral of tax as unreasonable. In virtue of violating the idea of society as a scheme of social cooperation for mutual benefit, a policy of containment of such practises can commence. Hence, with regards to recognising the need to bring about regulatory principles from the perspective of the anti-perfectionist neutral state, all that is required is an acknowledgement of the unreasonableness associated with these practises. Among the criteria of something being recognised as unreasonable is its violation of the idea of society as a scheme of social cooperation for mutual benefit. Since anti-perfectionists can recognise that strategies of deferred tax interfere with the instantiation of this liberal value, the identification of this practise as unreasonable and in need of regulation is discernible.

This is further corroborated on the basis of protecting the liberal values pertaining to the “Free and Equal Standard”. Recent UK data confirms that not enough revenue is collected to secure individual basic rights and liberties, or to help those who are worse off. The Office for National Statistics’ (ONRS) 2020 report on household inequality states as follows: ‘The income of the richest 20% of people was over six times higher than the poorest 20%, while the richest 10% received 50% more income than the poorest 40%’ (Webber, Mann, 2020, p. 2). This is not representative of a society which maintains the protection and instantiation of the rights and liberties of all. Although the ONRS 2019 report acknowledges that further taxes and benefits reduce household inequality between the poorest and richest (Webber, O’Neil, 2019, p. 9), the existence of the Tax Gap limits the extent to which this can occur, since the tax and benefits that might be used to foster greater equality is inaccessible to national governments. Consequently, if this is not contained and acted against, this limits the extent to which the liberal state can ensure that basic rights and liberties of individuals can be secured.

The imposition of perfectionist directives can also be directed towards the Tax Gap. Due to the difficulties in quantifying the scale of deferred tax, anticipating how the problem is to be understood is complex. The scope and strength of the directives imposed is hard to quantify, making the overall assessment and extent of harm caused to citizens difficult to discern. As a result, unlike the motivation to regulate NRA political lobbying, the need to protect citizens from harm cannot do all the justificatory work here. However, other facets surrounding the imposition of perfectionist directives can enable perfectionist liberal authority to recognise the
need to regulate. Part of the justification of perfectionist directives is that they are able to encourage certain actions, and make others harder to perform. Wall (2009, p. 104-05) illustrates this:

Perfectionists hold that the state should take an active role in creating and maintaining social conditions that best enable their subjects to lead good lives […] thus making it plausible to believe that the state (or state officials) have a duty to encourage some pursuits and discourage others.

This is corroborated by Raz (1986, p. 417), who argues that perfectionist directives can take different forms, both coercive and non-coercive. Subsidies for certain activities can encourage certain pursuits, while penalties and coercive intervention can limit other undesirable actions.

One would be hard-pressed to state that deferred tax, or the widening of the Tax Gap represented a good, desirable action, or something that the state should encourage, on the grounds of it enabling all citizens to lead good lives. Offshoring schemes such as tax avoidance and tax deferral exist in virtue of the fact that the payment of tax is involuntary. Therefore, it is far more likely that perfectionist directives would be targeted towards making these practices more complicated, on the basis that doing so is more likely to protect tax revenue.

As a result, the role of the pre-emption thesis in facilitating and requiring action of the desired kind can be consulted. As with anti-perfectionist liberalism, tax revenue is required by political authority to foster an environment which secures basic rights and liberties of individuals. Perfectionist liberals do not expect tax to be paid on the grounds that corporations and institutions recognise the importance of their role in supporting and upholding just institutions. Neither do they expect citizens to pay tax for these reasons. However, perfectionist liberals can utilise authoritative directives to pre-empt action of the desired kind. As Raz (1986, p. 67) states: ‘To the extent that legitimate authorities have power over us, the pre-emption thesis governs our right attitude to them’. Wishing to prevent an increase in deferring tax and a widening of the Tax Gap is enough to implement directives which limit its practise. While citizens and corporations may not recognise the overarching benefits of tax, perfectionist authoritative directives can be binding even if those they bind fail to agree to them. This is achievable providing that authoritative directives requiring the payment of tax are attached to penalties to individuals and corporations if such tax isn’t paid. Where this occurs, those responsible for deferring tax acquire prudential reasons for following the relevant authoritative directives.
In conclusion, a joint recognition on the need to regulate deferred tax, and to impose measures to stall the widening Tax Gap can be reached by perfectionist and anti-perfectionist liberals. The common feature of both is represented by the need to protect tax revenue, as this represents the basis through which the basic rights and liberties of individuals can be secured, and where the idea of society as a scheme of social cooperation for mutual benefit can be respected. While perfectionist liberal authority cannot straightforwardly discern the harm associated with the widening Tax Gap, and deferred tax, there is still a clear motive to prevent the Tax Gap from being widened. Since there is little evidence to suggest that this represents a desirable pursuit which furthers liberal values and norms, the perfectionist state can design against it, and pre-empt individuals and corporations into paying tax. Things are less complicated for the anti-perfectionist. As with the case of NRA lobbying, deferring tax and a widening Tax Gap represent unreasonable elements of society; on the grounds that it threatens the effective implementation of seminal liberal values pertaining to “Society as a Scheme of Social Cooperation” and the “Free and Equal Standard”. Once more, by extending the political justifications offered for these liberal values and norms, it is clear that both perfectionist and anti-perfectionists recognise the need to regulate offshoring practises that contribute to deferred tax, in spite of their divergent views surrounding the permissibility of state neutrality.

III.III. Harmful Advertising Practises and Controversial Good’s Commodification

Finally, the common recognition between perfectionist and anti-perfectionist liberal theorists relating to the need to bring about regulatory measures is illustrated through a case study of harmful advertising practises, and the controversial commodification of goods. Both theories acknowledge the importance of protecting citizens from external threats. This is justified on the basis of the need to protect citizens from harm, in accordance with the “No Harm Principle”. It also results from the need to safeguard liberal values, such as the rights of citizens to exercise freedom of thought and liberty of conscience, consistent with the value of “Extensive Basic Liberties”. Additionally, both camps wish to protect the extent to which individuals can make autonomous decisions, free from manipulation, meaning that the need to instantiate and implement the liberal value of “Non-Manipulation” also leads to common agreement on the need to regulate. Upholding these liberal values and wishing to protect their instantiation licenses perfectionist and anti-perfectionist liberals to take a sterner stance against certain harmful advertising practises, and the controversial commodification of certain goods.

To reiterate from section II, advertising practises that are harmful for liberals engage in aggressive marketing communications. These refer to strategies which impair and manipulate
the consumer’s freedom of choice through harassment, coercion, or undue influence. This means that consumers are more likely to make decisions they otherwise wouldn’t have done (ASA, 2020).

Adopting aggressive marketing strategies involves purposefully altering the decision-making processes of the consumer. The alteration is brought about by calculated methods which manipulate the consumer into finding something appealing that they would be far less likely to find appealing had they not been exposed to the advert.\(^{22}\) Villaran (2017, p. 480) clarifies this, stating that manipulative advertising practises present in aggressive marketing practises fall on a continuum between rational persuasion, and coercion. Advertising techniques seldom take the form of public reason discourses, whereby detailed, clear and reasonable reasons for accepting a certain perspective are offered, and can then be accepted by the participant on the condition that it accords with their beliefs/reasons. Similarly, advertising techniques are not directly coercive, whereby the aim is to forcibly create action of the desired kind, through the threat of punishment or the promise of rewards. Rather, Villaran (2017, p. 480) states that ‘between rational persuasion and coercion, we find manipulation’. Consequently, he states that the majority of adverts have a manipulative aspect.

The forms that manipulative advertising strategies can take are illustrated by Beauchamp (2001, p. 479). He refers to the following common strategies: ‘incentives, strong offers, indoctrination, propaganda, emotional pressure, irrational persuasion, temptation, seduction, and deception’. In the modern world, the canvas of platforms upon which these advertising strategies can be practised is vast, encompassing television adverts, and increasingly, through online platforms and social media. This has led to more targeted ads, and online algorithms to direct consumers towards specific adverts.\(^{23}\) This crowded market partly explains the earlier remarked 6.1% annual increase in UK advertising expenditure to £21.8 billion in 2019. Resultantly, adopting manipulative strategies and aggressive marketing

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\(^{22}\) There is a further distinction to make between being involuntarily or voluntarily exposed to advertisements. However, very few scholars have offered conceptual clarification with regards to this, and their differential impacts. It is plausible to presume that mass exposure to advertising occurs through both voluntary and involuntary means, and aggressive advertising strategies play a part in this exposure.

\(^{23}\) Increasing academic attention is given to evaluating the role of algorithms, understanding how they work and their potential harmful effects, and how it effects individual’s free expression and liberal democratic rights of participation. For more information, see (Aytac, 2022) and (Dillet, 2022). On top of this, the use of targeted ads on social media platforms has become an increasingly important political issue in Western, liberal democracies; particularly after the Cambridge Analytica scandal and the Capitol Hill Riots.
communications has become a means to stand out. In effect, a continual pushing of the boundaries with regards to what represents acceptable advertising practises ensues.\textsuperscript{24}

Manipulative advertising strategies which lay between direct coercion and rational persuasion also rely upon deception. This is understood by Sher (2011, p. 100) to represent ‘false claims, important omissions, or misrepresentations of what the facts mean to bring about consumer misconceptions’. In other words, deceptive practises occur in any situation whereby the advert aims to appeal to something other than the reasoning faculties of the audience to accept their points, and focuses on exposing vulnerabilities instead. Prominent strategies to do this include hiring well-regarded spokespeople to deliver the speech in the advert, which is designed to expose our vulnerability of placing great value upon people who are collectively admired, regardless of expertise and experience they have with the products they sell, and even without paying sufficient attention to what is being said.

These stated forms of deceptive manipulative advertising practises are utilised prominently by gambling companies. A House of Commons 2020 cross-party inquiry into the regulation of the gambling industry found the following:

\begin{quote}
Across all media, with the exception of online advertising for which there is limited trend data available, the estimated spend on gambling ‘paid for’ advertising has steadily increased year on year from £264,657,325 in 2015 to £328,945,916 in 2018. This represents a 24% increase from 2015 to 2018 (Woodhouse, 2020, p. 5).
\end{quote}

Examples of manipulative practise which the report highlights indicate that ‘vulnerable people were bombarded with gambling advertisements’, (Woodhouse, 2020, p. 6) with up to 66% of those surveyed claiming that they involuntarily were exposed to gambling advertisements and logos on social media. Furthermore, gambling logos were on screen as sponsors or as full adverts 70% of the time during sports broadcasts in 2019; and that adverts panicked consumers and created an inappropriate sense of urgency with Bet Now! Packages. This was not matched with the correct amount of detail concerning the potential negative consequences of gambling, and the report found that on the whole, too little emphasis was placed on encouraging moderation. (Woodhouse, 2020, p. 9).\textsuperscript{25}

\textsuperscript{24} While regulatory bodies exist such as the Advertising Standards Authority which aim to lessen the impact of these types of advertising practises, my interest is in how liberal theory can recognise the need to regulate these behaviours. Hence, I overlook detailed considerations of the success of the ASA.

\textsuperscript{25} Recent gambling law changes have outlawed the use of stars to target under-18s in their advertisements. There are also proposals to ban the airing of gambling adverts during the playing time of sporting events. Hence, the issue is acknowledged by political authority, and some legislative measures are being introduced. However, further
Deceptive practises were also found to be common, whereby gambling is equated with the elation at the earning off riches. Elsewhere, it is suggested that gambling can be a solution to one’s financial concerns (Woodhouse, 2020, p. 7). Additionally, reputable celebrities and public figures repeatedly provided commentary to the adverts, playing on the cognitive vulnerabilities of individuals to take the words of reputable figures more seriously, while paying less attention to the potentially damaging effects of gambling itself. Taken together, this range of advertising strategies highlight a concerted attempt to manipulate consumers to gamble; without paying adequate and proportional attention to the harms and risks associated with its practise.

The manipulation present in these advertising practises challenges the effective instantiation of the liberal value: “Extensive Basic Liberties”. Implied within the instantiation of this value is that individuals within a liberal state should be free to make decisions and form opinions, as well as direct their own life without being manipulated by external bodies (this is encompassesd by the maxims of free thought and liberty of conscience). Creating the provisions for liberty of thought does not entail that citizens should not be exposed to any external influences. However, when the practises of advertising manipulate and infiltrate the ability of citizens to make reasoned, informed decisions, then perfectionist and anti-perfectionist liberal theorists should take questions concerning regulation more seriously.

For anti-perfectionists, recognising the need to regulate has thus far resulted from diagnosing specific features of real-world societies and practises as unreasonable. With the examples of political lobbying and deferred taxation, the diagnosis of these behaviours as unreasonable is due to the preferential treatment that certain individuals or firms have received as a result of these behaviours/practises. This challenges the idea that all are mutually benefitting from society. These behaviours are unreasonable, and in violation of the value of social cooperation for mutual benefit, because it is citizens who lose out at the expense of powerful individuals, and/or corporations.

Manipulative advertising practises such as those described above do not straightforwardly follow this pattern. Firstly, because they are targeted at citizens, and tend not to attempt to influence political authority, the success or failure of different advertising strategies does not affect political authority by undermining its power as strategies of political lobbying do; nor does it damage the extent to which political authority can perform its ends by clarity on the harm caused, and additional arguments for potentially additional regulatory measures can be ascertained by analysing the issue from the perspective of liberal political theory.
depleting its revenue stream, as deferred taxation does. Secondly, because each individual will be susceptible to manipulative advertising strategies in different ways, it is difficult to sustain the idea that the existence of these strategies causes problems for the mutual benefit of all within society. Since the success or failure of advertising practises does not lead to political authority granting special privileges to advertising firms, and because the extent to which all mutually benefit from society is not under threat or altered as a result of advertising practises, one struggles to recognise them as unreasonable in the way that anti-perfectionists define a doctrine/idea as unreasonable.

While it is difficult to designate aggressive advertising practises as unreasonable, other facets of the anti-perfectionist perspective can be applied to the issue which offer greater assistance in relation to recognising the need to regulate. This stems from identifying and re-asserting the political values which represent liberal values and norms as values which ought to be protected and safeguarded. Once one accepts this, the case for defending these values against potential violations, and safeguarding their instantiation against external threats becomes more abundant. Quong (2011, p. 159) offers support for this:

‘Political liberalism is grounded in the fundamental political values of freedom, equality, and fairness. Each of us ought to recognize these as very great values, ones which should regulate the way in which we treat our fellow citizens. The normative conclusions of political liberalism thus provide us with powerful reasons to behave in certain ways, and not others, in our current world’

This claim reverts back to the overlapping consensus on a set of political values which grounds and justifies the liberal state. The claim is that liberal values and norms which comprise the political conception can and should be recognised as great values, worthy of safeguarding. This is reinforced by Larmore (1990, p. 346), who argues that the political association secured once we collectively affirm liberal values and norms is very significant. It is more than ‘an object of consensus’ (Larmore, 1990, p. 353-54). Rather, they are values which one should expect political authority to actively safeguard and maintain. Anti-perfectionists are doing more than recognise the values as significant, and in consistency with liberal thought. Rather, they recognise them as great values, worthy of protection. This implies that the common ground and consensus reached on these values and their protection and maintenance in society involves, where appropriate, the need for greater intervention from political authority.

Extending the political justifications given for these values to situations in the real world which threaten their effective instantiation adds further credence to this. The potential attack on
an individual’s “Extensive Basic Liberties” by aggressive advertising strategies shows how valued the common ground achieved is. It is the responsibility of liberal political authority to uphold these values. Part of upholding this common ground, in specific real-world instances, can be to design against or counterbalance the threat posed by aggressive advertising practises on the effective instantiation of these values.

Perfectionist liberals can also recognise the need to regulate as a result of the need to safeguard liberal values and norms. Their justification stems from the requirement to protect citizens from manipulative advertising practises which make it harder for them to make autonomous decisions. The claim is that where manipulative advertising practises exist, and are successful, this places significant external influence upon one’s decision-making processes. Such external influence is in conflict with the perfectionist liberal understanding of autonomy, which likens autonomous decision-making to self-authorship; the idea that one’s life goes a certain way because they choose it to be that way. Where citizens are manipulated by aggressive advertising practises, the idea that they have self-authored and directed their ends is questionable. Perfectionist liberals thus maintain that it is the prospect for behaving autonomously and self-authoring one’s life which is most at threat from harmful advertising practises. Therefore, the state protection and promotion of the provisions for autonomy implies acting against aspects of society which threaten/limit the possibility of citizens to make autonomous decisions. The justification for this claim lies in recognising that where deceptive, advertising strategies are used, the ability of individuals to make autonomous decisions is lessened.

However, the idea that autonomy is under-threat by certain advertising practises has been challenged. Firstly, increased advertising and competition between companies results in a wider awareness of options available for the consumer. It can also lead to making different choices visible, and as such, seemingly widens the scope of one’s autonomous choice. Some counterarguments to the perfectionist position go further than emphasising the positive benefits of advertising. They disagree with the claim that manipulative advertising strategies threaten the autonomy of all those who are exposed to them, as this likens humanity to a species of unintelligent, gullible and unsophisticated individuals, prone to many forms of manipulation and lacking the wherewithal to recognise it.

These claims are echoed by Brennan and Jaworski (2015). They aim to demonstrate that the consequences of manipulative advertising practises are not detrimental to the instantiation of an individual’s “Extensive Basic Liberties”. Also, they claim that the connection between
manipulative advertising practices and the controversial commodification of goods doesn’t hold. Consequently, it is unclear that advertising practices and any goods they subsequently commodify represent any major threat to autonomy. For the charges against aggressive advertising practices to be genuine, it must be the case ‘that markets in certain goods communicate, signal, express, or symbolize the wrong motive or attitude […] or communicates selfish or other bad motives, because of a meaning that attaches to market activities’ (Brennan, Jaworski, 2015, p. 1055). However, Brennan and Jaworski claim that just because there is a market in a specific good/service that some disapprove of, or that runs of the risk of negative consequences, this does not entail that a given commodification is, all-things-considered, controversial. Secondly, it does not entail that individual autonomy is interfered with in any significant way. They (2015, p. 1077) argue that ‘we have to ask whether disgust reactions are reliable guides to right and wrong. We also have to ask whether using these disgust reactions as the basis of a social code about the sacred and profane is worth the cost’. Similarly, we should not deduce, as a result of potential or measurable disdain towards a certain trade or industry, that the reason for its popularity must be consequential of a lapse in one’s ability to make autonomous decisions. Neither should we conclude that the success of a particular trade/industry is because of the success of manipulative, harmful advertising practices and strategies. In reality, the reasons why some advertising techniques and strategies are successful, and consequently, that some goods/markets are subsequently commodified is complex. For Brennan and Jaworski, no secure motivation for the regulation of harmful advertising practices can emanate from a desire to safeguard individual autonomy. This is because recognising any need to regulate against harmful advertising practices depends upon a pre-existing aversion to certain trades, or being susceptible to accepting simplistic explanations for why complex market decisions and trends come about.

Brennan and Jaworski’s claims put the burden of proof back on to liberals. In effect, more is needed to demonstrate that controversial goods commodification and a loss of autonomy are clear results of harmful advertising practices. Despite this, reaching a common agreement between perfectionist and anti-perfectionist liberal theorists on the need to regulate can still occur. Harm remains the essential rubric, and effectively implementing the “No Harm Principle” demonstrates this.

Brennan and Jaworski fail to pay adequate attention to the duty of political authority in safeguarding individuals from potential, as well as actual harms/threats. One can consistently accept that objectively asserting that a commodified good is brought about by
harmful/manipulative advertising strategies carries a heavy burden of proof. However, this does not mean that taking precautions against the possibility of certain activities causing harm does not represent a worthwhile reason for authoritative intervention. With the case of gambling, it is not true that all individuals that gamble end up in hardship; neither can one assert that the reason all gamblers gamble is because they have fallen victim to manipulative advertising strategies, or because they lack autonomy. However, one can recognise that a disproportionate or rapid spend on gambling advertising could contribute to increasing the potential harm for citizens. Regulatory alignment in the gambling industry and other industries which utilise manipulative or aggressive marketing strategies can occur on the basis of their potential to cause harm. It needn’t be the case that the scale of actual, measurable harm occurs before intervention from the liberal state takes place.

Therefore, while there is some disagreement about the extent to which commodification of goods engenders negative effects, this is largely redundant. Perfectionist and anti-perfectionist liberal theorists can recognise the need to regulate aggressive advertising strategies and the controversial commodification of goods on the basis of their potential to cause harm, as well as the actual harm they cause. On the basis of the advertising techniques that have been surveyed, it is clear that many prominent markets which have developed such as the gambling industry are harmful to individuals, or have a high potential of causing harm. With the gambling industry, when left unchecked, harmful advertising practises have led to the controversial commodification of certain goods/activities. Furthermore, where individuals are enticed into something like gambling as a result of exposure to harmful advertising practises, it is clear that their freedom of thought has been tampered with, and their capacity to make autonomous decisions that advances their interest is lessened. Both perfectionist and anti-perfectionist liberals can jointly recognise a need to regulate manipulative advertising practises, especially where a connection exists between harmful advertising practises, and the controversial commodification of certain goods.

VI. Conclusion – Commonality Adjudicates the Neutrality Dispute

In light of the similarities and the shared recognition on the need for regulation between perfectionist and anti-perfectionist liberal perspectives, the dispute surrounding state neutrality can be adjudicated. The neglect of issues surrounding the implementation and safeguarding of liberal values and norms has led to theorists over-emphasising the severity of their disputes. By switching focus to the implementation and safeguarding of liberal values and norms towards
questions concerning regulation, one can see that more unites than divides perfectionist and anti-perfectionist liberals, a realisation that is consistently and problematically overlooked.

Once ideas surrounding the implementation and safeguarding of liberal values and norms take a central focus, and the political justifications offered for these values and norms are extended to real-world issues, the quarrels surrounding which liberal theoretical perspective represents the most theoretically astute conception of liberal authority dissipates. When it comes to questions concerning regulation, which bear upon the effective implementation and instantiation of liberal ideas, common recognition of the need to regulate can be reached from both an anti-perfectionist neutral perspective, and a perfectionist, non-neutral perspective. Therefore, when evaluating the role of the liberal state in safeguarding and maintaining the effective instantiation of liberal values and norms, one is no worse off in adopting the recommendations of an anti-perfectionist neutral state, or accepting the role of perfectionist authoritative directives when counteracting the negative features of regulatory capture, immoral markets, and offshoring practises.
Chapter IV


Abstract: Common agreement can be reached among perfectionist and anti-perfectionist liberals with respect to processing principles of regulation. Perfectionist liberals can advance regulatory principles on the basis of preventing harm to citizens, or to safeguard and preserve the ability of citizens to make autonomous decisions. Anti-perfectionists can process regulatory principles by preserving values which comprise an overlapping consensus. Political authority can also enact what reasonable citizens engaging in public reason deliberation agree to. This commonality between the liberal stances rebuts prominent criticisms of anti-perfectionist liberalism. These include claims against the “shallow foundations” of relying upon stability over truth, and distrust surrounding the function of public reason. Additionally, charges of controversial sectarianism surrounding the prioritisation of reasonable citizens are redundant.

Perfectionist and anti-perfectionist liberalism can theoretically justify a process whereby real-world cases of regulatory capture, immoral markets, and offshoring practices can be responded to. The perfectionist liberal process for developing regulatory principles stems from the requirement of the liberal state to prevent harm, preserve autonomy, and allow individuals to live according to their own conception of the good. These claims can be interpreted from arguments offered by Raz, and are supported by accounts of moderate perfectionism. The anti-perfectionist strategy for developing a process for regulation can be extracted from the arguments offered by Rawls and Quong. This stems from political authority’s role in implementing the values comprising the overlapping consensus, and through relying upon the proceeds of public reason deliberation.

The similarity between both liberal theoretical perspectives is clear once questions concerning regulation take a central focus. This enables the following criticisms of anti-perfectionist liberalism to be responded to:

1. Anti-perfectionist Liberalism rests upon “Shallow Foundations”.
2. Trusting the proceeds of public reason is mis-placed.
3. The conception of ‘reasonability’ which plays a central justificatory role in antiperfectionist liberal theory is sectarian.

These criticisms fail to apply to the liberal theoretical perspective towards regulation. This demonstrates the similarity and effectiveness of the perspectives in protecting the instantiation of liberal values and norms.

I. Perfectionist Liberalism and Processing Principles of Regulation

There is a process for establishing principles of regulation from the perspective of Perfectionist Liberalism. Regulatory intervention against regulatory capture, immoral markets, and offshoring practises is justified where these behaviours lead to the following consequences:

1. They prevent individuals from forwarding valuable conceptions of the good life.
2. They cause individuals harm.
3. They interfere with an individual’s capacity to make autonomous decisions.

Raz (1986, p. 400) argues that one chief justification of state intervention is to prevent harm. To reiterate, Raz (1986, p. 412-14) understands the effects of harm in the following way: ‘one harms another when one's action makes the other person worse off than he was, or is entitled to be, in a way which affects his future well-being’. Raz (1986, p. 400) also states that ‘the only purpose for which the law may use its coercive power is to prevent harm’. Political authority thus assumes an interventionist role in counteracting and preventing harm. Hence, regulatory intervention that prevents harm to citizens is permissible.

Raz and other perfectionist liberal theorists also qualify the importance of individual autonomy. Where a citizen possesses autonomy, they enjoy: ‘appropriate mental abilities, an adequate range of options, and independence’ (Raz, 1986, p. 372). When these are possessed, individuals self-direct their lives, which Raz (1986, p. 389-90) refers to as ‘free and conscious self-creation’. Oshana (2003, p. 100) clarifies this. She claims that autonomy represents ‘having authority over one’s choices and actions whenever these are significant to the direction of one’s life’. Autonomy is thus viewed by perfectionist liberal theorists as a central capacity. This capacity can be enhanced in several uncontroversial processes of non-interference. These include allowing citizens to form their own opinions, and act upon their personal convictions. Additionally, non-interference implies ensuring access to information, and allowing citizens to develop and cultivate skills of absorbing, remembering and reasoning; and developing
awareness of their own physical abilities, health and skills which are helpful for an autonomous life (Raz, 1986, p. 408). Raz (1986, p. 407) recognises these actions as assisting in ‘securing the background conditions which enable a person to be autonomous’.  

However, for Raz, these forms of non-intervention do not help to cultivate valuable forms of autonomy. The capacity for autonomy is primarily enhanced by the intervention of political authority. This is where the imposition of perfectionist authoritative directives on the grounds of autonomy-enhancement and harm-prevention play a central role. An essential distinction is made between valuable, and non-valuable autonomous pursuits. Valuable autonomous pursuits are those that pursue the good life. As Raz (1986, p. 411) explains, acting autonomously ‘does not extend to the morally bad and repugnant. Since autonomy is valuable only if it is directed at the good it supplies no reason to provide, nor any reason to protect, worthless let alone bad options’. One may remain autonomous even if they choose bad options, or at the least, options which don’t further the good, but this contributes nothing to the value of autonomy, and citizens do not enhance their life prospects by autonomously choosing bad options. Raz (1986, p. 412) thereby states that ‘since our concern for autonomy is a concern to enable people to have a good life it furnishes us with reason to secure that autonomy which could be valuable’. Creating the conditions for autonomy and safeguarding its exercise thus implies an interventionist role for the liberal state in preventing the proliferation of activities which damage autonomy. In other words, if conditions manifest in society that limit the options open to individuals, or manipulate citizens towards certain ends, the perfectionist liberal state can intervene to prevent this. Such interventions are justified for Raz, since these represent ‘the right way in which the state could promote the well-being of people’ (Raz, 1986, p. 420).

In short, enabling and enhancing the capacity of citizens to make autonomous decisions can be achieved by the liberal state. Political authority can act to ensure ‘choice among an adequate range of options; that the agent must be aware of his options and of the meaning of his choices; and that he must be independent of coercion and manipulation by others’ (Oshana, 2003, p. 100). Moreover, when political authority acts to limit certain options from citizens on the grounds of their danger, or due to the negative consequences which result from these life pursuits, this does not represent a limitation of autonomy. Governmental intervention can direct

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26 Some liberal theorists faithful to neo-liberal and libertarian ideas view the possession of this level of autonomy as all that liberal political authority is responsible for (Nozick, 1977) (Hayek, 2001). They champion ‘negative freedom’, the idea that one possesses freedom and autonomy if there are not prevented from doing that which they have a will to do, which is achieved by the absence of constraints and external impediment.
and initiate these processes (Raz, 1986, p. 411). To preserve valuable autonomy, political authority can act to remove harmful options, or eliminate certain choices.

Given the primacy afforded to a citizen's ability to make autonomous decisions, interference with this central quality can be implied as constituting harm. The link between the harm principle and the primacy of individual autonomy is thereby emphasised by Raz. He (1986, p. 416) states that

if the government has a duty to promote the autonomy of people, the harm principle allows it to use coercion both in order to stop people from actions which would diminish people's autonomy and in order to force them to take actions which are required to improve peoples' options and opportunities.

State intervention on the grounds of preventing harm and safeguarding autonomy can thereby be extended to questions concerning the regulation of regulatory capture, immoral markets, and offshoring practices. If these behaviours bring about harm, or limit an individual’s capability to make autonomous decisions, the perfectionist liberal state can intervene against these practices. These interventions manifest in principles of regulation sufficient to prevent the harmful, or autonomy-reducing aspects of these behaviours.

Recent research has explored the impact of “repugnant markets”. This attempts to understand the harm that certain market transactions have the potential to cause. Repugnant markets are defined as ‘market exchanges that third parties want to prevent’, whereby ‘repugnance is associated with a strong opposition to certain markets’ (Leuker, Samartzidis, Hertwig, 2021, p. 1). In other words, viewing a market as repugnant represents a stronger opposition to markets than viewing them as ‘distasteful, inappropriate, unfair, undignified, or unprofessional’ (Roth, 2017, p. 40). With that said, how individuals determine and express their repugnance, and where feelings of repugnance are directed is not an objective measurement. For example, markets in prostitution and surrogate motherhood may be praised by some and lamented by others. Repugnance may also change over time. Markets in goods relating to pornography and/or prostitution, or the sale of dangerous drugs such as cigarettes may not have been viewed as repugnant in the past, but increasingly may be viewed as repugnant now. Finally, repugnance may vary to differing degrees among individuals in the same culture, reacting to the same market. For instance, two members of a liberal democratic society may have differing levels of repugnance in their reactions to issues associated with a trade in kidneys, or on the acceptability of controversial social practices and leisure activities such as dwarf tossing (Roth, 2007, p. 42) (Leuker, Samartzidis, Hertwig, 2021, p. 2).
Given the variance of feelings of repugnance among individuals, champions of unregulated market freedom claim that it rests with the individual to behave in markets in accordance with their beliefs. If one feels a particular market transaction is repugnant, they need not participate in it. If feelings of repugnance surrounding a specific market or market transaction are widespread enough, these markets would cease to exist.

However, regulatory responses to repugnant markets can materialise. This can occur when repugnant transactions prosper in society and cause demonstrable harm, or if repugnant markets and market transactions effect an individual’s capacity for valuable autonomy. Empirical research conducted by Leuker, Samartzidis, and Hertwig (2021) on the identification of repugnant markets provides support to the first point (2021, p. 2).27 In their empirical study, repugnant transactions related to the sale of alcohol, selling organs and humans eggs, or markets relating to the sale of pornography are difficult to interpret, due to the fact that they trigger these feelings to differing degrees, and as such are not collectively regarded as repugnant (2021, p. 5-7). Only a small number of markets/market transactions incur a level of repugnance amounting to near collective disapproval from the population. Among these, hunting endangered animals, often referred to as “trophy hunting” was regarded as the most repugnant transaction (Leuker, Samartzidis, Hertwig, 2021, p. 7).

However, even markets viewed as collectively repugnant do not always translate to more interventionist measures from political authority to regulate these markets. This is evidenced by the size of the market in trophy hunting. Despite widespread feelings of repugnance, it is worth $906.4 million in the US in 2021, a figure it has climbed to after a ten-year growth from being worth $626.6 million in 2011 (Langer, 2021). The growth of this market highlights the ineffectiveness of the identification of repugnance by itself in enacting change. Individuals acting upon feelings of repugnance do not act as a regulator against the existence of repugnant markets. In this respect, perfectionist political authority can act to make such activities harder for citizens to pursue, on the basis of forwarding valuable forms of autonomy that pursue the good.

Markets and market transactions may also not be regarded as repugnant, yet cause significant harm. In the empirical study, markets in alcohol, medical marijuana usage and gambling ranked among the lowest in relation to feelings of repugnance. However, the harm

27 See figure 1 (2021, p. 5): “Judged repugnance across transactions (ordered from least to most repugnant transaction) in Study 1. Vertical lines represent median judgments across respondents”. This table shows the results of an empirical study which involved a ranking of 51 markets and market transactions judged by individuals as repugnant.
caused to individuals by over-consumption of alcohol, for example, is clear. In 2018, there were nearly 6000 alcohol specific deaths in the UK, and 358,000 admissions to hospital (NHS, 2020). As such, the harm and danger tied up with these activities and these markets are evident, yet feelings of repugnance have not brought about a measurable change in behaviour. In these instances, focusing on the harm caused to individuals from specific market transactions rather than feelings of repugnance towards them provides a more secure basis for justifying regulatory intervention. This is because feelings of repugnance fail to conclusively determine regulatory action against these markets. By contrast, recognising the need to limit harm caused to individuals through the proliferation of these markets is a clearer theoretical basis for intervention.

Alcohol and drug usage and gambling practises also carry the threat of addiction. Addictive pursuits and behaviours may be initially autonomously chosen, but if pursued pervasively, they can act to reduce autonomy. If one suffers from addiction, their ability to self-direct their life is intercepted. They are more likely to make choices to satisfy their addiction, and this takes precedence over other ends. As a result, the adequate range of options which Raz refers to as a precondition for an autonomous act is difficult to recognise if one is motivated by addictive tendencies/drives to specific actions. Therefore, these markets and activities have an autonomy-reducing component. For example, an NHS survey conducted in 2018 found that there were around 280,000 problem gamblers in the UK (NHS Digital, 2018, Table 15). In relation to alcohol consumption, in 2018/19, figures suggest that 76,000 people were treated for problematic drinking (NHS Direct, 2020).28

Autonomous pursuits directed at addictive, potentially autonomy-reducing behaviours does not constitute valuable autonomy. It is incumbent upon the liberal state to limit the availability of these pursuits to citizens, and make them less visible. Additionally, other actions that promote the good and engender valuable autonomous pursuits should be forwarded more enthusiastically by the state. The overarching implication of this is that perfectionist directives which lessen or problematise the availability and consumption of these behaviours is permissible for perfectionist liberal theorists.

I.I Moderate Perfectionism and Pluralistic Promotion

Neo-Razian accounts of moderate perfectionist liberal theory support a theoretical process for establishing principles of regulation. They justify the forming and imposition of regulatory principles against activities which effect the extent to which individuals can live according to their own conceptions of the good life.

Moderate perfectionist theorists acknowledge a high burden upon the perfectionist liberal state in quantifying what is good for all citizens, and selecting the correct mechanisms and processes to move citizens towards these ends. This acknowledges valuepluralism, the notion that there exists many different viable yet incommensurable ideas about the good life. Valuepluralism exists between autonomous pursuits that are valuable. Therefore, even allowing for the fact that the state can design against and limit the availability of autonomous choices that are not valuable, the range of choices available mean that a significant degree of incommensurability between valuable autonomous pursuits and choices remains. In these scenarios, knowing precisely which ends and life pursuits to forward, and whether the state should forward one, two or multiple conceptions of the good are difficult questions to answer. Raz foreshadows the difficulty surrounding this. He (1986, p. 411) acknowledges that social, political, economic and cultural values are always changing. There are consistent technological advances, and personal relationships entered into by individuals are in ‘constant flux’. This heightens the stakes and potential controversies of political authority identifying and promoting a single, or select few conceptions of the good. Similarly, the ever-changing realities of liberal democratic society leave open the possibility that conceptions of the good that are deemed valuable may alter over time, or be replaced or developed with more valuable pursuits. Under these circumstances, political authority must possess the capacity or ability to change the conceptions of the good and life pursuits that they identify as ‘valuable’.

The pluralistic promotion of valuable conceptions of the good answers difficult questions of how the perfectionist liberal state might discriminate between valuable pursuits, and the controversies embedded within this (Chan, 2000, p. 14). The benefits of this are stated by Mang (2013, p. 302). In effect, ‘we do not have to give up perfectionism just because there might be some exceptions to each judgment about the good life’. Moreover, as Wall (2010, p. 233) argues, ‘it is permissible for the state to favor good ideals over bad ones; but this belief is consistent with the belief that the state should be neutral among ideals of equal or incommensurable value’. Wall (2010, p. 242) terms preference regarding pursuits of equal value as ‘arbitrary discrimination’, since there is no basis for the state to prefer one set of ideas about the good over another. Perfectionist liberal political authority need not make these hard
gradations or rankings between generally acceptable conceptions of the good that individuals have. This involves controversial calculations regarding why one conception of the good is more worthy of promotion than another. If the perfectionist liberal state pluralistically promotes the good, this enables individuals to live their lives in accordance with their own valuable conceptions of the good, providing they do not cause harm or limit the autonomy of others.

Returning to real-world case studies surrounding immoral markets supplements this approach as viable for processing principles of regulation. The pluralistic promotion of the good is compatible with regulating against conceptions of the good and life pursuits that which cause harm, or limit individual autonomy. As Wall (2010, p. 246) clarifies, if a substantial portion of the population ‘would benefit from perfectionist political action that sustains a certain kind of social environment, then it is appropriate for it to undertake it’. With respect to the earlier mentioned examples, a social environment which protects individuals from the dangers of addiction, and which outlaws markets and market transactions which generate extensive feelings of repugnance would be justified.

The primacy of valuable autonomous pursuits and the prevention of harm are the fundamental ends of perfectionist authoritative directives. Hence, regulatory principles and pursuits which safeguard and promote these ends are implied avenues of the perfectionist liberal state.

II. Responding to Criticisms of Anti-Perfectionism

The perfectionist theoretical approach to processing principles of regulation is justified on the basis of harm-prevention and autonomy-preservation. However, this does not give perfectionist liberalism a comparative advantage over anti-perfectionist liberalism. This is because regulatory principles can also be theorised by anti-perfectionist liberal theory. These ends can represent the subset of an overlapping consensus, and result from the proceeds of public reason deliberation. This means that both theoretical perspectives can recognise instances of regulatory capture, immoral markets and offshoring practices as problematic, and theorise towards principles of regulatory alignment.

Two significant implications arise from this. Firstly, it further demonstrates the plausibility of the liberal theoretical perspective towards regulation. Illustrating this central similarity between the perspectives outlines liberal theory’s applicability towards real-world threats to liberal values and norms, and the plausibility of the theoretical tools it possesses to
forward regulatory ends. The similarity between the perspectives in relation to questions concerning regulation also rebuts criticisms levelled against anti-perfectionists.

These criticisms target the credibility of the justificatory structure employed by Rawls and Quong. Firstly, critics claim that the overlapping consensus cannot perform the role Rawls and Quong wish, since it does not emanate from a strong enough justificatory basis. Individuals need only affirm, rather than accept and identify with the political values. Subsequently, there is not enough justificatory power generated to license the liberal state to take the interventionist action required to maintain and safeguard liberal values and norms. Secondly, critics claim that public reason deliberation cannot perform the ends that Rawls and Quong wish, due to its idealised and unimplementable nature. Lastly, anti-perfectionist liberalism is charged with being sectarian, due to its prioritisation of the views of reasonable citizens, and the specificity of the definition of ‘reasonability’. This is charged with controversially discounting the political participation of other citizens who are deemed unreasonable, despite holding unproblematic views which could assist public discourse.

There is no abstract, theoretical resolution to these disputes. Commitment to or deviation from these diverging theoretical, justificatory structures are precisely what demarcates perfectionist and anti-perfectionist liberal theorists. For this reason, the fact that anti-perfectionist liberalism can formulate principles of regulation by consulting the overlapping consensus and relying upon the proceeds of public reason deliberation exposes valued commonality between the perspectives.

Rawls’s justification of the overlapping consensus and Quong’s broad view of public reason can theorise toward principles of regulation against prominent instances of regulatory capture, immoral markets, and offshoring practices. Formulating and implementing principles of regulation are implied avenues of political authority, given that its role is to safeguard and maintain the values that represent the subset of an overlapping consensus. In other words, part of political authority safeguarding and maintaining the subset of liberal values and norms involves maintaining their effective instantiation. Such ends can be affirmed and agreed to, such that authoritative, regulatory intervention which brings about these ends overlaps across comprehensive ideas of the good. Therefore, despite only affirming and agreeing to the plausibility of liberal values and norms, the agreement does not represent shallow foundations. Such affirmation and agreement is enough to facilitate and justify principles of regulatory alignment.
Similarly, Quong’s broad view of public reason, expanding deliberation to encompass political and non-political matters can bring about regulatory principles. Public reasons can be forwarded and agreed to by reasonable citizens with respect to regulating instances of regulatory capture, immoral markets, and offshoring practises. Accordingly, charges against the idealised, abstract nature of public reason deliberation can be dispelled. Contra to what critics claim, public reason deliberation can be applied usefully to real-world behaviours which violate the instantiation of liberal values and norms. There remain concerns surrounding the justificatory potential of the proceeds of public reason as a whole. However, with respect to regulation, it can safeguard the instantiation and implementation of liberal values, and recommend regulatory principles. The success of the proceeds of public reason in formulating regulatory principles dispels claims that anti-perfectionist liberalism’s prioritisation of the views of reasonable citizens is sectarian. Though only reasonable citizens can utilise public reason deliberation, any mutually affirmed principles of regulation that result are designed to protect and safeguard the exercise of liberal values and norms for all citizens. Hence, there is no clear preference given for reasonable citizens. The benefits of implementing principles of regulatory alignment are enjoyed by all.

Therefore, both perfectionist and anti-perfectionist liberal theorists can articulate a theoretical process for formulating regulatory principles. Accordingly, when it comes to the implementation of liberal values and norms, and responding to questions concerning regulation, far more unites than separates the liberal theoretical stances. The immediate consequence of this for anti-perfectionist liberals is that these prominent charges and critiques cannot be upheld.

III. Anti-Perfectionist Liberalism and the Processing of Principles of Regulation

Anti-perfectionist liberal theorists can process principles of regulation. This emanates from two bases:

1. Principles of regulation are implied avenues of political authoritative action which aims to implement the values comprising the overlapping consensus.

2. Reasonable citizens deliberate towards principles of regulation through their use of public reason.

The first of these methods enables anti-perfectionist theorists to respond to the charge that the theory relies upon shallow foundations. The second dispels criticisms surrounding the proceeds
of public reason, and the controversially sectarian focus on ‘reasonable citizens’ which pervades the justificatory structure of anti-perfectionist liberalism.

II.I. The Subject of an Overlapping Consensus

The content of the overlapping consensus represents what reasonable citizens can collectively agree to. This designates the set of values, freedoms, and principles that political authority is tasked to bring about and maintain. To reiterate, the values and liberties that represent the overlapping consensus are as follows: ‘freedom of thought and liberty of conscience; the political liberties and freedom of association, as well the freedoms specified by the liberty and integrity of the person; and finally, the rights and liberties covered by the rule of law’ (Rawls 2005, p. 291). Rawls claims that the individual exercise and instantiation of these basic liberties are not to be interfered with by political authority, other citizens, or external bodies.

The political liberties Rawls refers to comprise of ‘freedoms to speak freely about political affairs; the freedom to participate in political organisations and interest groups; equal rights to vote; and equal opportunities to run for public office’ (Wall, 2006, p. 248). These political values overlap across different incompatible moral, religious, and philosophical comprehensive views of the good. This means that individuals with incompatible views about the good life can still collectively affirm these values.29

The first basis for processing principles of regulation is found in Rawls’s thought (2005, p. 294-98, 327-29). Rawls talks specifically about the role of regulation to ensure that the central range of application for basic liberties is maintained. He (2005, 295) states that ‘the priority of these liberties is not infringed when they are merely regulated, as they must be, in order to be combined into one scheme as well as adapted to certain social conditions necessary for their enduring existence’. This implies that the promotion of all values comprising the overlapping consensus must be kept within certain parameters. It is the responsibility of political authority to regulate where necessary in order to maintain this central range of application. In effect, regulation on the individual exercise of the political values ensures that all values can be instantiated. This ensures that one liberty is not exercised disproportionately in relation to others, nor exercised in ways which crowds out or undermines the others.

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29 The basic and political liberties which Rawls refers to are epitomised by the list of seminal liberal values and norms outlined in chapter I pertaining to the rights and freedoms of citizens, and the roles and responsibilities of liberal political authority.
Interference from political authority to maintain a central range of application for each liberty is most important with regards to the equal exercise of the political liberties. Rawls observes that the primary challenge to the equal exercise of political liberties is the ‘limited space of the political process’ (Rawls, 2005, p. 328). In liberal democratic societies, many individuals and groups compete for space and platforms to express their views, forward their agendas, and all wish to exercise their rights to vote and politically participate in ways that exert influence on the political process. Within this crowded environment, it is inevitable, according to Rawls, that those with greater means can exclude those with fewer. The consequence of this is ‘that the usefulness of our political liberties is far more subject to our social position and our place in the distribution of income and wealth’ (Rawls, 2005, p. 328). Those with ‘greater means’ may represent a financially well-resourced firm or individual with greater political influence than other citizens due to their increased wealth. Ensuring the equal exercise of the political liberties entails that political authority acts in ways which counters this imbalance. This ensures that individual rights to vote and politically participate have an equal effect in determining the political process, and influencing the ends of political authority (Wall, 2006, p. 254).

The Rawlsian directive for the liberal state to ensure the equal exercise of political liberties is straightforwardly applicable to earlier mentioned cases of political lobbying. The lobbying of interests to political authority is permitted in liberal societies. However, practises of political lobbying which aim to shape the ends and aims of political authority through financial campaign contributions, facilitating revolving doors, or developing special relationships with legislators has increased. Recent empirical data has indicated that in the United States, since the turn of the millennium, the amount spent on lobbying per annum has almost doubled; and in 2019, the total amount at all levels of federal and local government stood at 3.47 billion dollars (OpenSecrets, 2020). The increase in efforts to exert influence through political lobbying is creating additional motivations for political authority to forward and safeguard lobbying interests. There are two problems with this. Firstly, the interests of lobbyists increasingly needs to be balanced by political authority against the needs and wishes of citizens expressed through their rights to vote and participate in the political system. Here, Rawls’s (2005, p. 328) reference to the ‘limited space of the political process’ is significant. The needs and wishes of citizens expressed by voting could potentially be crowded out and ignored amongst the increasing influence of politically lobbied interests and ends. Secondly, the

30 See the full table on changes in lobbying spending at URL: https://www.opensecrets.org/federal-lobbying
spending increase in political lobbying disadvantages lobbying groups without the necessary financial capital to exert influence. Some lobbying interests are crowded out and ignored not because of the lack of interest or importance of their policy initiatives, but because they cannot compete with other lobbied interests. This means that the success of lobbying can be tied to the amount of financial resources available, not the beneficial consequences surrounding the adoption by political authority of different lobbying interests.31

By stating that political authority must safeguard the equal exercise of the political liberties, Rawls provides a theoretical avenue for the liberal state to redress the imbalances in political influence created by some forms of political lobbying. If a citizen’s rights to vote and politically participate are ignored or crowded out by the disproportionate influence of lobbying, the political liberties of citizens do not enjoy equal weight to those of well-resourced lobbyists. Moreover, if the equal exercise of the political liberties is not maintained, Rawls fears that ‘those with greater responsibility and wealth can control the course of legislation to their advantage’ (Rawls, 2005, p. 325). This entails that ‘those with relatively greater means can combine together and exclude those who have less in the absence of the guarantee of fair value of the political liberties’ (Rawls, 2005, p. 328). This is not permitted on anti-perfectionist liberal grounds. The idea that specified groups should have more influence over the political process due to financial advantage would not be affirmed by a majority of individuals. Hence, it does not overlap across reasonable comprehensive ideas of the good. By virtue of accepting the political values that comprise the overlapping consensus, and affording them special status, anti-perfectionist state directives against features of society that threaten their instantiation can be theorised towards.

II.II. Responding to the Shallow Foundations Critique

Affirmation and agreement between reasonable citizens does not constitute shallow foundations. This is reinforced by the fact that acceptance and affirmation of the negative consequences associated with regulatory capture, immoral markets and offshoring practises can represent the subject of an overlapping consensus. This subsequently designates a role for the state in acting upon this. Therefore, the shallow foundations criticism does not apply to questions concerning regulation, and this can be supported and bolstered by the theoretical

31 Further evidence of this was earlier stated in chapter III – concerning the disproportion between public calls for stricter gun control legislation, and increased efforts and financial spending of the NRA lobby to promote their own interests even if this goes against the public interest (p. 81-85). Full data at URL: https://morningconsult.com/wp-content/uploads/2019/08/190826_crosstabs_POLITICO_RVs_v2 JB.pdf + for related data on rise in mass shootings see URL: https://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/
accounts of Larmore (1990) and Estlund (1998). The fact that political authority acts to bring about the subject of an overlapping consensus illustrates that the values that comprise it represent core, common ground, and should be emphasised in this way, rather than regarded as objects of stability. This makes the charge of shallow foundations less prominent.

The shallow foundations critique aims to problematise Rawls’s justification for the overlapping consensus, whereby citizens affirm and accept the political values by giving allegiance to them alongside their comprehensive ideas of the good life. This occurs, according to Rawls, as citizens recognise that

the values of the political are very great values and not easily overridden, and second, that there are many reasonable comprehensive doctrines that understand the wider realm of values to be congruent with, or supportive of, or else not in conflict with political values (Rawls, 2005, p. 169)

The net result of this collective affirmation of the values, according to Rawls, is that the stability of the overlapping consensus is strengthened.

The shallow foundations critique questions whether the act of affirming or accepting a set of values is enough to bring about the ends that anti-perfectionists hope. Affirming entails agreeing to or accepting the validity of a set of ideas. This implies that formally believing in the truth of the political values comprising the overlapping consensus is not a requirement of their acceptance.

This has implications for any principles of regulation that may be derived. The concern is that by itself, affirmation or acceptance does not constitute a firm enough justificatory or consensual basis from which to enforce/implement principles of regulation. However, affirmation and collective acceptance of the negative consequences of the behaviours, and of the need to regulate is all that is needed to license regulatory intervention. It represents a binding consensus and directive for regulation, which can be implemented by the anti-perfectionist liberal state. Subsequently, claims against the shallow foundations that anti-perfectionist liberals rely upon can be dispelled with respect to questions concerning regulation.

The key point is that political authority assumes a role in bringing about and maintaining the values that represent the subject of an overlapping consensus. This is because the values that comprise the overlapping consensus represent the basis of social unity necessary to shape the basic structure of society. Therefore, since the liberal values and norms that represent the subject of the overlapping consensus must be implemented, this implies an active role for
political authority in designing or acting against features of society that threaten their effective instantiation. As a result, the collective affirmation and acceptance of the values comprising the overlapping consensus are not shallow. When questions concerning their implementation take a central focus, and the role of political authority in bringing about these ends is considered, the strength of the collective affirmation of the values directs the aims and intentions of political authority. With respect to questions concerning regulation, upholding and effectively implementing these values makes it incumbent to outline principles of regulatory alignment against activities which threaten their effective instantiation. Advocates of the shallow foundations critique thereby under-appreciate the significance of collective affirmation when it comes to questions concerning the implementation of liberal ideas.

The fact that the liberal theoretical perspective towards regulation is unscathed by the shallow foundations critique is significant. Due to the collective affirmation on the central liberal values and norms, proposals to safeguard the instantiation of these values by designing against real-world phenomena that violate them can also be collectively affirmed and agreed to. This gives firmer justificatory power to the liberal values and norms that comprise the overlapping consensus, as it embeds and protects their instantiation. In other words, affirming these values and recognising these as values which overlap across competing conceptions of the good implies and extends to protecting and safeguarding the instantiation of these values in real-world contexts.

This adds plausibility to the idea that far from representing consensus and agreement, what is achieved in the subject of the overlapping consensus is the best that can be hoped for. On top of this, Rawls and Quong can be regarded as guilty for under-emphasising the significance of this common agreement, and failing to appreciate what this may entail in real-world contexts. Despite their altering visions of the position of the overlapping consensus in the justification of Liberalism, they scarcely treat the question of how the values which comprise the overlapping consensus are to be brought about, maintained and safeguarded. Once the questions of implementation occupy a central focus, the wider and richer significance of affirmation and common agreement to the subject of liberal values and norms licenses regulatory alignment against real-world phenomena that threaten their instantiation. Reinforcing and emphasising the significance of this common agreement and affirmation finds theoretical support in the work of Larmore an Estlund. Firstly, Larmore (1990, p. 351) holds that liberal theorists should emphasise the significance and worth of the values which are
subsequently agreed to by reasonable citizens. This will provide them with a stronger justificatory force. He (1990, p. 351) argues that

the principles to be established must be ones which are justifiable to everyone whom they are to bind […] If, in this attempt at justification, we meet with reasonable disagreement, then we should fall back on common ground and determine what principles can be derived on that basis.

The common ground derived from the overlapping consensus is argued by Larmore to be more than merely stable. Instead, the values which reasonable citizens mutually agree to should be recognised as common, core values, that can be relied upon to solve disagreements. Viewing the political values comprising the overlapping consensus as core, common ground provides stronger justificatory force than viewing these values as affirmed and accepted by citizens. It is possible to recognise the political values as “great values”, and regard them as core common ground between competing comprehensive ideas. This strengthens the justificatory foundation of the political values. Larmore’s argument of how to regard the values comprising the overlapping consensus supports the regulatory response. In effect, the values that overlap across competing conceptions of the good must be laudable, and hence should be affirmed as great values. It thereby makes sense to envisage a role for the state in acting to effectively bring about and maintain these “great” values, and safeguard them from external threats to their instantiation.

Estlund (1998, p. 253) also provides reasons to dismiss the shallow foundations critique. This reinforces the idea that the shallow foundations critique does not apply to the liberal theoretical perspective towards regulation. He states that ‘normative political theory cannot hover like a blimp over the moral truth without any point of contact’. Rather, Estlund holds that anti-perfectionists can appeal to a minimal conception of truth towards the liberal values and norms comprising the overlapping consensus. In effect, it is true to say that one who can be regarded as reasonable, or who holds a reasonable comprehensive doctrine will affirm the political values. In other words, all who hold views and doctrines that respect citizens as free and equal and recognise society as a scheme of social cooperation for mutual benefit will attach plausibility to the political values, and affirm them as appropriate to dictate the ends of political authority. As such, Estlund (1998, p. 274) regards the subject of the overlapping consensus as ‘authoritative for other reasons, such as that it is the only conception that is acceptable to all reasonable citizens’. The core common ground that the overlapping consensus provides is minimally true, due to the fact that it represents the only expansive range of agreement that can
be attained by citizens within a liberal democratic society. Therefore, the agreement on political values is far from shallow. It represents the best agreement that can be hoped for.

The authoritative dimension of the values comprising the overlapping consensus is precisely what is brought out by the liberal theoretical perspective towards regulation. Echoing Larmore’s sentiments, Estlund recognises the great significance of the values comprising the overlapping consensus as great values, which uniquely represent a body of collective affirmation and agreement amidst continual disagreement surrounding other political and non-political matters. The authoritativeness of the subset of values comprising the overlapping consensus stems from the fact that they are the only set of values that can be reasonably agreed to. An implication of this authoritativeness is thereby implied by the need to impose principles of regulatory alignment that protect them. The agreement on the political values is therefore far from shallow. It is the only agreement that can be attained. Therefore, regulatory principles which protect them can be envisaged and produced as an implication of this agreement.

IV. The Proceeds of Public Reason

Principles of regulation can be processed by anti-perfectionist liberals through implementing the proceeds of public reason deliberation. Deliberation through public reason requires that ‘citizens and public officials only support political decisions when they sincerely believe those decisions can be justified by appeal to considerations that each person can reasonably endorse in their capacity as a free and equal citizen’ (Quong, 2011, p. 256). Hence, ‘citizens […] refrain from appealing to their comprehensive doctrines or other beliefs about the whole truth as they understand it’ (Quong, 2011, p. 256). There are two leading conceptions of public reason for anti-perfectionist liberals. For Rawls, its function is to justify matters pertaining to constitutional essentials and matters of basic justice (Rawls, 2005, p. 227-29). Quong extends the justificatory function of public reason to all situations whereby one exercises power over another. He (2011, p. 258) claims that ‘public reason […] should regulate all the political decisions in a liberal democratic society’. Furthermore, Quong (2011, p. 281) states that some ‘political problems that do not strike us as constitutional […] are nevertheless resolvable within the bounds of public reasons’. Questions surrounding the rights and responsibilities of the state, and determining fundamental values that should be afforded to citizens are important. However, a host of other questions pertain to how these values might be implemented, how these values may confront challenges surrounding their instantiation, or how these values are to be balanced
with other values. For Quong, proposals for answering these questions can also be achieved via public reason deliberation.

Quong’s (2011, p. 258) broad conception of public reason is most relevant for processing principles of regulation. This is evidenced by some of the non-political issues Rawls (2005, p. 214) regards as exempt from public reason deliberation. These include: ‘tax legislation and many laws regulating property; statutes protecting the environment and controlling pollution; establishing national parks and preserving wilderness areas and animal and plant species; and laying aside funds for museums and the arts’. Contra Rawls, Quong sees no reason to exclude public reason from trying to find a solution to these problems. Firstly, these problems represent political problems, as the imposition of tax legislation or laws surrounding pollution limits involve power relations. Secondly, there exists reasonable disagreement surrounding these issues in liberal democracies, and public reason deliberation thus manifests as a means to solve this.

Quong (2011, p. 285) reinforces his commitment to a broad use of public reason by responding to fears of its incompleteness and inconclusiveness with regard to political matters. The fear is that

public reason is indeterminate […] when its content cannot provide us with any reasons to favour a particular proposal. It is inconclusive when there are multiple and conflicting solutions that appear equally reasonable from the perspective of public reason (Quong, 2011, p. 286).

However, the inconclusiveness or indeterminacy of public reason does not represent a reason to remove it from having a stake in political matters. If solutions to political dilemmas surrounding tax legislation or strategies for dealing with environmental crises are indeterminate or inconclusive, public reason can still assist in resolving the issue. Firstly, trying to find public reasons to ground our justifications is preferable to relying upon appeal to comprehensive doctrines. Comprehensive views of the good are less likely to generate consensus among indeterminate, inconclusive political matters. This is because accepting these solutions to these dilemmas requires an acceptance of the comprehensive conception of the good as a whole. This cannot be relied upon, as a fundamental feature of a liberal democratic society is that it is comprised of many reasonable though incompatible comprehensive views of the good. Therefore, shifting allegiance from one comprehensive conception of the good to another is rare. This is not the case for public reasons. They draw upon values comprising the overlapping consensus, which can be affirmed by all those holding reasonable conceptions of the good.
Similarly, the use of public reason, even if indeterminate, ensures that reasons are put forward for certain ends which recognise citizens as free and equal, and that society is a system of cooperation for mutual benefit. Concordantly, even if a solution is not reached on political questions, the risk of treating other citizens as a means to an end, or attempting to solve the issue by selfishly advancing the ends of some over others could not stand, since this fails to manifest as public reasoning. Quong (2011, p. 286-87) summarises these points, stating that

> if the choice is between a model of public reason that is sometimes inconclusive, but grounds its decisions in reasons that are reasonably acceptable to these who are bound by them, and a model of perfectionist or non-public reasoning that is conclusive in all cases, but is based on premises and reasons that many people do not accept or even understand, we ought to choose the former

Hence, even if inconclusive, once one accepts the broad view of public reason, its role in offering advice towards questions concerning regulation becomes clear. This can be further reinforced by returning to case studies.

The regulatory role of public reason deliberation that the broad view of public reason allows has ramifications for the regulation of repugnant markets referred to in the previous section. To reiterate, the empirical analysis of 51 activities were ranked by participants in line with feelings of repugnance among citizens towards these markets. Trophy hunting represented the most repugnant transaction in the survey (Leuker, Samartzidis, Hertwig, 2021, p. 7). Feelings of repugnance among reasonable citizens towards trophy hunting can initiate public reason deliberation in a way that leads to a specific policy recommendation. As mentioned, empirical analysis highlights a consensus opinion that trophy hunting represents an immoral market transaction. Searching for public reasons to justify this viewpoint can be done to attempt to sway policy. In this instance, public reason deliberation works to contextualise and make initial feelings of repugnance towards the market in trophy hunting more substantive. If these feelings of repugnance were seen to be supported by public reasons, this would substantiate the justification of policy directives against their proliferation.

Offering public reasons for the outlawing of trophy hunting would need to show that the activity is unreasonable in view of its failure to treat all freely and equally, and that it is an activity that does not lead to the mutual benefit of all, nor inspire mutual cooperation between different groups. The acceptability of these public reasons would depend on these considerations trumping and overruling other liberal values of free thought, association and liberty of conscience, which may be offered as a defence of the activity. The process of
forwarding public reasons to this end depends upon sincere deliberation between citizens (Quong, 2011, p. 265) about the relative acceptability of the practise of trophy hunting. Structurally, it is achieved, according to Quong (2011, p. 258), when citizens ‘can successfully justify a political decision to each and every member of the relevant constituency’. In this case, the ‘relevant constituency’ pertains to reasonable citizens deliberating in the relevant site, the public political forum (Quong, 2011, p. 259). In its broad use, the permittance of an activity such as trophy hunting on the grounds of public reason would occur once all citizens accepted a proposal, or could envision themselves accepting a particular position on the basis that it represents a mutually acceptable justification. In other words, even if they are opposed to a particular view, they can recognise its plausibility, and that it is based on some central ideas that they do affirm (such as, for example, treating all freely and equally and accepting society as a scheme of social cooperation for mutual benefit).

Given the ill-feeling among citizens with respect to trophy hunting, it is difficult to ascertain which public reasons may be forwarded for its practise. It is more difficult to understand how arguments could be put forward that would be agreeable and accepted by the constituency of reasonable citizens involved in public reason deliberation, or to see how reasons may be put forward that are mutually acceptable. This identifies the crucial regulatory function of public reason deliberation. The designation of ‘repugnance’ associated with the activity via empirical data collection demonstrates ill-feeling among citizens towards its practise. While useful, this alone does not directly lead to regulatory intervention, or limitation of the accessibility of this practise. Subjecting activities such as trophy hunting to the proceeds of public reason deliberation is a sterner requirement. If the proceeds of public reason do not lead to consensus or convergence upon the mutual acceptability or direct acceptance of the practise of trophy hunting, there exist grounds to restrict or potentially to outlaw its practise. This can be premised on the fact that the practise of trophy hunting violates seminal liberal values and norms pertaining to the “Free and Equal Standard”, and “Society as a Scheme of Social Cooperation”. This adheres to the broad view of public reason as outlined by Quong, as opposed to Rawls’s narrower model. Whether trophy hunting should or should not be omitted is neither a constitutional essential nor a matter of basic justice. Under Rawls’s conception, it escapes the scrutiny of public reason deliberation. This is not so with Quong. He (2011, p. 281) argues that ‘on the broad view, public reason requires (when possible) that legislative decisions be based on reasons that are mutually acceptable to reasonable persons, even if the basic interests of citizens are not at stake’. Therefore, the adoption of the broad view of public reason enables
potential principles or regulatory directives against activities such as trophy hunting, and opens a new window for using and applying the proceeds of public reason in real-world settings.

This recognises the role of liberal democratic states in outlawing or restricting practises that fail to gather acceptance via the process of public reason deliberation. This does not discount the importance of collecting empirical data to understand which activities are controversial. Articulating principles of regulatory alignment occurs by applying the proceeds of public reason to these activities, and forcing them to pass this justificatory test.

A further indicator that public reason deliberation could play a theoretical role in processing principles of regulation is through consulting its comparative advantages to real-world polling. Polls are designed to capture and express public feeling towards specific policies, real-world affairs, or political authority itself. Revisiting the example of regulating the Tax Gap, polling for this indicates that 61% of people, would favour a wealth tax of those earning over £750,000 (34% strongly support) (YouGov, 2020). Moreover, 82% stated their views that countries registered in offshore tax havens should receive no support from the government in the form of financial aid and bailouts (this specifically centres around aid packages that are given out at times of national emergency). This data was received in response to questions regarding how to lower the Tax Gap in the UK.

Though polling data expresses a desire among the public to shorten the Tax Gap, nothing in the poll itself forces any sort of regulatory alignment. In other words, though the YouGov poll may reflect some form of public justification towards narrowing the Tax Gap, this can only entice and recommend, and cannot enforce political authority to act upon the outcome of polling data in effective ways. This is not the case with public reason deliberation. According to anti-perfectionists, political authority must implement whatever the proceeds of public reason agree to. In other words, the activities and attitudes of the basic institutions of political authority, and the making of political decisions is tied to what reasonable citizens engaging in public reason deliberation decide to. Hence, contra polling, which can only advise political authority to act, the proceeds of public reason deliberation are tied to the exercise of governance itself. In this sense, public reason deliberation represents ‘the most plausible way of understanding what the more general commitment to the public justification of political

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32 See full results. Available at URL: https://docs.cdn.yougov.com/p54plx0gh9/NEON_PostCovidPolicy_200508_w4.pdf
33 The situation is complicated further by the sheer volume of polling groups in liberal democratic society. Rarely do all polling organisations converge on the same answer, and those in charge of specific polling organisations may have strong political leanings or ideological preference which subvert the interpretation of results
power implies about the practical activities of citizens and public officials’ (Quong, 2011, p. 257).

If articulating proposals to shorten or widen the Tax Gap were left to the proceeds of public reason, stricter regulatory alignment towards these practises would be recommended to political authority. It is plausible to expect that mutual agreement and acceptance can be reached among reasonable citizens surrounding the need to act against those whose activities widen the Tax Gap. Arguments for maintaining the liberal value of “Society as a Scheme of Social Cooperation” could lead to mutual agreement and direct acceptance that those responsible for purposefully avoiding their tax responsibilities, and pursuing private interests ought to be prevented from doing so. If this is agreed to through public reason deliberation, bringing about regulatory alignment by responding to the proceeds of public reason becomes the responsibility of liberal political authority. This demonstrates that anti-perfectionist liberal theory can process principles of regulation. It occurs through extending and applying the proceeds of public reason deliberation to real world settings Political polling helps to understand public feeling towards a range of matters. However, if the goal is the forming of policies which can effectively regulate these practises, then forcing controversial activities to pass the justificatory test of public reason deliberation is the correct way for anti-perfectionist theorists to proceed.

IV.I. Dispelling Criticisms of Public Reason

The centrality of the proceeds of public reason in articulating principles of regulation buttresses and reinforces the commonality between perfectionist and anti-perfectionist liberal stances. Since both theoretical perspectives can theoretically process principles of regulation, the plausibility of the liberal theoretical perspective towards regulation is enhanced. Several significant philosophical consequences emerge from this. The most significant relates is that the viable role of the proceeds of public reason in theorising toward and processing principles of regulation rebuts prominent criticisms of public reason. Other related criticisms of anti-perfectionist liberalism can also be dispelled, such as the claim that anti-perfectionist liberal theory is impermissibly sectarian.

There are three prominent criticisms of public reason. Firstly, Rawls and Quong are charged with ignoring constraints on individuals engaging in public reason deliberation in real-world, rather than idealised contexts. This implies that they intentionally underestimate the barriers to the exercise of public reason deliberation in liberal democratic societies (Enoch, 2015, p. 118). Secondly, anti-perfectionist liberals overlook the discrepancy between individuals surrounding what would constitute an agreement or compromise. As such, public
reason lacks justificatory power because it wrongly assumes that every citizen will have the same understanding and conception of when compromise is reached. Lastly, even if one accepts that the proceeds of public reason can arrive at principles of regulation, anti-perfectionists fail to acknowledge the theoretical gap between what public reason recommends, and potential feasibility constraints surrounding the implementation of these ends by existing institutional structures. However, these criticisms fail to recognise the role that public reason deliberation can play in formulating principles of regulation. As such, with respect to questions concerning regulation, they are void.

Enoch’s (2015, p. 117-18) criticism of the justificatory potential of public reason stems from scepticism surrounding the ability of citizens in real world societies to be able to deliberate in this fashion. He claims that Rawls and Quong intentionally neglect serious engagement with how citizens in real-world societies engage in public reason. This tactfully avoids drawing attention to the practical and logistical impracticalities of relying upon it to solve all political matters. For Rawls and Quong, ‘what’s important is not that people see the justification of the relevant principle, but that they would see or endorse it, if they spent a respectable amount of good reasoning on it’ (Enoch, 2015, p. 118). However, Enoch’s concern is that this only conveys how public reason deliberation works in idealised circumstances, thus ignoring potential constraints citizens may face in using public reason deliberation in real-world settings (Enoch, 2015, p. 130). In real world societies, it is reasonable to expect that citizens fail to meet the standards required of public reason deliberation. This is because of the time and effort taken to engage in public reasoning, and the pressure one might face in real-world scenarios to make certain decisions quickly and efficiently, without the time to adequately self-reflect and deliberate. Bonotti (2017, p. 78) develops this point, stating that ‘in the end, there is no way to check whether people are truly motivated by the public reasons that they expediently invoke in public deliberation’. This highlights a lack of a clear basis in real-world contexts from which to judge whether a perspective is justified primarily by public, or non-public reasons.

Further related scepticism about anti-perfectionist liberalism targets Rawls’s and Quong’s neglect to consider ‘the prevalence and permanence of political disagreement’ (Sleat, 2013, p. 101) in real world societies. Even if consensus on a set of political values detailing the scope of the state and the rights of citizens can be reached through the use of public reason, Rawls and Quong fail to demonstrate that this consensus can endure over time, or that it can survive pervasive disagreement or challenges that may undermine its initial justification. Sleat corroborates this, arguing that the mere acceptance and affirmation of the political values does
not strengthen their justification. With respect to formulating principles of regulation, the idea is that the affirmation or mutual agreement to regulate is not a strong enough basis to enact or enforce regulatory action from political authority. This is the case even if such mutual agreement is the result of public reason deliberation. In effect, anti-perfectionists underestimate and neglect real world realities of disagreement when referring to how the proceeds of public reason deliberation come about.

While these are well-substantiated criticisms, the fact that public reason deliberation is idealised and that Rawls and Quong do not pay attention to real world societies is not an issue for the liberal theoretical response to regulation. The fact that attention is not paid to real-world societies can be quickly dispelled. Once questions concerning regulation take a central focus, questions relating to the effective instantiation and implementation of liberal values and norms are at the forefront of the inquiry. Hence, the liberal theoretical perspective towards regulation may rely upon the proceeds of public reason, but this does not neglect real-world scenarios. Rather, it is precisely real-world cases of regulatory capture, immoral markets and offshoring practises that public reason deliberation is tasked to regulate.

Relatedly, the feasibility constraints referred to by Enoch, Sleat and Bonotti do not apply. Relying upon the proceeds of public reason to respond to questions concerning regulation is feasible. It is possible to see regulatory solutions put forward by reasonable citizens, and for these to be mutually agreed to and affirmed. The earlier mentioned examples from section II provide evidence for this. Public reasons can be offered for the regulation of repugnant markets. Also, mutually acceptable public reasons can be affirmed which provide directives for the liberal state to shorten the Tax Gap on the basis of safeguarding the implementation of liberal values and norms. The fact that public reasons could be offered for these specific ends, and gather mutual acceptance, demonstrates the feasible role of the proceeds of public reason in facilitating regulatory proposals. Furthermore, these are prevalent real-world issues. This rebuts the claim that the proceeds of public reason are of relevance in idealised circumstances exclusively.

The second criticism of public reason is levelled by Gaus (1996, p. 183). He highlights the unrealistic aim of achieving compromise and agreement which public reason deliberation depends upon. He states that ‘a realistic commitment to a principled compromise would involve each person pressing his own conception of what would be a fair compromise among competing positions’. In effect, what constitutes compromise or agreement on principles is perceived differently by each individual. Rawls and Quong focus only upon the way in which public reason deliberation can reach consensus by reasonable citizens putting forward reasons other
reasonable citizens would accept. They problematically presume that each reasonable citizen will have the same standard and idea of what constitutes an agreement or compromise, and the amount of evidence needed for this. This is deemed a controversial assumption to make, due to uncertainties surrounding when compromise has been reached in deliberation (Gaus, 1995, p. 258). This is reinforced by Archard (2005, p. 16), who states that ‘there is an important difference between offering someone a description of an action or state of affairs and giving them reasons why they should accept the doing of that action or that state of affairs’. Therefore, even if one grants that different citizens can offer compelling reasons for different points of view, it is far less clear how one goes about ensuring that the public reasons offered will be accepted by other reasonable citizens. Rawls and Quong are thus wrong to presume that reaching ‘agreement’ as a result of public reason deliberation is clear, and that this agreement will be recognised by all citizens who engage in public reason.

However, discrepancies among citizens surrounding the evidence required for justification for a specific value/end does not apply to the anti-perfectionist process for formulating regulatory principles. Re-considering the Tax Gap, it is unlikely that citizens will reach agreement surrounding the exact level of intervention necessary to solve the problem. This is due to differences surrounding the extent to which citizens view the problem as an issue worth solving, and the variance surrounding the severity and extremity of the solutions that political authority might adopt. Yet, given the complexity of the Tax Gap, and the multitude of methods and actors employed to widen it, a single policy response with universal agreement and assent should not be expected to solve it. There may be differential perspectives as to what would constitute “compromise” on a solution. But this does not outlaw any possibility of regulatory intervention on behalf of liberal political authority. Relying upon the proceeds of public reason deliberation might not recommend a specific policy response. But it can uncover significant and binding common ground with regards to the direction that regulatory principles should be targeted towards. This includes agreed upon common ends surrounding the need to shorten the Tax Gap. Different public reasons and justifications can be offered, and differential levels of agreement among citizens as to the severity of these policy interventions may exist. Nevertheless, common agreement and acceptance on the need to limit the Tax Gap can be reached. The fact that for anti-perfectionists, liberal political authority must act upon the proceeds of public reason is significant here. Even if the agreement is minimal, a directive to regulate behaviours in ways which limit the Tax Gap is discernible. Because of this, Gaus’s and Archard’s concerns can be viewed as subsidiary with respect to the liberal theoretical perspective towards regulation.
To articulate an additional example, one can return to the role of the anti-perfectionist liberal state in processing principles of regulation to counteract NRA lobbying. Trusting the proceeds of public reason can be utilised to this end, despite the fact that universal common agreement and wide-ranging compromise as to the shape that gun control legislation should take, and the extremity of intervention in this regard remains unknown. Two reasonable citizens engaged in public reason deliberation can offer reasons why gun ownership ought to be regulated, and converge on a decision to regulate. Citizens may appeal to the importance of a citizens “Political Autonomy”, encompassing values of participation, and the right to vote and hold political authority to account when voicing concern at the lobbying strategies of the NRA. Since NRA lobbying disproportionately sways the ends of political authority, mutual acceptance on the need to regulate activities can be agreed to through public reason deliberation. Others may appeal to the value of “Society as a Scheme of Social Cooperation”. This can express agreement about how this central liberal value is undermined by the disproportionate treatment and beneficial ends that the NRA lobby receives. Lastly, public reasons may be affirmed on the basis of the “No Harm Principle”. Some reasonable citizens may deliberate and point out the harm brought about by mass shootings, and blame limited gun control legislation as a cause of this. Given the rights and freedoms of liberal citizens to be protected from harm, public reasons for the regulation of the NRA, and undermining the effect of its lobby can be reasonably put forwarded, and assented to. This common agreement is significant. It is derivable through the proceeds of public reason. Specifically, it can be reached once one adopts the broad view of public reason as theorised by Quong. Only this form of public reason deliberation enables its use when deliberating non-political matters, and controversial real-world behaviours, such as questions concerning regulation.

The concerns about public reason deliberation taking place, and problems surrounding reaching a compromise can be responded to. However, the justificatory potential of public reason deliberation faces a further barrier. Rawls and Quong assume that existing institutions and institutional structures can straightforwardly implement anything which public reason deliberation agrees to. This ignores a potential theoretical gap between what the proceeds of public reason agree to, and whether there are any viable mechanisms to bring this about. Hence, even if one grants that public reason deliberation can arrive at clear, affirmative ends, this is worth little without state structures in place to bring this about. As Mang (2017, p. 349) comments, whatever the output of public reason deliberation, ‘it is plausible to suggest that the state will need to put in place relevant institutional arrangements’ in order for these ends to be enacted in political decision-making. In the idealised scenario of reasonable citizens engaging
in deliberation that Rawls and Quong portray, there is no conceptual difficulty in political authority implementing whatever ends are agreed to. However, the proceeds of public reason deliberation may have feasibility restrictions in actually existing liberal democratic societies. This prompts critics to suggest that questions of feasibility are intentionally ignored, as it demonstrates the shortfalls and impracticalities of using public reason deliberation as a justificatory basis for implementation.

Though a theoretical gap may exist between the proceeds of public reason, and the prospects of political authority implementing this end, this criticism does not apply to the anti-perfectionist process for developing regulatory principles. Firstly, political authority is the clearly designated institution tasked with implementing the proceeds of public reason. Since it is real-world behaviours that are subject to the proceeds of public reason, one can recognise that political authority in liberal democratic societies are tasked with implementing these ends. Furthermore, if the proceeds of public reason deliberation arrive at agreed upon principles of regulation, these can be specifically targeted towards independent instances of regulatory capture, immoral markets or offshoring practises. Hence, the theoretical gap between the proceeds of public reason, and an institutional structure which can bring about these ends does not apply to these questions. In dealing with repugnant markets, for example, the proceeds of public reason may state that it is the responsibility of the state to end or severely penalise activities associated with, or in promotion of trophy hunting. This gives the state a clear task to carry out, and sheds light on those responsible, providing clear avenues for political authoritative intervention against those that promote and enable these activities. The same applies to the other behaviours which represent the focus of this chapter. The proceeds of public reason can be relied upon to generate regulatory proposals for NRA lobbying, and limiting the Tax Gap. Public reasons can be forwarded which justify regulatory intervention, on the basis of safeguarding the implementation of liberal values and norms. When questions concerning regulation take a central focus, questions of feasibility surrounding the actual implementation of ends have less relevance. Therefore, anti-perfectionist liberals can still rely upon the proceeds of public reason to process principles of regulation against real-world instances of regulatory capture, immoral markets, or offshoring practises.

IV.II. Anti-Perfectionist Liberalism is Not Sectarian

Relying upon the proceeds of public reason is a reliable means to produce principles of regulation. As a result, the charge of sectarianism associated with anti-perfectionist liberalism’s prioritisation and privileging of reasonable citizens can be responded to. The concern with
public reason deliberation, even if one grants its positive ramifications with respect to producing principles of regulation, is that only “reasonable” citizens can participate in it. Similarly, the overlapping consensus is a set of political values which need only appeal to citizens who hold reasonable comprehensive doctrines. Lastly, one key justification for the political values comprising the overlapping consensus is that they respond to reasonable pluralism by offering a shared basis of agreement for reasonable citizens. This risks dispelling the potentially helpful and plausibility of input of other citizens. However, once liberal theorists focus upon the implementation of liberal values and norms towards instances of regulatory capture, immoral markets, and offshoring practises, the question of whether anti-perfectionist liberalism as a whole is sectarian becomes a separate inquiry.

By a ‘reasonable citizen’, Quong refers to individuals who accept society as a fair system of social cooperation for mutual benefit between free and equal citizens, treat individuals freely and equally, and recognise that liberal societies are characterised by reasonable pluralism (Quong, 2011, p. 261). Any belief/doctrine that fails to view all as free and equal or holds that society is not about social cooperation, is thus unreasonable. Crucially, all that is required for a reasonable belief to be forwarded is that the above requirements of a reasonable belief/doctrine are met, and that this belief/doctrine is arrived at through ‘the use of clear and coherent thinking and reasoning’ (Quong, 2011, p. 248).

Critics of the anti-perfectionist reliance on reasonability draw upon problems relating to how reasonability is defined. They also criticise Rawls’s and Quong’s insistence that one need only rely on what reasonable citizens can agree to in order to determine the ends of political authority. This amounts to a charge of sectarianism levelled against anti-perfectionist liberalism (Gaus, 1995; 1996; 2012). This can be understood through the following two claims:

1. The political values comprising the overlapping consensus requiring acceptance by reasonable citizens only has sectarian implications.
2. There are exclusionary implications of the prioritisation of reasonability. The barrier to those deemed unreasonable from participating in public discourse prevents the articulations of viable points of view.

These two claims imply that allowing reasonable citizens to deliberate about principles of regulation exclusively prevents valuable insight towards the best available principles. This is controversially disregarded as unreasonable.
The rationale for the overlapping consensus being agreeable to reasonable citizens is that ‘if liberalism is to rise above the fray, it must […] be based on an obvious and widely (indeed, universally among reasonable people) accepted understanding of justification’ (Gaus, 1995, p. 257). In effect, political authority must be agreeable to and accepted by reasonable citizens. They are the only constituency suited for public discussion (Quong, 2011, p. 291). This is because reasonable citizens would not endorse or license political authority or individuals to act in ways that did not treat all citizens freely and equally, or which gave preferential treatment to some social groups at the expense of others. By contrast, unreasonable citizens hold ideas/doctrines that either reject these values, or fail to associate with these ideas as strongly. Gaus (2012, p. 11-12) argues that this prioritisation of reasonability implies that ‘anyone who believes that her own conclusions about morality, ethics, or the will of God are relevant to checking whether the liberal “freestanding” argument is truly justificatory is expelled’ He states in opposition to this that ‘surely we have now excluded large swaths of the population on the grounds that they are “unreasonable” and hold “unjust” views’. (Gaus, 2012, p. 11-12). Drawing on comprehensive ideas of the good to settle or question the justificatory power of public, political ideas is regarded by anti-perfectionists as unreasonable. As such, these views are discarded from public discourse. The question thus arises as to whether Quong can plausibly deem ‘unreasonable and unjust anyone who thinks that her views on moral philosophy or religion are relevant’ (Gaus, 2012, p. 12). For Gaus, acceptable reasons for discounting comprehensive ideas of the good from public discourse are not provided.

This is further developed by Friedman, who states that Rawls’s and Quong’s treatment of the defined constituency of unreasonable citizens is unjustifiable. As a result of the anti-perfectionist prioritisation of reasonability, unreasonable citizens are ‘treated like the bearers of a pestilence […] in daily life, they will be denied the full protection of the system’s basic rights and liberties’ (Friedman, 2003, p. 23). Gaus and Friedman deem this enough to dismiss any insight anti-perfectionist liberalism gives for the solving of questions concerning regulation.

The problem of the sectarianism of reasonable citizens also manifests through further exclusionary implications. Although anti-perfectionism prioritises the deliberation and public justification of principles by reasonable citizens, this gives these citizens a monopoly surrounding the direction and actions of political authority. This limits the justification of political matters to reasonable citizens only. This creates an idealised subset of reasonable citizens who can publicly justify ideas to each other, while controversially excluding large quantities of the population who fall under the category of the unreasonable (Gaus, 2012, p. 11-
12). This limitation of those suitable to justify political principles excludes valuable perspectives from the adjudication and solving of disputes. As Frohock (2006, p. 43) states, ‘to exclude the more difficult adversaries in a dispute admits that political reasoning is less effective’. The barrier to public discourse set up by anti-perfectionist’s prioritisation of reasonability thus harms public discourse, and limits its potential (Frohock, 2006, p. 27).

This means that when deliberating towards and processing principles of regulation, ‘some or all of the players in a dispute are committed to a truth and methods for reaching that truth which are inaccessible to the liberal frame of mind’ (Frohock, 2006, p. 30). This highlights the exclusionary tendencies embedded within liberal reasoning. Public reason deliberation is a luxury of reasonable citizens, and disregarded for those who wish to use comprehensive views of the good to solve disputes. Devoid of the full range of considerations, political authority may implement directives while being less informed than they could be. These exclusionary tendencies handicap political authority, and make it less able to instantiate effective ends.

The charge of sectarianism, and highlighting the implied exclusionary tendencies within the anti-perfectionist definition of reasonability is a well-founded criticism. However, it does not affect the theoretical process through which regulatory principles are derived. The chief reason for this is that establishing a theoretical process for liberals to envisage principles of regulation is a separate inquiry to wider questions regarding what constitutes reasonability as a whole, how we should define the term, and the extent to which reasonable citizens should be prioritised within public discourse. When processing principles of regulation, the need to use the apparatus and powers of the liberal state to protect and safeguard all individuals (regardless of whether they are deemed reasonable and unreasonable) trumps considerations of what constitutes the correct definition of reasonability, and whether this is or is not impermissibly sectarian. Furthermore, principles of regulation are not brought about specifically to benefit reasonable citizens. For example, articulating directives that prevent the spread of repugnant markets, or acting on public wishes to shrink the Tax Gap, and/or limit the influence of political lobbying is not designed to benefit reasonable citizens only. The anti-perfectionist liberal justification for these regulatory principles emanates from the need to maintain and safeguard central liberal values and norms. Considerations of sectarian implications of prioritising unreasonable citizens are irrelevant.

The charge of sectarianism also implies that those regarded as unreasonable by liberals are not afforded the same rights and protections from the state as reasonable citizens. However, this is a misinterpretation. As Quong (2011, p. 293) states, ‘the fact that someone is
unreasonable [...] is no sound reason for denying them the rights and benefits of citizenship’. In effect, though unreasonable citizens hold views that prohibit them from engaging in public reason deliberation, this does not mean they are exempt from the benefits of citizenship. The “Extensive Basic Liberties” each citizen enjoys within liberal society, and the “Free and Equal Standard” to which they are held applies to all citizens who hold both reasonable and unreasonable views. As Quong (2011, p. 292) illustrates, ‘the more unreasonable views they have, the more total their exclusion from this constituency will be’. Hence, if individuals hold views that disregard citizens as free and equal, reject reasonable pluralism, and refute the idea of society as a scheme of social cooperation for mutual benefit, they can expect more of their freedoms to be curtailed. Those who attribute the sectarianism charge against anti-perfectionists thus over-emphasise the extent of poor treatment that unreasonable citizens receive.

With regards to the further exclusionary implications implied within the prioritisation of reasonability, this presumes that the more perspectives that are entered into public discourse, the more likely that beneficial ends will be found. Further evidence is needed to credit this assumption. For example, Quong (2011, p. 312) regards the idea that political power needs to be justifiable to everyone, and that everyone should be able to determine the direction of political power as ‘wildly implausible’. Arriving at common ground between all views would take far longer than if political authority based the justification of the implementation of liberal ideas around a select constituency of views. Also, regardless of the barriers to engaging in public reason deliberation, the aim of principles of regulation are to maintain and safeguard liberal values and norms which represent the subject of an overlapping consensus. These have a wide common ground, as they are affirmed by many citizens holding comprehensive conceptions of the good. Hence, even if public reason deliberation is selective, it is not exclusionary, as the aim of deliberation on principles of regulation is to ensure and protect the implementation of political values. Since these political values are widely affirmed, and represent core, common agreement between citizens, the exclusionary implications of relying upon public reason deliberation from reasonable citizens is lessened.

V. Conclusion: The Similarity of Perfectionist and Anti-Perfectionist Liberalism

The theoretical perspectives of perfectionist and anti-perfectionist Liberalism imply a theoretical basis for answering questions concerning regulation. Also, their justification of the scope and aims of political authority encompass a theoretical process for producing principles
of regulation. The plausibility of these theoretical approaches to regulation has been illustrated throughout chapters III and IV.

With regards to producing principles of regulation, anti-perfectionist liberal theorists rely on the role of political authority in maintaining the values comprising the subject of an overlapping consensus. They also rely upon the proceeds of public reason deliberation to determine the precise and specific ends of political authority in acting against these behaviours. Perfectionist liberals license a role for political authority in acting against cases of regulatory capture, immoral markets and offshoring practises if these activities limit individual autonomy, cause harm to citizens, or prevent the ability of citizens to act in accordance with their conception of the good.

As such, when it comes to questions which bear upon the implementation and instantiation of liberal ideas, one can use the recommendations and theoretical apparatus of liberal theory to respond to these behaviours. The plausibility of the liberal theoretical response to regulation has been reinforced by considering the liberal theoretical response to real-world cases, and data/statistics surrounding political lobbying; deferred taxation; lessening the tax gap; responding to repugnant markets; and regulating the advertising industry. This has served to cement the similarity, and demonstrate the viability of the liberal theoretical response to regulation. On top of this, it has provided a theoretical framework which illustrates how liberal values and norms surrounding rights afforded to citizens, and the scope and aims of liberal political authority can be implemented and instantiated towards real-world events and issues.

The similarity between the perspectives is also strengthened on account of the fact that criticisms and charges against anti-perfectionist liberalism can be overlooked when questions concerning regulation take a central focus. Concerns surrounding the epistemic abstinence surrounding the political values; concerns about the viability of adopting a stance of state neutrality; misgivings about the justificatory power of public reason; and concerns surrounding the sectarian prioritisation of reasonability are severely lessened with respect to the liberal theoretical perspective on regulation. While it is beyond the remit of this thesis to counteract these criticisms entirely, demonstrating how they do not apply to questions which bear upon the implementation of liberal ideas means that the liberal theoretical processing of principles of regulation remains unscathed. This concludes the first chief claim of the thesis, namely, that when it comes to questions which bear upon the implementation and instantiation of liberal ideas, such as those concerning regulation, the theoretical perspectives of perfectionist and anti-perfectionist liberalism are alike in their provision of effective solutions.
Chapter V

Accommodating the Theoretical Justification of Liberal Paternalism

Abstract: Perfectionist liberalism is superior to anti-perfectionist liberalism as a theoretical basis for regulation. This is due to the greater scope of influence and paternalistic intervention licensed to political authority. Specifically, perfectionist, pre-emptive authoritative directives can take the form of authoritative nudges. This is a form of paternalistic intervention which simultaneously reduces harm, and increases autonomy. It counteracts negative consequences associated with regulatory capture, immoral markets and offshoring practises, and is specifically targeted towards the perpetrators of these behaviours. The anti-perfectionist stance dismisses paternalistic intervention as inherently wrong, manipulative, and necessitating a negative view of citizens to advance their interests. However, these criticisms do not apply to pre-emptive directives, or authoritative nudges.

There is a need to utilise paternalistic intervention to counteract the negative consequences of regulatory capture, immoral markets, and offshoring practises. However, only perfectionist liberalism accommodates such intervention. Therefore, it is favoured over anti-perfectionist liberalism when responding to questions concerning regulation. Substantiating this argument illustrates the plausibility of the following claims:

1. Perfectionist liberal theorists can respond to prominent objections towards paternalistic intervention characterised by Quong’s anti-paternalist arguments.
2. Perfectionist Liberalism can accommodate a type of paternalistic intervention, ‘authoritative nudges’ that can take the form of pre-emptive authoritative directives.
3. Paternalistic state intervention in the form of authoritative nudges represent an effective means to respond to instances of regulatory capture, immoral markets and offshoring practises.

I. Perfectionist Liberalism, Anti-Perfectionist Liberalism, and Paternalism
Perfectionist and anti-perfectionist liberal theorists are linked by ‘their belief in limited government’ (Arnold, 2009, p. 418). Therefore, questions surrounding “to what end” is paternalistic interference permissible, and “to what extent” can it interfere on the free decision-making capacity of individuals requires precise specification.

Such specification is hard to come by, given that “paternalism” and “paternalistic intervention” is understood in a multitude of different ways within the liberal tradition. Consequently, drawing upon the broad understandings of the term, and evaluating the merits and drawbacks of the sum total of definitions of paternalism and paternalistic interference is complicated. Focusing upon the paternalism dispute between perfectionists and anti-perfectionists, rather than the liberal tradition as a whole, helpfully narrows the focus of the inquiry. Moreover, this thesis concerns the role of liberal theory in responding to instances of regulatory capture, immoral markets, and offshoring practises. Therefore, evaluating the ways in which liberal theory accommodates paternalistic intervention will focus only upon its role in counteracting the negative effects of these behaviours.

I.I Reiterating Raz’s and Quong’s Dispute Surrounding Paternalism

The perfectionist and anti-perfectionist dispute surrounding the permissibility of paternalistic interference is illustrated in the arguments forwarded by Raz and Quong. Raz claims that the liberal state has a role in advancing the good which licenses certain forms of authoritative intervention. Chiefly, liberal political authority can use its privileged position to advance the good by pre-empting citizens towards certain ends. The pre-emptive force of authoritative directives is evident in the subsidising of certain desirable activities by political authority, the offering of rewards for the pursuit of certain ends, or advertising the availability of choices which help subjects achieve their ends. Moreover, ends which are undesirable or harmful to subjects may become harder to pursue, and the attractiveness of certain courses of action may be lessened with the imposition of penalties and punishments for citizens for performing these ends (Raz, 1986, p. 417). Raz (1986, p. 417-18) holds that citizens would accept authoritative directives that take this form, as they recognise the privileged place of authority in knowing how to advance the good.

Therefore, for Raz, citizens acquire reasons to perform certain actions because they are influenced by authoritative directives. It provides citizens with new reasons (e.g., they may

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34 For a broad list of the different conceptual understandings of the concept, see Dworkin In Schramme, T. (eds.) (2015)
have a reason to perform an action they hitherto had no reason to perform). Alternatively, authoritative directives replace reasons citizens already had for performing certain actions, (e.g., citizens already have reasons to perform certain actions, but realise that it is more efficient to follow authoritative directives than their own justifications) (Raz, 1986, p. 69). As mentioned in chapter two, Raz (1986, p. 57-60) defines this as the pre-emption thesis. When an authoritative directive satisfies the pre-emption thesis, the directive changes or replaces reasons for action in ways which make a difference to how those subject to it decide to act. Furthermore, for pre-emption to work, subjects recognise that they take certain decisions because of influential authoritative directives, such that had they not taken this authoritative directive to be binding, they would not have performed the act it recommended. Therefore, allowing pre-emptive authoritative directives enables political authority to paternalistically interfere in the lives of citizens. This is uncontroversial because of the positive ends it brings, and because citizens are aware that by following the advice or directives of authority, they are more likely to reach ends that apply to them than if they had been left to their own devices.

Quong denies any role for paternalistic interference from liberal political authority, whether this occurs through pre-emptive authoritative directives, or any other means. His claim is that paternalistic interference in the actions and choices of citizens is “inherently wrong”. This is because overruling a citizen’s reasoning processes involves the subordination of a citizen’s views under that of a paternalizer. Hence, no form of perfectionist authoritative directives can eschew paternalistic reasoning. As mentioned in chapter two, Quong (2011, p. 80) regards an act as paternalistic under the following circumstances:

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

2. P’s act is motivated by a negative judgment about Q’s ability [...] to make the right decision or manage the particular situation in a way that will effectively advance Q’s welfare, good, happiness, needs, interests or values.

Perfectionist, pre-emptive authoritative directives are thereby unviable as they involve making a negative judgement about an individual’s ability to advance their welfare. This is prima facie wrong, such that any proposed defence offered by perfectionists cannot justify this interference. Concordantly, Quong rejects any notion that the perfectionist liberal state is better placed then individuals to know what interests apply to them.

Quong also charges pre-emptive authoritative directives with manipulating citizens towards specific ends, by disregarding or failing to prioritise a citizen’s own
desires/wishes/choices. According to Quong, the imposition of pre-emptive authoritative directives falls foul of Raz’s own criterion for making autonomous decisions, whereby an individual makes an autonomous decision when they possess adequate mental abilities, an adequate range of options, and that individuals are free from coercion and manipulation (Quong, 2011, p. 50). Quong (2011, p. 71) argues that

so long as autonomy is understood in this way, it will be difficult to justify one of the central features of liberal perfectionism: subsidies, incentives, and other means of manipulating citizens into making good choices. On the other hand, if the manipulation of others is consistent with the value of autonomy, it is not clear that a theory based on this conception of autonomy will be recognizably liberal.

In effect, promoting autonomous decision-making is not consistent with allowing the state a role in subsidising actions, and inducing citizens towards specific outcomes. This misguidedly attempts to make individual autonomous decision-making and the self-direction of one’s life compatible with the intentional aim of political authority to move citizens towards state desired, specific ends.

II. The Preference for Perfectionist Liberalism: The Case for Paternalistic Intervention

Adjudicating the dispute between perfectionist and anti-perfectionist liberal theorists regarding the permissibility of paternalism is possible once questions concerning regulation take a central focus. However, commonality between perfectionist and anti-perfectionist liberalism is not uncovered. Due to its ability to incorporate paternalistic interference, and the promotion of forms of paternalistic interference sufficient to counteract the negative effects of the behaviours, perfectionist liberal theory emerges as the preferable liberal theoretical perspective with respect to answering questions concerning regulation. Outlining the case for liberal political authority to implement paternalistic intervention involves responding to the anti-perfectionist arguments against paternalism. This highlights that, contra-Quong, there is no inherent wrongness associated with paternalistic intervention implemented by liberal political authority. Secondly, substantiating the connection between a specific form of paternalistic intervention, authoritative nudges, and the perfectionist liberal pre-emption thesis highlights how liberal theory can be connected to a permissible form of paternalism. Lastly, this form of paternalistic intervention can act against and counteract the negative consequences that emanate from instances of regulatory capture, immoral markets and offshoring practises. In relation to the actual
implementation of principles of regulation, perfectionist liberalism’s allowance of pre-emptive authoritative directives, and the responsibility given to the liberal state to further the good leaves it better placed to initiate principles of regulatory alignment. This entails that state intervention necessary to curb the negative consequences associated with regulatory capture, immoral markets, and offshoring practises can be forwarded by the perfectionist liberal state.

This thereby completes the liberal theoretical perspective towards regulation. The two theses comprising it are that when it comes to questions concerning regulation, and questions bearing on the implementation of liberal values and norms, far less separates than divides perfectionist and anti-perfectionist liberalism. However, due to its accommodation of paternalistic interference, the recommendations of perfectionist liberalism are preferable when regulating instances of regulatory capture, immoral markets, and offshoring practises.

Firstly, the theoretical basis of Quong’s anti-paternalist arguments are debunked. Subsequently, the claim that paternalistic interference is inherently wrong is dismissed. Quong’s complaints about paternalistic interference emphasise their autonomy-reducing implications, and the fact that they are manipulative, because they involve overruling the reasoning processes and faculties of citizens. Furthermore, for Quong, it is impossible for political authority to act paternalistically without taking a negative view towards citizen’s, and distrusting their ability to advance their own interests. However, none of these arguments can withstand scrutiny. Firstly, the presumed link between paternalistic interference and taking a negative view of a citizen’s ability to advance their interest can be rejected. Paternalistic intervention which publishes the availability of options, or provides information about the consequences of pursuing different ends aims to assist citizens with their decision-making. It is not predicated on the idea that citizens cannot make these gradations, or that their own reasoning faculties can’t enable them to reach desirable ends. Secondly, while some paternalistic intervention may carry a manipulative component, there are scenarios under which individuals would accept this, and even welcome it. This is due to the hardship faced when individuals make decisions entirely of their own accord, without any outside interference. Lastly, the removal of political authority from the advancement of the good in the way Quong recommends is unjustifiable. This makes it harder for individuals to recognise and realise the good, and makes knowledge of worthy pursuits and ends more difficult to ascertain.

Since paternalistic interference is not inherently wrong, the benefits and implications of liberal paternalistic interference can be made clear. The first step towards achieving this involves theorising toward the appropriate form of paternalistic interference compatible with
the perfectionist liberal state. The primary benefit of perfectionist authoritative directives are their pre-emptive quality. Citizens/firms can be pre-empted towards ends or encouraged not to take harmful courses of action. Also, the publicization of available options and ends can be made known to citizens, expanding and enhancing their capacity for autonomy. Paternalistic directives which carry this pre-emptive quality, and help to satisfy the pre-emption thesis are ‘authoritative nudges’. These are forms of paternalistic interference issued by political authority. They can be applied both to individuals and corporations/firms. They carry both a harm-prevention and autonomy-enhancement component, underlining their synergy with pre-emptive authoritative directives. If behaviours manifest in society which cause demonstrable harm to citizens, which in this context amounts to violating the effective instantiation of liberal values and norms, they can make the performance of these acts more complicated, or inform citizens of the harms associated with them. Similarly, authoritative nudges can act to expand the choice-sets and information available to citizens. This can assist citizens in the making of autonomous decisions, since they have a more concrete awareness of the implications associated with different choices.

Lastly, the use of paternalistic interference with takes the form of pre-emptive, authoritative nudges are applied to questions concerning regulation. This bolsters the credibility of this form of paternalistic interference. This illustrates how the liberal state can act paternalistically towards instances of regulatory capture, immoral markets, and offshoring practises, and theoretically impose useful, workable principles of regulatory alignment. In each instance, it is the paternalistic, pre-emptive authoritative nudge which theoretically provides workable regulatory solutions. With respect to political lobbying (whereby the banking and finance sectors are utilised by examples), authoritative nudges can encourage legislators and regulators to report their dealings with banks, either through financial benefit or by risking exposure. This helps to make instances of collusion more visible. Secondly, the targeted, specific nature of pre-emptive authoritative nudges bolsters the case to shift from a single, to a multi-supervisory structure of banks. This will make it easier to detect instances of harmful political lobbying, and more effectively police the dealings between banks and regulators. Secondly, pre-emptive authoritative nudges imposed by the perfectionist liberal state can counteract other, non-authoritative nudges imposed by aggressive advertising techniques, and the controversial commodification of goods. In these instances, the authoritative nudge helps to make citizens aware of the harms of certain consumer choices which companies may wish to conceal, and helps them to recognise the availability of other, more productive or less risk-averse choices. Lastly, authoritative nudges can act to further publicize the findings of seminal
tax avoidance abuses uncovered by the Pandora Papers. Using the basis of the perfectionist liberal state, individuals and firms embroiled in tax avoidance schemes can be more effectively publicized. This creates a deterrent against engagement in these behaviours. The authoritative nudge acts to publicize more widely the at present niche findings of the Pandora Papers. It also provides paternalistic interference that encourages individuals to avoid companies/individuals that engage in such schemes, and to lessen the temptation to avoid tax, due to fears of public reprisals and reputational damage.

Since these regulatory avenues are avenues open only to perfectionist liberal theorists, this qualifies it as the preferable liberal perspective when it comes to answering questions concerning regulation.

II.I. Resolving the Perfectionist/Anti-Perfectionist Dispute: Justifying a Role for Paternalistic Interference

The crux of Quong’s anti-paternalist perspective rests and falls with the claim that paternalistic interference is inherently wrong. This implies that all potential avenues of paternalistic intervention applied by liberal political authority take a negative view about a citizen’s ability to advance their interest, and manipulate citizens towards ends that they would not have chosen had they been left to their own devices. It also depends upon the claim that all forms of paternalistic interference are autonomy-reducing, by intercepting the deliberative and individual processes through which citizens decide upon their own ends. However, none of these anti-paternalist arguments can withstand scrutiny. This means that paternalistic intervention is compatible with liberal political authority.

The appeal of Quong’s anti-paternalist stance is clear. There are concerns surrounding over-intrusive political authoritative intervention. This is because it involves governments making choices on behalf of its citizens (Bräanmark, 2018, p. 169). This risks bypassing and overruling the ability of citizens to advance their own interests, according to their own judgements and reasoning processes (Scoccia, 1990, p. 323). However, Quong’s arguments for the inherent wrongness of paternalism confute the level of intervention involved in different types of paternalistic interference. Also, his broad-brush assessment that any form of paternalistic interference involves taking a negative view of a citizen’s ability to advance their interests can be dismissed. Not all forms of paternalistic interference are autonomy-reducing; not all forms of manipulation towards specific ends are harmful to citizens. Finally, not all instances of paternalistic intervention involve a negative view about the ability of citizens to
advance their interests. Thus, the three foundations upon which Quong’s anti-paternalist stance rests are incorrect.

Firstly, different motivations can be at play when interfering with someone’s free decision-making. For example:

1. I respect that Person A intends to choose between either options 1, or 2, but I would be doing them a disservice if I did not share my expertise with them, and alert them to the potential benefits of choosing options 3, or 4. I also understand that if I don’t intervene, then they will never know of these additional, beneficial options, so I feel a responsibility to intervene, and expand the choices available to them.

2. I do not think that Person A has the necessary foresight, or responsibility to choose wisely between any options. They are likely to take a decision which harms their interests, and I would rather just act on their behalf than trust them to decide for themselves.

These are two different types of intervention, with different justifications. Quong’s mistake is to conflate intervention of the first kind with intervention of the second. In reality, political authority can intervene with individuals in line with the first type of intervention without taking a view toward citizens consistent with the second type of intervention. For example, as Dworkin (2015, p. 28) explains, ‘people make lots of mistakes in their practical judgments about what is best for them. This is something that those being paternalized can acknowledge without assuming that there is something fundamentally inadequate about their decision-making capacities’. Enoch (2016, p. 29) clarifies this line of thought, arguing that ‘A can consistently think of B both that B can exercise good judgement and strong will, and that he is unlikely to’. In other words, contrary to Quong’s anti-paternalist stance, there is nothing inherently wrong with judging that someone, in a specific setting, may require assistance in the form of authoritative, paternalistic intervention. This says nothing of the overall assessment of their character, hence, Quong is wrong to presume that all forms of paternalistic interference necessarily imply a negative judgement about an individual’s ability to advance their interest.

The other bases of support for Quong’s anti-paternalist stance are also incorrect. Quong argues that paternalistic interference in the form of perfectionist directives and subsidies are unavoidably manipulative. For Quong, citizens make effective decisions when they reason toward ends voluntarily, and make decisions purposefully, through the use of their reasoning faculties. A manipulative directive intends to move individual(s) towards specific ends, regardless of their wishes, desires, or consent. Furthermore, in moving citizens towards specific ends, the manipulator demonstrates no respect for the manipulatee’s capacity to make good
judgements, and overrides their own reasoning faculties. Given that Quong holds that paternalistic interference bypasses a citizen’s reasoning faculties, such interventions are unavoidably manipulative, and impermissible.

However, Quong mistakenly presumes that all instances of manipulation are unjustifiable. This ignores potential manipulative interventions which promote the well-being of citizen’s. In some cases, the desire of a manipulator to move a manipulee towards specific ends is consistent with the needs, desires and/or wishes of citizens; such that even if a citizen knew they were being manipulated, they would have no objection to this (Mills, 2013, p. 449). For example, manipulating citizens to alter their thought-processes in ways which make the adoption of a healthier diet more advisable, or which encourage them to exercise more frequently could be conceivably welcomed by citizens. Hence, manipulative directives and intervention need not engender negative ends.

Secondly, the claim that all instances of manipulation engender a lack of respect for the manipulee’s capacity to make good judgements is also incorrect. Proving that an isolated case of manipulation disrespects one’s capacity to make good judgements requires a clear understanding of ‘whether that person’s decision was both caused by the manipulative act and in some perverted way’ (Wilkinson, 2013, p. 346). Quong fails to appreciate the conceptual undertaking in determining whether each independent act of manipulation is problematic or not. To undergo such an analysis, one must know the competency of each individual’s reasoning faculties. Moreover, one must have a clear understanding of what would constitute disrespect on behalf of the manipulator. This could be an objective criterion and be the same for every citizen. Alternatively, it could depend upon the extent to which a manipulee values the use of their reasoning faculties, and whether they would welcome or shun external interference in their decision-making. These are open questions. Hence, Quong’s prima facie rejection of all forms of manipulation requires more substantial qualifications.

In practical terms, though some manipulative acts may clearly show disrespect to citizens, some do not. This makes the anti-paternalist, blanket assertion of manipulative acts showing disrespect to citizens unsubstantiated. Some cases of manipulation clearly disrespect a citizen’s reasoning capacities, such as deceiving someone to take a certain course of action by lying about its benefits. Additionally, subliminal advertising which aims to convince citizens that a product is good for them, when in fact its consumption causes them harm falls into the category of manipulative acts which show clear disrespect to citizens. However, other forms of manipulation are unproblematic. Intentionally withholding some choices from citizens, or
actively encouraging them to take specific courses of action is not disrespectful to citizens. This might be motivated towards heightening the chance that a citizen chooses a specific, more beneficial course of action. What matters in this instance is the motivation on behalf of the manipulator. If one limits or enhances choices so as to not overwhelm citizens, or make their choosing too complex, or to make them aware of options they would otherwise not be aware of, this is not disrespectful. The intention is to aid with decision-making, and assist, rather than bypass one’s reasoning faculties. To bracket all potential manipulative intervention as unjustified outlaws these potentially helpful interventions that might be welcomed by citizens.

The final justificatory tenet of Quong’s anti-paternalist stance is that paternalistic interference is autonomy-reducing. This shifts focus away from the potential ends citizens attain as a result of paternalistic interference, and focuses upon the prima facie wrongness of the interference itself. Accepting Quong’s anti-paternalist stance entails that what matters to citizens most of all is that their decision-making processes are not interfered with in any capacity. This implies that citizens would rather make an erroneous decision that did not advance their interests, and may even be disastrous, than make better decisions and arrive at more desirable ends by accepting the help and information provided by, for example, political authority. It is straightforward to envisage instances whereby citizens would accept the help of political authority in decision-making. This is alluded to by Birks (2014, p. 485), who argues that what matters most of all for citizens is that ‘chosen ends are valuable’. By contrast, Quong wrongly focuses upon the wrongness of interference, rather than on the ends citizens wish to attain.

Firstly, proposing that paternalistic interference implies a reduction and disrespect of individual autonomy overlooks the potential benefits of paternalistic interference that safeguards and/or extends one’s capacity for autonomy (Scoccia, 1990, p. 329). Quong’s anti-paternalist stance does not pay adequate note to the potentially autonomy-reducing or harmful actions which individuals may undergo as a result of their own autonomous decision-making. Thus, his blanket aversion to paternalistic interference ignores cases whereby intervention can enable citizens to make decisions which, in the long run, help to preserve and extend their autonomy. Paternalistic interference need not be universal, and applied in a general, all-encompassing way. Quong’s mistake is to view paternalistic interventions, and their permissibility on a general basis, as something which is either universally wrong or permissible.

35 In chapter IV, analysis of addiction and gambling where used as cases of free decision making that damages one’s capacity to make autonomous decisions. Manipulative directives which make these activities harder are uncontroversial, and do not damage one’s autonomy
One can instead distinguish between different forms of paternalistic interference; recognise different levels and extremes of paternalistic interference, and recognise scenarios whereby certain forms of paternalistic interference may be viable. In practise, when freed from the universal declaration against paternalistic interference, at different times, different paternalistic interventions may be proposed. Some may be enacted, and then redacted on the basis of citizens refusing to accept them. At other times, interventions might be applied and then redacted because they have achieved their purpose in shaping behaviour, and thereby become redundant (Bräanmark, 2018, p. 181-82).

In summary, Quong’s anti-paternalist stance can refuted on the grounds that paternalistic interference cannot be deemed inherently wrong, can be non-manipulative, and does not imply the reduction of autonomy. Dealing with Quong’s anti-paternalist arguments is the first step towards adjudicating the dispute, and resolving the liberal theoretical perspective towards regulation. Since the anti-paternalist case has no credible theoretical basis within liberal theory, correctly justifying a form of paternalistic interference that is compatible with the aims of liberal political authority, and which safeguards the instantiation of liberal values and norms becomes viable. Once found, this can be applied to prominent cases of regulatory capture, immoral markets and offshoring practise. This qualifies the uniqueness of perfectionist liberal theory in being able to implement principles of regulation, a quality which emanates from its accommodation of paternalistic interference.

Substantiating the benefits of the perfectionist liberal perspective on paternalism will take up the remainder of the chapter. This involves shedding light on the specific form of paternalistic intervention, authoritative nudges, that are compatible with perfectionist, pre-emptive authoritative directives. It will also highlight how perfectionist directives that take the form of authoritative nudges can respond to instances of regulatory capture; immoral markets; and offshoring practises.

II.II. Perfectionist Liberalism and Authoritative Nudges

There is an unappreciated connection between the aims of authoritative nudges, and the justifications Raz provides for pre-emptive authoritative directives. Authoritative nudges can be viewed as an example of a perfectionist authoritative directive that pre-empts citizens towards beneficial and desired outcomes. Furthermore, pre-emptive authoritative directives that take the form of authoritative nudges are both non-manipulative and autonomy-enhancing. Therefore, the paternalistic element of these nudges are permissible.
Thaler and Sunstein (2008, p. 6), define a nudge as ‘any aspect of the choice architecture that alters people’s behavior in a predictable way without forbidding any options or significantly changing their economic incentives’. Choice architecture refers to the design of ways in which different choices are presented to individuals (Thaler and Sunstein, 2008, p. 83). The phenomenon of “nudging” is therefore a form of intervention which helps citizens make sense of the choices that are available to them. Nudges improve citizens’ ability to ‘select options that will make them better off’, and ‘to make the information about various options more comprehensible’ (Thaler and Sunstein, 2008, p. 92). Nudges which are imposed by liberal political authority will be termed as “authoritative nudges”. These authoritative interventions are not designed to compel or coerce citizens to take certain courses of action. Neither are authoritative nudges predicated on a negative judgement about the fundamental life choices taken by an individual. Rather, they aid citizens in their decision-making processes, particularly for complex choices, by making options more comprehensible, or encouraging citizens to pursue specific ends. Effective authoritative nudges thereby involve publicising the availability of certain options, or offering incentives and directives to take certain courses of action rather than others. Crucially, the influence of any authoritative nudge is not all-encompassing. A citizen maintains the discretion to choose as they please, and to ignore the influence of nudges if they choose to. This enables them to still have the scope to make autonomous decisions. Therefore, authoritative nudges represent uncontroversial, beneficial forms of intervention that heighten a citizen’s autonomy, and encourage them towards beneficial ends. There is a synergy between the aims of authoritative nudges and Raz’s conception of pre-emptive authoritative directives. Both forms of intervention have the same motivations, the same justifications, and lead to the same positive outcomes. As such, perfectionist liberal theorists would accept paternalistic interventions that take the form of authoritative nudges. This is further clarified by examining the positive effects of authoritative nudges, and recognising their pre-emptive, autonomy-enhancing quality.

Thaler and Sunstein (2008, p. 107) observe that citizens regularly say they should save more for retirement, or they should stop smoking, and this implies ‘that people would be open to strategies that would help them achieve these goals. […] They might even be grateful for one’. An authoritative nudge can bring these ends. These could automatically enrol employees on pension plans to save them the burden of doing it themselves, while providing citizen’s with the choice to opt out of this scheme (Thaler and Sunstein, 2008, p. 109). With regards to aiding with the prevention of smoking, authoritative nudges from political authority can publicise the negative health consequences of smoking so that potential and active smokers cannot fail to
recognise them. Additionally, more direct measures of limiting the advertisements of cigarettes, direct imagery of the health consequences of smoking on cigarette packaging, or raising the price of cigarettes are all examples of successfully implemented authoritative nudges designed to alert the citizen to the dangers of smoking. The rationale for this authoritative nudge is that when free from any outside interference, citizens are liable to under-estimate the health risks of smoking, and not fully think through the consequences of their decisions. Alternatively, the increasing financial cost of smoking can make it unviable for citizens. However, autonomous decision-making is preserved. Cigarettes are not banned outright, and smokers are not forced to give up. Therefore, an authoritative nudge simultaneously induces or directs citizens to make certain choices, while safeguarding their autonomous choice to pursue one set of ends over others.

Thaler and Sunstein (2008, p. 9) claim that citizens would welcome the paternalistic influence embodied in authoritative nudges. In other words, it is a ‘false assumption that almost all people, almost all of the time, make choices that are in their best interest or at the very least are better than the choices that would be made by someone else’. One cannot assume that citizens universally make decisions that benefit them, or which are superior choices than those made by political authority. In many cases, political authority may be better placed to decide on behalf of citizens what ends to encourage or make it easier to pursue, on the basis of this benefitting citizens, and allowing them to reach their ends.

With that said, advocates of authoritative nudges recognise that a citizen’s ability to make autonomous decisions remains important. Therefore, paternalistic interference in the form of authoritative nudges must strike a balance between unburdening citizens of the strain involved in making fully independent decisions, while also allowing them the autonomous freedom to choose certain specific courses of action. Therefore, one can theorise towards authoritative nudges as a form of authoritative directive that supports perfectionist liberalism. This is because pre-emptive authoritative directives from perfectionist liberal authority can take the form of authoritative nudges. When citizens act on authoritative nudges, or take certain courses of action as a result of the influence of nudges, they have accepted their role in pre-empting them towards certain ends. In other words, they accept a role for pre-emptive, paternalistic authoritative directives in influencing their decision-making.

Additionally, for political authority to forward authoritative nudges as opposed to anything which represents stronger intervention, the nudge ‘must be easy and cheap to avoid’ (Thaler and Sunstein, 2008, p. 6). This entails that citizens must be aware of the authoritative
nudge, and then autonomously decide whether to act in accordance with its recommendations, or reject it. This mirrors the role that Raz’s pre-emptive authoritative directives play. Raz argues that ‘a government which subsidises certain activities, rewards their pursuit, and advertises their availability encourages those activities without using coercion’ (Raz, 1986, p. 417). Pre-emptive authoritative directives aim to encourage certain actions, and prevent others. They are straightforward for citizens to comprehend, and possible to ignore. The success they have in shaping an individual’s decision depends on this.

Pre-emptive authoritative directives in the form of authoritative nudges escape the charges against paternalistic intervention levelled by Quong. Firstly, attempting to nudge citizens towards specific ends does not imply a negative judgement about a citizen’s ability to advance ends that apply to them. In effect, implementing authoritative nudges is not carried out by political authority on the basis that citizens are unable, or unwilling to advance their own interests. They are aimed at improving the choice sets available to citizens, and providing them with more knowledge about certain choices, to aid their decision-making (Enoch, 2016, p. 28). Therefore, far from being autonomy-reducing, the purpose of authoritative nudges is to expand the choices available to citizens, and make the harms and benefits of certain courses of action more knowable. There is no negative judgement about citizens involved. Moreover, autonomous decision-making is not an “all or nothing” capacity. Valuing the ability to choose and make up our own minds, while also welcoming intervention and guidance which assists citizens at other times are compatible. This is misrepresented by Quong’s anti-paternalist stance. Scoccia (1990, p. 323) comments on this misrepresentation, stating that ‘our desire to run our own lives is not so strong that we prefer to incur the consequences of any irrational choice rather than be stopped’. This provides a further justification for authoritative nudges. Nudges are autonomy-preserving, since individuals can choose to opt out of them, or else ignore them entirely. Thus, it is compatible for individuals to make their own reasoned decisions, while accepting or rejecting the influence of authoritative nudges.

Quong’s charge of manipulation also does not apply to authoritative nudges. If political authority interferes in the decision-making processes of citizens by utilising authoritative nudges, this does not manipulate them towards specific outcomes, nor subject them to the will of the state. Examples of authoritative nudges that encourage retirement savings, and the prevention of smoking illustrate this. There is no force implied in an authoritative nudge that publicises the negative health consequences of smoking. Its aim is to ensure that citizens are aware of the consequences of their actions, to equip them with a clearer choice architecture
from which to decide whether or not to smoke. Similarly, citizens are not forced to remain within pension schemes that they are automatically opted into. If they do not want to save for a pension, they are free not to do so.

In summary, authoritative nudges represent permissible forms of paternalistic interference, and lend support to Perfectionist Liberalism. This is because authoritative nudges possess a pre-emptive quality in encouraging and inducing action of the desired kind. Therefore, perfectionist pre-emptive authoritative directives can take the form of authoritative nudges. The paternalistic interference is justified, since this does not manipulate citizens, take a negative judgement about a citizen’s ability to advance their interests, or reduce their capacity to make autonomous decisions.

Therefore, as well as qualifying the inferior status of Quong’s anti-paternalist arguments, pre-emptive authoritative directives represent the form of paternalistic interference most suitable for responding to questions concerning regulation. Authoritative nudges have a pre-emptive faculty, and can be motivated by the need to prevent harm and enhance the autonomy of citizens. The multi-faceted and broad use of authoritative nudges, and the differing extent to which they possess and can pre-empt citizens towards certain ends makes them ideal forms of intervention to be utilised against prominent and harmful instances of regulatory capture, immoral markets, and offshoring practices.

III. Authoritative Nudges and Regulation

Up until now, the commonality and synergy between the aims of pre-emptive authoritative directives and authoritative nudges have been clear. This has qualified the compatibility of perfectionist, over anti-perfectionist liberalism as the appropriate means through which to respond to questions concerning regulation. Paternalistic interference in the form of authoritative nudges can be utilised by the perfectionist liberal state to respond helpfully to harmful bank lobbying practises. It can also combat and counteract the influence of aggressive advertising strategies, and more widely publicise individuals and firms who engage in harmful tax avoidance practises, thereby heightening deterrence. Showcasing these positive benefits completes the liberal theoretical perspective towards regulation. While both perfectionist and anti-perfectionist liberal theorists can recognise the need to regulate, and theoretically process regulatory principles, only perfectionist liberalism can forward a workable justification for actively implementing these principles. Subsequently, there are clear reasons to adopt
perfectionist over anti-perfectionist liberalism with respect to questions concerning regulation, and safeguarding the implementation of liberal values and norms.

The justification for authoritative nudges primarily focuses upon their use in regulating and shaping individual conduct, and helping citizens make more effective decisions. However, paternalistic intervention in the form of pre-emptive, authoritative nudges can also be targeted towards external bodies/firms/interests groups that engage in practises of regulatory capture, immoral market proliferation, and offshoring practises. In this respect, the implementation of authoritative nudges is able to provide an effective response to questions concerning regulation. Authoritative nudges targeted at firms/industries complicit in activities of regulatory capture, immoral market proliferation, and offshoring practises aim to shape the behaviour and activities of a firm, or government agency. In other words, government policy which aims to regulate these behaviours can impose pre-emptive authoritative directives that take the form of authoritative nudges. Such interventions can involve encouraging firms/companies/interest groups towards certain ends through subsidisation, financial rewards and incentives, or the publicization of information and government reports which can help to facilitate actions of the desired kind.

Paternalistic interventions in the form of pre-emptive, authoritative nudges are also justified on liberal grounds. The negative consequences associated with these behaviours threaten the implementation of liberal values and norms. For example, strategies of political lobbying, can induce liberal political authority into prioritising the private vested interests of lobbyists and firms over the needs and wishes of citizens. This subsequently limits the extent to which a citizen’s “Political Autonomy”, including their rights to vote and politically participate can shape the ends of political authority. Offshoring schemes which are not regulated by political authority represent the prioritisation of private vested interests of powerful firms and individuals, over the public interest of citizens. This violates the “Free and Equal Standard” and “Public Good Prioritisation” values, by failing to treat all freely and equally, and favouring private, vested interests over the public good. Similarly, on account of exemptions and clearances that some may enjoy in relation to their tax commitments, at the expense of others, the idea of “Society as a Scheme of Social Cooperation” cannot be effectively implemented. The tax revenue which political authority is deprived of does not lead to mutual benefit, and cannot be used to bring about public goods. Instead, it benefits those engaged in offshoring schemes over the well-being of citizens. Lastly, aggressive marketing strategies and advertising techniques which escape existing forms of regulatory alignment violates the rights of citizens.
not to be manipulated towards specific ends, and interferes with the ability of citizens to make autonomous decisions. This subsequently violates a citizens “Extensive Basic Liberties” and violates the “Norm of non-Manipulation” which qualifies the ends of government in maintaining and protecting the rights and freedoms of citizens. Paternalistic intervention in the form of pre-emptive, authoritative nudges can safeguard the effective instantiation of these liberal values and norms. By fulfilling these ends, the liberal theoretical perspective towards regulation is carried out.

III.I. Authoritative Nudges and Bank Lobbying

The imposition of paternalistic interference on behalf of the perfectionist state can be accommodated through paternalistic, authoritative nudges. Active interventions towards the publicization of the dealings of regulatory bodies in public domains reduces the risk of collusion between banks and regulators. Additional financial incentives to banks and regulators can also be offered to pre-empt the publicization of information.

This viable paternalistic function of the perfectionist liberal state, and the plausibility of pre-emptive authoritative nudges can be ascertained by understanding the specific negative effects of bank industry lobbying. Authoritative nudges can be utilised to pre-empt legislators and regulators to report their dealings in public domains via financial incentives, and encourage them to prioritise the public good. This counteracts the appeal of furthering the vested interest of banks, enables the disclosure of information, and lessens the risk of collusion between regulators and bank lobbyists. Authoritative nudges can also be specifically targeted, rather than general and all-encompassing. Subsequently, the prospects of success in pre-empting actions of the desired kind via paternalistic interference are heightened. The paternalistic interference implied by these authoritative nudges is sufficient to limit the negative effects of bank industry lobbying. Hence, enacting these ends by embracing the recommendation of perfectionist liberalism carries out the liberal theoretical perspective towards regulation.

Given the central role that banks, and bank activities play in the economy, enabling banks and bank lobbyists to influence and shape policy remains important. Banks are involved in activities such as allocating capital, monitoring investment opportunities, mobilising savings, informing risk management, balancing the books of the economy, keeping savings, and other essential tasks (Ivan & Lambert, p. 130-32). Since banks take on responsibility in carrying out these tasks, liaising with legislators and regulators to offer insight and guidance surrounding the best way to further the public interest is desirable. However, when bank’s and bank lobbyists exert too much influence on policy, or act in ways which further their vested interests,
regulatory alignment from political authority is essential. These vested interests of banks include a desire for lower regulation on their activities, increased freedom to forward their own investments without external influence, and lower tax rates on trading and investment.

In the US, the total amount of money involved in bank lobbying to try and protect these vested interests has been consistently high: ‘Banks—encompassing commercial banks, credit unions, savings and loans, and mortgage bankers and brokers’ have ‘spent a total of $1.2 billion over the period between 1998 and 2016 […] Lobbying by banks increased in absolute terms over most of this time period, rising from a trough of $36.3 million in 1999 to a peak of $88.2 million in 2014’ (Igan & Lambert, 2019, p. 134-35). Moreover, in 2021 alone, vast sums of money were spent by bank lobbying firms. Funds spent by these lobbying groups are also focused and targeted towards purchasing access to regulators and legislators. They face diffuse opposition, partly because of the central role that banks, and banking industries play within Western economies. This leads to banks having a direct influence on policy. Furthermore, while the money spent on bank lobbying in the US is less compared to other industries, this figure is comprised from fewer lobbying groups. This makes the commonality of aims and more unified collaborative approach between lobbyists more likely (Open Secrets, 2021).

Subsequently, the aim of any regulatory approach involves counteracting the furthering of a banks and bank lobbyists private, vested interests. Additionally, regulations aim to design rules and establish norms and regulations that enable banks to behave and take actions which best serve the public interest, and influence policy in positive ways. The regulator can intervene, implement and enforce these rules, especially if banks begin to fall foul of them. However, the increase of regulation and monitoring of the behaviours of banks and bank lobbyists has had several unintended consequences. Namely, regulatory agencies exist, but few have had sustained effect (Manish, O’Reilly, 2019, p. 150). Traditional forms of regulation from the state targeted the state ownership of banks, limiting foreign ownership of banks, or directly setting and regulating interest rates. Modern forms of regulation encompass regulatory, supervisory agencies which are authorised to oversee, supervise and if necessary intervene in the activities

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36 In the US in 2021, the amount of money spent on bank lobbying, categorised through “Mortgage Bankers and Brokers”, “Commercial Banks” and “Savings and Loans” stood at just over $50 million dollars, with 199 clients in total, and 584 lobbyists who had been former government employees (a roughly 73% mean average of employees for these lobbying firms) (Open Secrets, 2021) Available at URL: https://www.opensecrets.org/federal-lobbying/alphabetical-list?type=s

37 For example, a rival lobbying group to banks, “Pharmaceuticals/Health Products”, are comprised by 429 different lobbying groups, spending a total of $266 million in 2021. This makes direct influence on policy and a unification of aims among lobbying groups difficult to accomplish (see URL: https://www.opensecrets.org/federal-lobbying)
and behaviours of banks (Manish, O'Reilly, 2019, p. 146). Therefore, with respect to the relationship between a bank and a regulator, it is expected that the regulator is awarded both the legislative and executive tasks of establishing and implementing the final rules that banks must abide by. They also amend rules, and ensure banks stick to them (Igan & Lambert, 2019, p. 132). If these rules are designed in ways that benefit banks, and further their own private, vested interests, then regulatory bodies are no longer furthering public ends. The “capture” of banking regulators thus occurs ‘when banks exert excessive influence on the regulators such that regulators act primarily in the interest of the industry they regulate rather than in the public interest’ (Igan & Lambert, 2019, p. 132).

The problem is exacerbated in regulatory schemes that place the burden and task of regulation upon a single group or supervisor. The problem is explained as follows: bank supervisors and regulators ‘may fall under the influence of the industry and then fail to reduce the informational gap between uninformed policy makers and the privately informed industry’ (Boyer, Ponce, 2012, p. 208-09). Under a single-supervisory structure of banks, such as one whereby a central bank is responsible for administering all regulatory alignments to banks, or when individual government approved committees/individuals oversee a bank’s activities, this heightens the possibility for collusion between regulators and bankers. This may take the form of regulators/supervisors withholding information from organisations/committees tasked with the actual regulation of bank behaviour, in exchange for monetary bribes from the bank. Collusion may also come in the form of the banks providing additional motivations for regulators and supervisors to act in their own interests, such as the promise of lucrative careers, or financial backing in future elections.

The benefits of paternalistic, pre-emptive authoritative nudges is that they provide additional incentives to legislators not to prioritise the private, vested interests of banks. This lessens their vulnerability in falling victim to methods of capture adopted by banks and bank lobbyists. The implementation of authoritative nudges theoretically plays one of two roles. On the one hand, authoritative nudges can make it more attractive for supervisors, regulators and lobbyists to disclose information about their dealings, and reward activities which hasten the development of socially optimal outcomes. Here, their pre-emptive quality is clear. Authoritative nudges can be specifically targeted towards modifying, altering and pre-empting the motivations of bank lobbyists and regulators, to ensure that public interests are prioritised and furthered over the private, vested interests of banks. This works to ‘enhance the transparency of regulatory decisions’ (Igan & Lambert, 2019, p. 150).
For example, providing monetary incentives/bonuses/additional funding to regulators and supervisory bodies to report their information in public domains can pre-empt regulators to disclose relevant information, and limit the risks of collusion. In other words, directives that possess this pre-emptive quality can mitigate against the risk of capture. Financial advantages and public acknowledgements can be granted to supervisory bodies and regulators that publicly reveal their dealings, and by comparison, pose question marks against regulators who do not carry out such ends. When carried out by political authority, this can facilitate a ‘systematic, ex-post disclosure of information on regulatory decisions’. This in turn ‘would increase regulators’ accountability both toward the general public and toward other (potentially competing) parties. Indeed, this would prevent the reputational cost of defending positions the general public would consider as improper collusion with banks’ (Igan & Lambert, 2019, p. 150). The idea is that if potential instances of collusion between bank lobbyists and regulators could become public knowledge, it would be more likely that banks and regulatory bodies would not engage in such practices, due to the reputational damage if caught.

To this end, authoritative nudges which require or encourage the publication and public accessibility of information on bank’s political dealings actively design against regulators falling under the influence of bank lobbyists. These pre-emptive, authoritative nudges make potential offers of hiding supervisory information in exchange for monetary bribes or lucrative employment offers from the bank they are trying to regulate less attractive (Boyer & Ponce, 2012, p. 208-12). Furthermore, the authoritative nudge acts to make it attractive for regulatory bodies and supervisors to publicly reveal their dealings, via financial incentives and to state the intentions of their activities.

These ends help to counteract the negative consequences of regulatory capture activities practised by banks and bank lobbyists. They can be achieved by political authority because of the pre-emptive and paternalistic role that authoritative nudges can take. A key feature of authoritative nudges is the increasing of publicity of different options, and in this instance, the publicization of relevant and important dealings between financial regulators and banks, with the intention of modifying the choice architecture of the regulator. Consequently, if regulators or bank lobbyists adopted a policy or made a judgement that could not be publicly defended, there are greater costs and fears associated with embarrassment and reputational damage. This intends to alter their choice architecture towards the adoption of ends that are synonymous with the positive functions of banks, and the furthering of public interests. Furthermore, it lessens
the vulnerability of regulators to forward a bank’s vested interests, and become captured, as competing incentives and rewards to publicise their dealings can bypass these influences.

Moreover, the aim of the authoritative nudge is to pre-empt banks and regulators not to engage in practises of collusion. It is ‘pre-emptive’, in the sense that due to the influence of the directive (in the form of an authoritative nudge), regulators and bank lobbyists can change their behaviour to align with public interests. If successful, lobbyists and regulators recognise that they change their behaviour in this fashion because of the influence of this directive. The pre-emptive feature of these authoritative nudges is consistent with Raz’s conception of paternalism. Raz claims that political authority is entitled to use paternalistic intervention, and to use its privileged position to advance the good. This can be applied to using the mechanisms of state power to design against the negative effects of regulatory capture in banking. Moreover, for Raz and perfectionist liberals, paternalistic intervention is if it pre-empts, rather than forces or compels action of the desired kind. Authoritative nudges designed to influence the banking sector via the publicization of their dealings and pre-empting actions towards the general goal of transparency qualifies as legitimate paternalistic intervention (Thaler, & Sunstein, 2008, p. 340). It is paternalistic, as bank lobbyists and regulators are not forced to publicise their dealings, and the specific intention of the pre-emptive authoritative nudge is to design against practises of collusion. Hence, it is theoretically viable on liberal grounds.

Part of the justification for perfectionist liberal paternalistic interference rests with the fact that such intervention is minimal, and specific to particular contexts. In effect, paternalistic intervention through the use of authoritative nudges towards the activities of individual supervisory structures is more feasible. From the view of the liberal theoretical perspective towards regulation, imposing pre-emptive authoritative can be targeted towards specific ends, and against specific supervisory agencies. This more focused method of regulation manifests as multiple different authoritative nudges targeted towards each individual supervisory body. It is preferable to an all or nothing attempt to modify the behaviours of whole supervisory bodies, with high stakes for the success or failure of the authoritative nudge in altering the decisions of bank lobbyists. When perfectionist authoritative directives attempt to pre-empt individuals, such directives are not general, but specific, and aimed towards facilitating specific behaviours. When this translates to bank industry regulation, the same holds. A pre-emptive authoritative directive has clearer prospects for success if it is concerned with facilitating action of the desired kind among a smaller group. Furthermore, this is consistent with the conception of legitimate paternalistic interference outlined by Raz. Raz’s own defence of pre-emptive authoritative
directives which can facilitate action of the desired kind is not meant to be general and all encompassing. Rather, paternalistic, pre-emptive authoritative directives are designed to be targeted and specific, aiming to influence specific behaviours, modify the approaches of specific entities, and design against the practise of specific ends, due to their negative effects.

IV.II. Authoritative Nudges to Counteract Aggressive Marketing and Advertising Practises

The second case outlining the comparative strength of perfectionist over anti-perfectionist with respect to questions concerning regulations concerns the use of authoritative nudges to combat aggressive advertising practises. Once again, by virtue of its allowance of paternalistic intervention, this is an avenue open only to perfectionist liberal theorists.

Paternalistic intervention in the form of authoritative nudges can counteract other nudges implicit in aggressive marketing strategies, and advertising techniques. This exposes a qualitative difference between authoritative nudges, and other, non-authoritative nudges. The comparative benefits of authoritative nudges rests in their ability to pre-empt individuals towards more desirable, beneficial ends, rather than taking advantage of frailties in their judgement. In this sense, authoritative nudges can pre-empt citizens towards desirable ends to increase their welfare. For these reasons, though intervention from authoritative nudges is paternalistic, their ability to counteract the negative effects of more harmful nudges means they will be accepted by citizens. Those who oppose authoritative nudges on the grounds that paternalistic intervention in the activities of markets is unjustifiable fail to acknowledge this qualitative difference between authoritative and non-authoritative nudges. Perfectionist liberal theorists can recognise such a difference, and the scope of paternalistic state intervention it permits makes citizens less vulnerable to aggressive advertising practises. Subsequently, due to the imposition of paternalistic directives, and pre-emptive, authoritative nudges, the liberal theoretical perspective towards regulation can exercise a strong preference for perfectionist liberalism. Through the perfectionist liberal state, the prospects for the instantiation and implementation of liberal values and norms is greater. With combative, counteractive measures at its disposal, the influence of harmful elements of society such as aggressive advertising practises that threaten the instantiation of these values can be mitigated.

The success of market reasoning, and the viability of particular products and consumer choices can depend upon a firm or individual applying nudges. These nudges can be defined as non-authoritative, as they are not imposed by political authority. Moreover, non-authoritative nudges manipulate one’s choice architecture towards specific ends/products/services,
regardless of whether this benefits the nudgee. Checks and balances against the potential overreach of consumer and market reasoning requires political authoritative, paternalistic intervention. This arises when decision-making by citizens is disproportionately swayed by the influence of aggressive marketing strategies and advertising techniques.

An example of these over-intrusive practises was referred to in Chapter III, whereby marketing and advertising strategies associated with the gambling industry were linked to the controversial commodification of goods. This represents aggressive marketing strategies; in the sense that through undue influence, the consumer was led to make choices they otherwise would not have made. Furthermore, these marketing strategies are implemented for the benefit of the firm/industry, rather than the individual. The gambling industry represents one example of these aggressive marketing strategies and advertising techniques. The aim of firms in this industry is to shape the choices of consumers, and alert them to the attractiveness of particular courses of action involving the purchasing of their services, even if this is detrimental to the individual. The advertising strategies of these firms encompass nudging consumers towards decisions which would heighten the possibility of gambling. In this way, the nudge imposes the will of the industry/firm on to the consumer, and shapes their choices (Hausman, Welch, 2010, p. 130). This involves using flaws in individual decision-making to make participants choose one alternative over another, such that the action of an individual reflects the wishes of the nudger, more than an individual’s own evaluation of different choices, and their process of choosing one outcome over another (Hausman, Welch, 2010, p. 128). Moreover, the benefit brought about by the nudge influencing individual decision-making is enjoyed not by the citizens/consumers making choices, but to the firm/individual responsible for the nudging. For example, individuals making decisions as a result of these marketing strategies may lead to negative consequences for them, but greater profits and exposure for the firm/company responsible for the nudge. The latter is what is prioritised, irrespective of the extent of harm brought to the individual. To counteract these practises and their negative effects, greater checks and balances and regulatory alignment is important. Where firms engage in aggressive marketing practises, their strategies can become over-intrusive, and play upon and aim to take advantage of flaws in human judgement and decision-making.\(^{38}\) Wilkinson (2013, p. 354) goes as far as to state that markets and firms which utilise these aggressive marketing strategies and harmful advertising practises can manipulate the consumer. This is because ‘advertisers and

\(^{38}\) Though this thesis has focused more upon the gambling industry, the same argument for the benefits of authoritative nudges holds against any industry associated with aggressive marketing strategies and advertising techniques.
marketers who want to sell products, may well have manipulative intentions and use nudges that pervert the decision process. If those nudges are not consented to by their targets, they would manipulate and infringe upon the target’s autonomy’.

Initiatives to regulate marketing and advertising practices are looked upon in a tentative fashion. Weiya Cai (2019, p. 3355) comments that ‘the paternalist perspective is not needed in a competitive market as such a market can supply many mechanisms that allow individuals to cope with problems in their decision-making processes at an individual level’ (Weiya Cai, 2019, p. 3355). This points to the idea that the problem of potential interventionist measures from political authority against markets is that such measures could subvert the ability of individuals to make reasoned choices, and cut off viable alternatives at the discretion of those who are intervening.

This reflects a wider concern about where and by whom nudges can be legitimately implemented. This concern is clarified by Weiya Cai (2019, p. 3359-60): ‘In effect, ‘nudging’ is stating ‘we know best’ […] When nudges are introduced, thus allowing other bodies to interfere in the decision-making process, this phenomenon essentially impinges on the free will of a person to make autonomous choices’. This implies citizens can exercise the right to decide for themselves once regulatory alignments surrounding markets are removed, not increased.

However, denying any role for pre-emptive, authoritative nudges fails to recognise the qualitative distinction between types of nudges. The controversy in nudges lies with the intentional shaping of choices, and the direct intention of certain markets and their accompanied advertising practices which aim to move citizens towards specific, potentially harmful ends, for the nudger’s benefit. This is clarified by Thaler and Sunstein (2008, p. 72), who state that ‘for all their virtues, markets often give companies a strong incentive to cater to (and profit from) human frailties, rather than to try to eradicate them or to minimize their effects’. This is not intended to design against the proliferation of the free market as a whole. Liberal theorists acknowledge that market competition can bring about positive ends. However, it is compatible for markets to perform this positive function while bringing about checks and balances. These can design against incentives companies have to cater to and exploit people’s frailties, lapses of judgement, or their propensities to make decisions that are not in their best interests (Thaler & Sunstein; 2008; p. 77). In other words, there is a qualitative difference between nudges related to aggressive marketing strategies and advertising techniques, and the political authoritative nudges which can be theoretically implemented by the perfectionist liberal state. Specifically, paternalistic, pre-emptive authoritative directives in the form of authoritative nudges can
counteract nudges entailed within aggressive marketing strategies and advertising practises
which negatively shape the decision-making processes of citizens.

The two qualitatively different forms that authoritative and non-authoritative nudges
could take is developed by Hausman and Welch. They (2010, p. 130) argue that ‘there would
be an important difference between attempting to persuade by means of facts and valid
arguments and attempting to take advantage of loss aversion or inattention to get someone to
make a choice that they do not judge to be best’. There is a difference in the acceptability of
nudges. Nudges which aim to persuade and move citizens towards certain courses of action
using valid arguments and more acceptable forms of persuasion are more permissible than other
nudges that take advantage of imperfections in human judgements and decision-making. In fact,
nudges of the first kind (authoritative nudges) can actively and substantively counteract the
effects of nudges of the second kind (non-authoritative nudges).

With respect to the liberal theoretical perspective towards regulation, paternalistic pre-
emptive authoritative nudges that are permissible forms of perfectionist liberal state intervention
are the first type of nudge. The pre-emptive aspect of an authoritative nudge in these instances
is illustrated when individuals overcome and fail to be drawn to the influence of nudges which
aim to profit from frailties of their judgement. In effect, it is present when individuals recognise
that they do not allow, engage or succumb to aggressive marketing strategies of firms, and do
not make decisions which are against their better, more reasoned judgement when making
market decisions. Additionally, individuals recognise that these ends are met because of the
influence of these authoritative nudges. This is not to say that all individuals require or
necessitate the imposition of pre-emptive authoritative nudges in order to overcome the pull of
non-authoritative nudges implicit in aggressive marketing strategies. However, authoritative
nudges remain important for citizens who are more susceptible to frailties of judgement, or who
do not exercise enough consistent, reasoned decision-making to be able to repel the influence
of other, non-authoritative nudges. In these cases, the pre-emptive faculty of authoritative
nudges in helping citizens to decide and pursue ends which benefit them is crucial.

The pre-emptive character of authoritative nudges towards beneficial ends represents the
qualitative difference between authoritative and non-authoritative nudges. Firstly, the specific,
targeted nature of authoritative nudges are such that the pre-emptive feature of their imposition
aims only to design against and counteract the negative implications of aggressive marketing
strategies and advertising practises. Examples of such directives include expansive publication
of negative effects associated with certain markets, and further exposure of the negative
consequences involved with making certain decisions (i.e., the decision to gamble). Nudges of this form are specifically designed to influence and alter the decision-making processes of citizens/consumers. While it cannot compel specific action, the publicization of the threats associated with certain decisions acts as a significant counterbalance. This encourages citizens towards more reasoned choices, and lessens their susceptibility to make less informed judgements that don’t advance their interests.

Other potential authoritative nudges encourage firms, via financial incentives and initiatives to take a more active, responsible approach to marketing and advertising. Where authoritative nudges are effective in this instance, firms are pre-empted towards more responsible advertising, or encouraged to do so, due to tangible benefits and funding from political authority to help facilitate this. This indirectly benefits citizens, as where financial incentives encourage firms to move away from aggressive marketing and advertising strategies, this entails that less of these nudges will be in effect, lowering the prospects of citizens falling victim to them.

These pre-emptive authoritative nudges are consistent with Raz’s justification for paternalistic intervention. Authoritative nudges against aggressive marketing strategies are not predicated upon a negative view of citizens to advance their interests, neither do they impose the will of the state on the decision-making processes of citizens. Their aim is to increase the choice-sets available to citizens, heighten awareness of the harms associated with certain decisions, and offer incentives for citizens to take courses of action which make them less vulnerable to aggressive marketing strategies.

Therefore, the synergy between Raz’s conception of perfectionist liberalism, the role he gives for paternalistic interference, and the impact and effect of authoritative nudges is clear. The use of authoritative nudges to counteract the impact of aggressive advertising strategies would be accepted by citizens. Concordantly, the ends of regulatory alignment are achievable from the perspective of perfectionist liberalism. This adds further weight to the dismissal of Quong’s anti-paternalist argument and further qualifies why the liberal theoretical perspective towards regulation forwards a preference for perfectionist liberalism with respect to the imposition of regulatory ends and principles.

IV.III. Paternalistic Interference Against Tax Avoidance: Authoritative Nudges and the Pandora Papers
Further substantiation of the pre-emptive, paternalistic role that authoritative nudges can play is epitomised by their role in responding to offshoring practices and tax avoidance. This solidifies the viability of the perfectionist liberal perspective towards regulation. Using the case study of the Pandora Papers, the pre-emptive, paternalistic dimension of authoritative nudges can work to further publicise and expose those embroiled in harmful offshoring schemes. A chief tenet of authoritative nudges is their wide publicization of information that can influence and modify the choice architecture of an individual. With regards to the Pandora Papers, authoritative nudges imposed by the perfectionist liberal state can expand and sustain the publicization of this information in accessible public domains. This can pre-empt action of both individuals and firms. It can provide individuals with additional information which can alter their decisions to follow individuals or purchase goods from companies embroiled in offshoring schemes. Secondly, it can provide a check and balance against a firm or individual’s decision to engage in offshoring practises. Once political authority publicizes offshoring leaks more widely, the risk and increased damage of reputation and credibility on behalf of the firm heightens. Due to these greater costs of detection, they can be deterred from offshoring schemes.

Tax avoidance schemes violate the instantiation of liberal values and norms. For example, the commitment to uphold “Free and Equal Standard” to treat all freely and equally is violated by the differential treatment of firms with regards to their tax responsibilities. Similarly, the money due through taxation to national governments is less than it otherwise would be had such avoidance schemes not been carried out. As a result, governments are unable to use these missing tax revenues as a basis to forward public goods. Moreover, governments who do not close tax avoidance loopholes violate the norms of “Public Good Prioritisation” by becoming facilitators of the private interests of powerful firms and individuals who benefit from them. Accordingly, aligning the theoretical ends and scope of state action with the public good cannot be effectively implemented. Accordingly, paternalistic intervention through authoritative nudges which counteract these offshoring practises is justified on the basis of protecting and safeguarding liberal values and norms concerning the free and equal treatment of all, and the prioritisation of the public, over the private good.

Those responsible for participating in offshoring schemes, and the strategies with which these activities are carried out has been highlighted in the recent publication of the Pandora
Overall, the Pandora Papers investigation has shed light upon individuals and firms who use tax havens and avoidance schemes to buy property, hide assets, and avoid taxes. Those caught up in their investigation ‘include more than 330 politicians and 130 Forbes billionaires, as well as celebrities, fraudsters, drug dealers, royal family members and leaders of religious groups around the world’ (Diaz-Struck, 2021, no pagination). Early reactions to the papers and early identifications of those involved state that ‘the leak once more illustrates how the offshore financial system is tightly connected to global politics, corporate giants and notable individuals holding vast levels of private wealth’ (Buchholz, 2021, no pagination).

The Pandora Papers focuses upon unearthing the firms responsible for facilitating these offshoring schemes, as well as specific individuals and companies that are known to have used them, and the financial consequences this has with regards to the avoidance of tax. The costs of offshoring and global tax avoidance schemes which the Pandora Papers have also uncovered corroborate the need for paternalistic intervention from the state. The global tax system is estimated to lose $427 billion dollars a year, and the worst facilitators of these losses (Cayman Islands, $70.4, 16.5%; United Kingdom, $42.5, 9.9%; Netherlands, $36.4, 8.5%, Luxembourg, $27.6, 6.5%; United States, $23.6, 5.5%) do not represent countries who stand to lose the most from tax losses; which are generally located in South America, and Africa (Armstrong, 2020).

The Pandora Papers have thus provided greater insight into the overarching reality of the offshore world. This advances the claim inherent in much tax avoidance literature, namely, that the global tax system represents a shameful, needless tragedy brought about by the complicity of multinational corporations - that have gone to great lengths to abuse their tax responsibilities - and of [...] a number of national governments that have stalled meaningful reform of the

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39 The Pandora Papers comprise 11.9 million leaked records from 14 different offshore services firms. It details and documents previously confidential information embroiling heads of state, celebrities and firms with a variety of offshoring schemes to acquire goods and increase their wealth. The papers highlight that this often occurs without transparency, and without the knowledge of national governments who are due tax revenues. Information and case studies from the Pandora Papers is accessible through URL: https://www.icij.org/investigations/pandora-papers/about-pandora-papers-leak-dataset/ via The International Consortium of Investigative Journalists. (ICIJ, 2021)

40 The difference between the Pandora Papers and the earlier Panama and Paradise Papers is outlined by Diaz-Struck (2021, no pagination) as follows: ‘The Pandora Papers information – the 2.94 terabytes in more than 11.9 million records – comes from 14 providers that offer services in at least 38 jurisdictions. The 2016 Panama Papers investigation was based on 2.6 terabytes of data in 11.5 million documents from a single provider, the now-defunct Mossack Fonseca law firm. The 2017 Paradise Papers investigation was based on a leak of 1.4 terabytes in more than 13.4 million files from one offshore law firm, Appleby, as well as Asiaciti Trust, a Singapore-based provider, and government corporate registries in 19 secrecy jurisdiction’. Earlier references to the Panama and Paradise Papers are not to be disregarded due to the more comprehensive nature of this investigation, as outlined in the above quotation, they unearth different realities associated with global offshore tax avoidance
broken, international tax system and have actively hid the scale and extent of international tax abuse from their populations (Cobham, 2020).

One might reject the idea that the implementation of paternalistic, authoritative nudges can have any measurable impact in correcting this system. However, the publication and availability of the information comprising the Pandora Papers, and its publication and publicization to a wide audience itself acts as an authoritative nudge to pre-empt the actions of individuals and firms engaged in such activities. The nudge acts to publicize the information widely, pinpoint those responsible, and highlight the negative consequences of offshoring behaviours.

The authoritative nudge thus manifests as a wide-ranging, focused publication and publicization of the findings of the Pandora Papers, and other similar documents. This enables these important findings to reach a much wider audience than they have at present. The justification for this intervention is that the publication and knowledge of these practises is not as wide-ranging as it could be. The publication of the Pandora Papers has been carried out by investigative journalists, and despite early media attention, the limited reach of publications of similar revelation such as the Paradise and Panama Papers suggest that these latest findings have not been kept in the public eye long enough to exhibit and enforce widespread changes in behaviour of those who use offshoring schemes. Authoritative nudges carried out by political authority can increase and sustain the publicity of such findings, making such practises knowable to the extent that lasting changes in behaviour become more likely. Using the mechanisms of political authority, such a wide-ranging distribution is accomplishable. The pre-emptive feature of these authoritative nudges are multi-faceted. On the one hand, publicising information about tax avoidance loopholes and those embroiled in them can pre-empt individual decision-making, as with a wider informative base of companies and individuals that engage in harmful tax avoidance practises, individuals may make alternative choices about individuals they follow, or companies they purchase goods from. This could limit support and revenue to those individuals and firms who are publicly known to utilise offshoring tax avoidance methods.

Authoritative nudges which extend the publication and publicization of a firms tax avoidance practises can be pre-empted towards confessing to their involvement, or stopping engaging in offshoring schemes altogether. In effect, wary of the increased risk of reputational damage and public shaming, as well as a loss to revenue and popularity in the eyes of the public, corporations and/or individuals who may have been drawn to such schemes may reflect, and make more reasoned, sensible choices. The pre-emptive aspect of this potential change in behaviour is facilitated by the existence of authoritative nudges that consistently make leaked
or publicised findings related to offshoring practises more widely accessible. This is also pre-emptive in the sense that it encourages and provide reasons for corporations and individuals not to engage in offshoring practises. This increases the tangible benefits of abiding by tax law, since this safeguards their reputation, and protects their revenue by limiting the potential for public shaming on account of these offshoring schemes becoming unearthed. Though this constitutes paternalistic intervention on behalf of political authority, it does not force or compel firms to not engage in offshoring schemes, nor provide legally binding directives against consumers purchasing goods from certain firms. Neither is such intervention aiming to impose the will of political authority on individuals. Though the intention of the authoritative nudge is to facilitate action which decreases the attractiveness of offshoring practises, it does not aim to restrict the decision-making of individuals or firms. Rather, it provides additional information and considerations which can influence the way choices are made.

The wider and sustained publicization of offshoring practises does not guarantee that firms will not utilise offshoring strategies, nor ensure that citizens will not still choose to purchase from firms or follow individuals embroiled in offshoring schemes. However, this is consistent with the perfectionist liberal justification of paternalism. The chief justification for paternalistic interference rests in the fact that the imposition of pre-emptive, authoritative nudges aims to pre-empt the decision-making of firms and individuals towards desirable ends. Among liberal theory, paternalistic interference of this kind represents the most viable attempt to more closely regulate the activities of those engaged in offshoring, tax avoidance schemes. This further corroborates why perfectionist as opposed to anti-perfectionist liberal theory provides the most promising answer to questions concerning regulation.

### IV. Conclusion

In relation to questions concerning regulation, there is clear justification to prioritise the recommendations and insights of perfectionist, rather than anti-perfectionist liberalism. The anti-perfectionist liberal perspective’s anti-paternalist stance, and its lack of accommodation of paternalistic interference, even with respect to scenarios which threaten liberal values, provides the dividing line between the perspectives. The appeal of the anti-perfectionist, anti-paternalist stance revolves around the idea that no form of paternalistic interference can be envisaged which does not impermissibly interfere with the free decision-making of individuals, nor can it avoid taking a negative judgement about a citizen’s ability to advance their own interests.
The articulation of authoritative nudges, and specifically the way in which authoritative nudges can be representative of perfectionist, pre-emptive authoritative directives negates this anti-perfectionist claim. This form of paternalistic intervention protects individuals from harm, and expands the range of choices open to them. As well as improving individual autonomy, through improving choice architecture, authoritative nudges can be targeted towards and extended against the actions of firms. This entails that authoritative nudges can design against the negative effects of regulatory capture, immoral markets and offshoring practises. Due to its rejection of paternalistic interference, this cannot be accommodated by anti-perfectionist liberal theorists. This demonstrates the greater plausibility of the perfectionist liberal stance when it comes to questions which bear upon the regulation of regulatory capture, immoral markets, and offshoring practises.

Several significant implications emanate from this. Firstly, the ability to accommodate paternalistic interference proves to be the significant difference between perfectionist and anti-perfectionist liberal theory when it comes to questions which bear upon the implementation and instantiation of liberal ideas. Secondly, it implies that liberal theory can theorise towards a role for the state in counteracting the negative consequences associated with regulatory capture, immoral markets, and offshoring practises. Lastly, with respect to the relationship between liberal theory and conceptions of paternalism, the synergy and similarity between the aims and intentions of authoritative nudges, and perfectionist, pre-emptive authoritative directives is established. The effective, autonomy-preserving and harm-reducing results of pre-emptive authoritative directives that take the form of authoritative nudges clarify the comparative benefits of perfectionist over anti-perfectionist liberalism when it comes to responding to questions concerning regulation. Due to its licensing of paternalistic intervention necessary to counteract the negative effects of regulatory capture, immoral markets and offshoring practises, perfectionist liberalism is the most viable liberal theoretical perspective towards questions concerning regulation.
Chapter VI

Strengthening the Liberal Theoretical Response to Regulation

Abstract: The liberal theoretical perspective towards regulation counters prominent criticisms of liberal theory. Claims against the ideal theoretical methodology used by liberal theorists do not apply. In relation to the regulation of regulatory capture, immoral markets, and offshoring practices, liberal theory is attuned to the real circumstances of politics. This entails that its use of idealizations is uncontroversial. The credible liberal theoretical perspective towards regulation means that liberal theory can respond to real world problems. Thus, it is not self-defeating to use liberal theory for this end. Lastly, rival non-liberal and cosmopolitan theoretical perspectives fail to debunk liberal theory as a viable theoretical stance to solve real-world problems.

Chapters I-V show that with respect to counteracting the negative consequences of real-world instances of regulatory capture, immoral markets, and offshoring practices, liberal theory can forward a viable regulatory response. This bolsters the liberal theoretical perspective against prominent criticisms of the stance. Critics have targeted the methodological grounds upon which liberal theories are constructed, suggesting that the tendency among Rawls, Quong and Raz to rely upon idealized, hypothetical and abstract scenarios makes liberal theory unattuned to the real, lived circumstances of politics. Through this focus upon ideal theory, liberal theorists fail to offer helpful, workable initiatives for tackling major issues within society. Other critics of liberal theory offer rival political perspectives. Cosmopolitan theorists claim to offer a theorisation of the duties of citizens and political authority which is more appropriate for the concerns and issues facing the modern world, due to its global, rather than nationalised focus.

The fact that perfectionist and anti-perfectionist liberal theory can recognise cases of regulatory capture, immoral markets and offshoring practices as problematic, and theoretically respond to them shows that liberal theory is not ill-equipped to tackle real-world issues. Neither is it divorced from the real circumstances of politics, as critics of ideal theory claim. This entails that Cosmopolitanism does not present a more viable alternative to tackling these real-world
problems than liberal theory, and that the methodology used by liberal theorists is appropriate for questions concerning regulation.

Other criticisms of liberal theory forwarded by critical theorists and non-liberal theorists claim that it should be discarded, rather than modified and re-interpreted to face the challenges of modern society. The dismissal of liberal theory as a viable stance for tackling real world concerns is a chief tenet of these perspectives; as the rejection of liberal theory paves the way for considering alternate, non-liberal views. Liberal theorists cannot reject rival proposals for tackling real-world concerns, including questions concerning regulation that are directly offered or implied from non-liberal theoretical accounts. However, they can dismiss the claims implied within these perspectives: that liberal theory is categorically unable to respond to these issues effectively.

I. Responding to the Ideal Theory Critique

The critique of ideal theory highlights the ideological, context-insensitive and abstract nature of liberal theory. Critics regard these commitments as symptomatic of liberal theory’s inability to take real-world questions surrounding regulation. However, the plausibility of the liberal theoretical perspective towards regulation rebuts these claims. This means that when it comes to questions concerning regulation, the response offered by liberal theory cannot be discarded on the basis of it utilising an ideal theoretical methodology.

Ideal theorising involves abstraction and idealization from the real world. The rationale for this is that real societies are characterised by unfortunate social conditions, or political conflict. This entails that solving political problems, or clarifying the precise meaning of political concepts is difficult. Therefore, ideal theorists claim that conceptual clarity can only proceed via a process of abstracting, and through hypothetical idealizations. These idealizations often assume that all agents are able to act fully rationally, without any lapses in judgement or failure to adhere to general principles or standards of reasoning. Also, ideal theories attempt to construct utopian societies which do not recognise significant feasibility constraints in the real-world when ascertaining whether certain political goals and principles may be realised. Lastly, ideal theories aim to promote end-state conceptions of perfect societies. These act as a ‘yardstick for measuring how much our society is failing compared to a fully ideal one’ (Valentini, 2012, p. 660). This implies that knowledge of an ideal state of affairs is necessary for any transitional improvements in the non-ideal world towards the ideal. Little attention in
ideal theories is dedicated to ascertaining how to respond to real-world concerns. This means that the strength of these theories is represented in the plausibility of their idealized scenarios.

Nonideal theory rejects each tenet of ideal theory. Its chief claim is that any theoretical prescriptions which result from abstractions and idealizations can neither solve real world problems, nor regulate political society effectively (Valentini, 2012, p. 659). Political theorists should recognize that citizens and political actors may not behave the same way in real circumstances as they do in ideal circumstances. Additionally, effective political theorising should take realistic feasibility constraints on achieving specific ends seriously. This may involve recognizing unfavourable conditions which burden societies, or realising that societies are constantly changing. Furthermore, nonideal theorists reject the idea that society requires an end-state model to enable meaningful, lasting and processional reform to take place. This can be ascertained through looking at features and realities of the world around us.

The main point of contention within the debate thus centres around the plausibility of idealizing. Trifunovic (2013, p. 163) characterises the impasse, by claiming that while idealization ‘seems necessary in order to make it clear which state of affairs we wish to have’ it ‘makes the theory too fact-insensitive […] or too far from reality’. However, liberal theorists, are unapologetic about their use of idealizing. A few isolated justifications of their methodological practises are provided, but little is substantively claimed beyond this. Rawls states that one can effectively theorise towards the meaning of political concepts by abstracting away from the real world, and articulating hypothetical societies. These are defined as ‘self-contained […] having no relations with other societies’ (Rawls, 2005, p. 12). Rawls’s deems such an approach as necessary because it allows theorists to ‘focus on certain main questions free from distracting details’. In other words, free from the limitations of human partiality, imperfect real-world situations and political problems, the true meaning of political concepts can be known, and the non-ideal world has a standard to aspire to. This leads to Rawls’s (1999, p. 8) proclamation to do the work of ideal theory first, as it represents ‘the only basis for a systematic grasp of these more pressing problems’. Rawls also justifies focus upon idealized conceptions of the citizen and political authority, and does not apologise for what seem ‘the abstract and unworldly character’ of these arguments (Rawls, 2005, p. lx). This ideal theoretical approach is ratified by Quong (2011, p. 159), who argues that beginning with idealized justification is the right course of action. If liberal theory ‘cannot gain the adherence of citizens under ideal conditions […] it would be unstable and self-defeating’. Likewise, Quong (2011, 143) claims that the articulation of an idealized liberal democratic society need ‘not aim to
achieve public justification or normative stability in current liberal democratic societies’. This reflects the fact that the benefits of ideal theory are assumed, rather than justified in argument.\textsuperscript{41}

Claims against liberal theorists use of ideal theory are posited by Farely (2007), Charles Mills (2005), Finlayson (2015) and Geuss (2008; 2010). They criticise the process of idealization and abstracting from the real world as making implausible assumptions about individuals and political authority. They also claim that ideal theorising removes political theory from the contexts and realities of the political world, thereby limiting its role in guiding action of the desired kind. Finally, ideal theorising is charged with perpetrating an ideological set of beliefs which don’t reflect of the needs of all in society, and is responsive to illicit group privilege. One need not assume a synergy among the ideology critique, critique of idealizations and the claim that liberal ideal theory is divorced from the real circumstances of politics. They are forwarded independently by these theorists, but are considered together here because of the similarities of their complaints against liberal theory.

Despite these claims, the theoretical viability of the liberal theoretical perspective towards regulation lessens their credibility. The existence of the liberal theoretical perspective towards regulation highlights that with respect to real-world questions concerning regulation, liberal theory is neither content-insensitive, guilty of making harmful idealizations, nor illustrative of illicit group privilege.

The first of the claims against ideal theory argues against the practise of idealization. This involves the differential representation of an idea or political concept, often involving an idealized concept of citizens and/or political authority. Idealization proceeds by abstracting away from the real world, and modelling idealized citizens and political authority in ways which ignore imperfections that punctuate their existence. Idealized citizens typically are gifted with heightened degrees of rationality, enabling them to make reasoned decisions. Additionally, they are assumed to be able-bodied, and unaffected by external events which might interfere with their reasoning capacities. Idealized conceptions of political authority abstract away from the reality of internal conflicts and strife between competing political perspectives, or feasibility issues which might prevent them from performing a given act. Similarly, they are abstracted

\textsuperscript{41} Beyond these stated points, only The Law of Peoples (Rawls, 2001b, p. 11-23, 59-62, 89) makes direct reference to ideal and non-ideal theory, when referring to the idea of a Realistic Utopia, and setting out the rights liberal states have to other states. This falls far short of justifying the methodological approach used when assigning the rights and responsibilities of citizens, and the duties of political authority, which is essential to the arguments in Rawls’s other work (1999; 2001a; 2005), and in the work of perfectionist and anti-perfectionist liberal theorists.
away from potential economic barriers which prevent the bringing about of certain desirable ends.

For Mills (2005, p. 167-8), idealization represents a problematic turn in political discourse. He (2005, p. 167) ponders the following question and answer to liberal theorists: ‘In trying to understand the workings of an actual P, how useful will it be to start from an ideal-as-idealized-model of P? […] it's going to depend on how closely the actual P in question approximates the behavior of an ideal P’. What idealization exposes is the visible gap between political problems, disorder, and unpredictability in the real world, and idealized liberal societies. This gap is too great for one to have any meaningful effect or alteration upon the other. This leaves Mills (2005, p. 168) to conclude that ‘what distinguishes ideal theory is the reliance on idealization to the exclusion, or at least marginalization, of the actual’.

These concerns surrounding idealization, and its problematic use among prominent liberal theorists are shared by other scholars. To fixate upon an idealized state of affairs, and to engage in idealization to abstract away from real-world problems and concerns is labelled as ‘armchair theorising’ (Farrelly, 2007, p. 859). This is because considerations of what would or might be the case in an idealized state of affairs leaves one oblivious to the real concerns and troubles faced by many in the real world. Relying upon and practising idealization is also described as ‘a distorted view of anything that could reasonably be called “politics”’ (Geuss, 2010, p. 5). Moreover, theorists who practise idealizations or even depend upon them ‘condemn themselves to certain forms of ignorance and illusion’ (Geuss, 2008, p. 16-17). This specifically targets liberal theory, as the intentional decision of the likes of Rawls, Quong and Raz to ignore real world issues when theorising towards ideas about the appropriate rights and responsibilities of political authority fails to acknowledge and respond to existing real-world problems.

Criticisms of idealization thus challenge liberal theorists’ assumption that ideal theory and idealization is the best candidate methodology available (Mills, 2005, p. 167), and one that designates the appropriate starting point for political theory. If this view was credible, it would not rely on uncredible empirical assumptions (Farrelly, 2007, p. 856). The aforementioned gap between the idealized, abstract world and the real world illustrates that at the least, the idea that human agents and political authority could act in ways which approximate an idealized state of affairs, are slim. Also, while Geuss (2008, p. 9) admits that humans possess imaginative drives, ideals and aspirations, this should not circumvent the fact that ‘just because certain ideal or moral principles ‘look good’ or ‘seem plausible’ to us […] it does not follow that these norms, canons or principles will have any particular effect at all on how people will really act’. 
Therefore idealizations neither help us to understand the world, nor acknowledge and respond to real political problems that current societies face.

However, the problems surrounding the use of idealization by liberal theorists are over-emphasised. They do not deny any possibility of a credible ideal liberal theoretical perspective on matters which concern real-world dilemmas and issues. One can dispute the use of idealizations in some instances, while recognising that liberal theorists can use them to respond effectively to other social issues. Therefore, as much as Farrelly (2007, p. 856) and other critics caution liberal theorists unwavering commitment to their belief in the benefits of ideal theorising, it is equally difficult to justify the dismissal of the use of idealizations in all instances.

There are many real-world issues which many rightfully expect liberal theory to accommodate and respond to. These are qualitatively different to one another. While liberal theory’s ideal theoretical perspective could render it unhelpful with regards to some social issues, critics of idealization mistakenly presume that this applies in all instances. For example, the attack on idealization levelled by critics such as Mills focuses primarily on issues surrounding oppression. The thought is that a method of idealization from the lived experience and real-world reality of oppression based upon, for instance, race, sex and gender, is of no help when it comes to solving these problems. In this sense, the practise of idealization is irrelevant, and redundant. Firstly, abstracting away from the lived experience and reality of oppression and its consequences provides a barrier to responding to these real-world experiences. Given the personal, lived nature of these experiences, relying upon abstraction or treating the issue in an idealized realm could be envisaged as counterproductive.

However, the use of idealizations as part of the liberal theoretical perspective towards regulation are of benefit. Instances of regulatory capture, immoral markets and offshoring practises are complex, prevalent, and multi-faceted. They can also possess extensive influence in modifying the decision-making processes of real-world political authorities and citizens. Attempting to idealize toward a solution in an abstract realm is not synonymous with ignoring the problem. In fact, considering how theoretical responses may be envisaged pays due diligence to the structural impact of these real-world realities, and acknowledges the extent of their negative influence on the actions and decision-making processes of citizens and political authority.

Secondly, critics of idealizations emphasise the visible gap between the idealized, abstract world, and the implementation of these ideas toward real world phenomena. However,
while this gap may be wide with respect to some social issues, this is not the case with regards to the liberal theoretical perspective towards regulation. Considerations of how public reason operates, or hypothesising about the precise form that pre-emptive authoritative directives might take are considered in an idealized realm. Similarly, considerations about the viability of the perspective of state neutrality, and theorising towards how paternalistic, authoritative nudges might operate are abstracted away from the real world. However, these abstractions and idealizations are made with a specific aim in mind. They are designed to ascertain how the existing theoretical mechanisms of perfectionist and anti-perfectionist liberal theory can be applied to real-world instances of regulatory capture, immoral markets, and offshoring practises. Crucially, the idealization is formulated to test the effectiveness of these theoretical ideas when it comes to questions bearing on the implementation of liberal values and norms. The purpose of the idealizations is not to create and justify an idealized, perfectly regulated society where the practises of public reason or pre-emptive authoritative directives work perfectly to eliminate any regulatory issue. The use and effectiveness of these political authoritative mechanisms are precisely what is scrutinised in the idealization itself. In other words, the need to bring about regulatory solutions to specific, real-world phenomena is built into the idealization, and represents the standard under which different liberal theoretical processes will be judged. Thus, questions bearing on the application of liberal ideas are central to the liberal theoretical perspective towards regulation. The idealization locates specific, known real-world instances of the behaviours, while analysing how a liberal theoretical regulatory response would approach these issues. In summary, it is the theoretical mechanism and potential regulatory response that is idealized, and considered in a realm away from the real world. The reality and consequences of the issues themselves are not ignored. They motivate the idealization, and responding to these real-world problems represent the standard upon which different theoretical mechanisms of liberal perspectives are evaluated.

Lastly, the more limited scope of the aims of the liberal theoretical perspective towards regulation make its use of idealizations less controversial. The claim against idealizations criticise the all-encompassing nature of their approach, and the assumption that this is the only candidate methodology for political theory. The liberal theoretical perspective towards regulation does not solve all problems related to these behaviours, nor counteract all instances of them. However, the use of idealizations can illuminate a theoretical response to these questions which had hitherto been neglected by liberal critics, and under-explored by liberal theorists.
Another strand of the ideal theoretical critique questions its overall effectiveness and potential for action-guidance. Its claim is that liberal theory’s use of ideal theory abstracts itself from essential realities, circumstances and contexts of politics. These specifically surround the significant ways in which real world political actors and citizens behave, and the limitations and imperfections that effect their actions and decision-making processes. This prohibits ideal theories such as Rawlsian and perfectionist and anti-perfectionist liberalism from having a role in regulating institutions, or providing appropriate action-guidance to modify and aid the decision-making procedures of citizens and political authority.

Liberal theorists who advocate the use of ideal theory maintain that it can respond to real world problems, and provide guidance as to how to solve these in the real-world. Geuss (2008, p. 8) rejects the idea that one can theorise toward ‘an ideal theory of how we should act, and then, in a second step […] apply that ideal theory to the action of political agents’. He does not deny that one can theorise toward an idealized state of affairs. However, Geuss rejects the presumption that real-world political agents can straightforwardly apply the idealized state of affairs to their own situation and act accordingly. Instead, Geuss (2008, p. 9) claims that political theory should ‘be concerned with the way the social, economic, political […] institutions actually operate in some society at some given time, and what really does move human beings to act in given circumstances’. This implies that politics in the first instance is about action and contexts of action, and these realities fully encompass the motivations and justifications through which individuals and political authority make decisions. This leaves no room for calculations about how any given decision or activity approximates or fails to live up to any existing prescriptions of ideal theoretical models.

Moreover, political theory must reflect the fact that politics concerns human agents that act differently and in ever-changing contexts. Whether ideal ends can be approximated depends upon the contexts within which individuals act, and the particularities of the situation at hand when citizens decide to act. Any specific context of action will itself be the result of a structured web of actions, and any given state of affairs will be explainable by a chain of other states of affairs, decisions and authoritative directives that render every political situation and decision as unique (Geuss, 2008, p. 14). Abstracting away from the real world, and conceptualising citizens and political authority from a context-independent perspective takes the focus of theory away from assisting the choices of citizens in specific contexts. For example, knowledge of an idealized society regulated by Rawls’s political conception of justice may not straightforwardly assist the decision of political authority with respect to how to distribute funding, or whether or
not to impose tax hikes. These ideal theoretical considerations are not as significant as real-world pressures from interest groups, considerations about the health of the economy at any given moment, and the immediate, short term and long-term consequences that such policy interventions will have. Similarly, Quong’s calls for citizens to settle reasonable disagreement through the exercise of public reason fails to take adequate note of the fact that within one’s immediate social circle, there exist a multitude of citizens who do not possess appropriate reasoning faculties, are too preoccupied with other matters, or apathetic to the issue in general to be able to engage in any form of meaningful debate. In other words, liberal theorists who utilise ideal theory fail to acknowledge ‘diverse complexities that arise in the real world’ (Farrelly, 2007, p. 862). This neglects the real circumstances of politics.

These critics also take issue with the assumption liberal theorists make about human agents when constructing their ideal theories. Liberal theorists attribute a wide range of faculties to the idealized citizen. They possess a sense of justice, encompassing an ability to recognise that all individuals should be treated as free and equal, and that society is a scheme of social cooperation for mutual benefit (Rawls, 2005, p. xxxv; Quong, 2011, p. 182-85). They also hold comprehensive conceptions of the good that motivate their actions and which they can use to justify their beliefs and opinions (Rawls, 2005, p. 168; Quong, 2011, p. 185). Furthermore, the idealized citizens of liberal ideal theory can recognise when their decision making has been influenced by a specific authoritative directive. They can recognise the scope of this influence against other factors, and they can reason towards the fact that they make specific decisions because of the influence of authority (Raz, 1986, p. 58-62).

Focusing more concretely on why individuals make specific decisions as opposed to others in given circumstances necessitates taking contexts of action and real-world political circumstances seriously. This involves accepting that human agents can be finite, vulnerable, and prone to lapses in judgement. This changes the goalposts and aims of political theory away from what ideal theorists propose. Focusing upon contexts of action does not serve to create an essential definition and conception of politics. Geuss (2010, p. 6) states that ‘at best, “context of action” is an open concept with indeterminate contours, and boundaries that can expand and contract’. Liberal theorists aim to establish general, complete conceptions of political society and citizens. This alienates it from real-world concerns. Once one focuses on the contexts of action, the need for such grand theoretical models dissipates.

The claim that liberal theorists should focus more upon the contexts of action in the real world is coherent. However, this does not apply to the liberal theoretical perspective towards
regulation, since this focuses upon real-world contexts of politics. Real-world instances of regulatory capture, immoral markets and offshoring practises have populated the discourse of this thesis. The focus has been upon how these behaviours damage the credibility of liberal conceptions of political authority, provide barriers to the effect implementation of liberal values and norms, and effect the extent to which citizens can effectively instantiate liberal freedoms. Far from theorising about liberal values in an abstract, hypothesised realm, or tinkering with the details of ideal justifications of liberal values and norms, the liberal theoretical perspective on regulation attunes existing liberal theoretical conceptions of citizens and political authority to the contexts of regulatory issues. The reality and real-world examples of these behaviours play a significant role. The liberal theoretical perspective does not theorise toward a conception of liberalism, then apply it to existing real world issues. Instead, real world instances of regulatory capture, immoral markets and offshoring practises are shown to violate liberal values and norms. There is significant guidance within the liberal theoretical perspective towards regulation to recommend change and enforce regulatory alignment. This thereby disproves the claim that liberal theory is a redundant political stance when it comes to questions which bear on the implementation of liberal ideas.

The other key strand of Geuss’s criticism of liberal ideal theory is that the use of ideal theoretical methodology fails to be appropriately action-guiding. However, this also fails to apply to the liberal theoretical perspective towards regulation. Both perfectionist and anti-perfectionist liberal theory converge upon a recognition of the need to regulate real-world instances of regulatory capture, immoral markets, and offshoring practises, and can justify a theoretical process for bringing about regulatory principles. Furthermore, perfectionist liberal theory can implement paternalistic intervention, sufficient to design against these behaviours, and prevent their further proliferation. In this respect, one can recognise the viable liberal perspective when it comes to designing against the negative effects of these behaviours. Concordantly, if one accepts the liberal theoretical perspective towards regulation, it is possible to use its recommendations to respond to the real-world behaviours that threaten the instantiation of liberal values and norms. This demonstrates effective action-guidance, which this thesis has sought to outline the ramifications of. Concordantly, this criticism does not apply to questions concerning regulation.

Other criticisms of ideal theory highlight its inaccessibility. This states that ideal theory, as practised by liberal theorists is ideological, and reflective of illicit group privilege. The charge states that liberal theorists on the whole are reflective of a sub-set of privileged
individuals, perpetrating a limited, closed-off set of ideas about the political world. Despite this, they generalise their ideas as if they are all-encompassing, value-neutral, and responsive to the sum total of needs, interests and perspectives of society as a whole.

The chief advocates of this critique are Mills and Finlayson. Mills (2005, p. 175) claims that the tendency towards liberal ideal theory is reflective of the fact that the values, norms and beliefs of liberal theory reflect the interests and experiences of those who practise it (Mills, 2005, p. 172) (e.g., upper class, bourgeoisie white males). Far from actively engaging and disproving other potential political theoretical perspectives, or outlining why liberal theory and ideal theoretical methodology is superior, these facts are assumed by liberal theorists. Finlayson (2015, p. 23) explains that on this basis, ‘it is not at all obvious that a consensus among political philosophers is best interpreted as evidence of truth or validity’. While a consensus may exist, this can be seen as a manufactured consensus, on the basis of theorising in ways that bracket inquiry between liberal theorists. In other words, liberal theorists are a privileged minority whose theorising is in conversation with one another. It does not invite, engage with or attempt to disprove rival perspectives.

This maintains an illusion that within the liberal paradigm, dissenters can be dealt with straightforwardly. In reality, dissenters to the tradition, or real-world circumstances that trouble the ideally justified concepts are rarely considered. Moreover, the continual reinforcement, rather than critical engagement of a set of ideally justified liberal values and norms heightens the fear of losing the paradigm. In effect, the more theorists depend upon the liberal paradigm to solve practical and theoretical issues (regardless of how well-justified this dependence is), the greater the fear for political theorists in moving past it, and articulating new perspectives. This results in the maintaining of the status quo, and the re-affirming of the benefits of the liberal theoretical paradigm. This runs contrary to the way in which politics actually operates. As Geuss (2010, p. 12) highlights, ‘political action takes place in an arena in which the standards for evaluating what is “success”, what is a good idea, what is a desirable outcome, are themselves always changing and always in principle up for renegotiation’. Furthermore, the ends of ideal theory are also ideological, and unreflective of real political discourse. Those faithful to the liberal paradigm strive towards idealized, general and comprehensive explanations that affirm and reinforce the viability of liberal values and norms. However, the ever-changing political world means it may not always be desirable to stay faithful to the truth of a specific set of ideas and values.
Finlayson further outlines the ideological and harmful implications of the practises of liberal theorists. She claims that those who practise ideal theory falsely regard themselves as the first movers in politics. This implies that the consequences of the modifications they make to their stances, or their amendments to certain theoretical structures has deep consequences for the experiences of individuals and political authority, and for potential policies that may be enacted. In actual fact, Finlayson (2015, p. 144) argues that ‘to the extent that they conceive of their actual and potential role in the ‘real world’ in this way, political theorists place the very concerns that are most definitively political beyond the scope of the social change in which they envisage themselves as playing’. In effect, liberal ideal theorists believe that they propose changes to existing theoretical models of the state, and that without the theoretical basis they provide, politics has no basis from which to make changes. Furthermore, liberal political theorists regard themselves as individuals of reason, prepared where necessary to move their allegiance to certain theoretical ideas when they are no longer tenable (Finlayson, 2015, p. 146-47). In reality, Finlayson argues that those who practise liberal ideal theory are the least likely individuals to change their minds. Once established, they tend not to move from their theoretical position. This prevents any possibility of meaningful progress in debates.

The claim that ideal theory is ideological has some elements of plausibility. Similarly, the observation that liberal theorists fail to engage with and respond to rival, non-liberal perspectives is true, especially for the perfectionist versus anti-perfectionist liberal debate. Nevertheless, the project of establishing a liberal theoretical perspective towards regulation is not ideological. Instead, it represents an attempt to apply and implement liberal theoretical ideas and arguments towards specific real-world concerns. With regards to questions surrounding how political authority might counteract the negative consequences of regulatory capture, immoral markets and offshoring practises, the liberal theoretical perspective should be considered. Liberal theory remains a dominant theoretical paradigm. Therefore, it is plausible to consider liberal theory when it comes to confronting real world problems.

Part of the thrust of the claim that liberal ideal theory is ideological is that dominant concepts and theoretical perspectives such as those which make up the liberal paradigm may obscure crucial realities. They overlook, obscure or else neglect realities of the real political world, and under-emphasise the extent to which these invalidate their theoretical positions. This does not apply to the liberal theoretical perspective towards regulation. Existing realities and negative real-world phenomena are interwoven with existing political theoretical concepts and theories. Liberal theoretical ideas are not shown to be dismissive of these regulatory issues, nor
undermining of their negative consequences. By contrast, theoretical features of perfectionist and anti-perfectionist liberal theory are shown to be robust to these real-world challenges, and able to offer helpful guidance with respect to combatting them. Therefore, while it is true that liberal theorists could do more to engage with rival perspectives and more actively confront real world problems that threaten the instantiation of their values, this does not apply to questions concerning regulation. Moreover, the claim that liberal theorists perpetrate an ideological set of beliefs, without concern of their real-world implementation can be debunked. Throughout this thesis, the theoretical facets and justifications of perfectionist and anti-perfectionist liberal theory have been applied to regulatory issues. Demonstrating how liberal theory can approach these new domains, and spelling out the consequences for its theoretical structure is not ideological. It does not bracket liberal inquiry, nor focus on tinkering existing theoretical structures. In summary, with respect to the liberal theoretical response to regulation, there is no reason to accept the criticisms against liberal theorist’s use of an ideal theoretical methodology.

II. Responding to the Cosmopolitan Critique

A further positive implication of the liberal theoretical perspective towards regulation is that it provides a means to counter criticisms emanating from cosmopolitan political theory. These include the charges that liberal theorists fail to appreciate the impact of globalisation; that they possess an incoherent model for reform due to utilising outdated conceptions of the citizen and political authority; and do not possess a critical dimension sufficient to identify the flaws in the current world order, and undergo social transformation. The success of the liberal theoretical perspective towards regulation involves its applicable potential, and its ability to safeguard the instantiation of prominent liberal values and norms. Examining the implications of this provides grounds to denounce these cosmopolitan criticisms. Accordingly, the cosmopolitan criticism of liberal theory does not apply with respect to questions concerning regulation.

Part of the reason why Cosmopolitanism is held in a positive light relates to the presumed lack of application liberal theory has to real-world behaviours. This draws from its inability to correctly categorise unjust realities, because of its focus upon national, rather than global contexts. By contrast, Cosmopolitanism adopts a critical perspective on current realities. It aims to solve global injustices by re-defining our conceptions of political authority and citizenship to encompass our global responsibilities to other citizens and states. The basis of Cosmopolitanism’s critique of Liberalism is that it is ill-equipped to respond to real-world,
modern-day injustices and societal issues. The success of the liberal theoretical perspective towards regulation negates this. Liberal theory can respond adequately to real world issues surrounding regulation. This means that with respect to regulation, which bears upon the implementation and instantiation of liberal values and norms, these criticisms do not apply.

Cosmopolitan political theory calls to re-theorise existing conceptions of citizenship and political authority. This re-conception must take notice of the fact that duties, aims and responsibilities of citizens should be understood on a global rather than a national level. In effect, all human beings have equal moral value, and a citizen’s moral responsibilities to others do not disappear once we reach the boundaries of states or nations. Concordantly, no national categories of people have more or less moral weight (Brock, 2002, p. 315). Cosmopolitan political theorists state that taking this basic aim and value seriously has implications for the ways in which we distribute rights and responsibilities to citizens, and the ways we consider our duties to citizens that are not co-nationals. Cosmopolitan theorists also call for varieties of world governance structures. These emphasise cooperation and recognition of the needs of states to solve global problems. These trump the motivations and aims of independent nation-states. This central cosmopolitan thesis is applied to multiple domains.\textsuperscript{42}

Much of the rationale for this central cosmopolitan thesis emanates from a response to the realities of globalisation. In an increasingly globalised world, issues which face modern states are no longer nation specific. They are global; hence, every state has a duty to prevent them. Globalisation itself, accelerated by technological growth, deregulation, and the growth of new markets has led to the expansion of the global reach and status of multi-national corporations, and enhanced the sense in which national policy shifts in particularly well-resourced, rich and influential countries ignite a ripple effect across the globe. This heightens the need for political authority to think about their global impact, pointing to the need for ‘forms of governance that depend on the management of interlocking matrices of difference’ (Moore, 2012, p. 200).\textsuperscript{43} A further reason to adopt a cosmopolitan perspective is forwarded by Garsten (2003, p. 358): ‘The weakening power of nation-state politics to govern local economies, coupled with an increased awareness of the world as ‘one single place’, in which risks and responsibilities are shared, accentuate the need for common global policies or systems of governance’.

\textsuperscript{42} It can encompass a moral, political or cultural lens, and involve theoretical perspectives about global justice, global democracy, and global legal systems.

\textsuperscript{43} The 2021 United Nations Climate Change Conference, termed “COP 26” is a recent example of trying to construct such forms of governance.
Liberal theorists are charged with neglecting the negative consequences of globalisation, and refusing to adapt liberal democratic national government structures that have led to its acceleration. By contrast, the transition to cosmopolitan societies recognises that ‘beneficiaries of globalization have a responsibility to help those who have fared less well under it’ (Brock, 2002, p. 316-17). An excessive focus upon national issues, or political theorising in a way which focuses only on solving isolated, specific problems in national contexts prevents the realisation of these aims. Cosmopolitan theorists do not reject the values and norms pertaining to the citizen and to political authority that liberal theorists attempt to justify. However, liberal theorists handicap themselves. They focus disproportionately upon the roles and responsibilities of a single, independent political authority, or the securing and protection of rights within a given national or territorial border. For cosmopolitan theorists, concerns should be broader, encompassing potential overlapping duties of particular nations to co-nationals, as well as to other nationalities, or even to citizens of the world as a whole.44

Most liberal theorists fail to account for faults brought about by globalisation. Despite this, these criticisms cannot be used as effective arguments against the liberal theoretical perspective towards regulation. Acknowledgement of the controversies of globalisation, and actively trying to regulate and design against these is built into this liberal theoretical response. For example, the liberal theoretical perspective towards regulation does identify the global reach and impact of instances of regulatory capture, immoral market proliferation, and offshoring practises. Secondly, it assesses the extent to which real-world, global manifestations of these behaviours threaten the effective instantiation of liberal values and norms. Instances of regulatory capture, immoral markets and offshoring practises are analysed, and the demonstrable threat to citizens and liberal political authority is understood. Far from failing to acknowledge the globalised nature of these problems, such an approach is advantageous for the liberal theoretical perspective towards regulation. By measuring the global impact of these behaviours by assessing the extent to which they violate the instantiation of liberal values and norms, a deliverable means to limit these behaviours presents itself. In effect, since the liberal

44 The Law of Peoples (Rawls, 2001b) represents the most substantive attempt by liberal theorists to consider the duties nation states have to one another, but this remains far short of a cosmopolitan conception of world governance. Its chief focus revolves around establishing laws under which different nation states can co-exist. It theorises towards laws that liberal societies should live under, including their responsibilities to non-liberal, but decent societies, and the obligations they have to burdened societies suffering from economic disadvantage, and outlaw states that have the means but not the intent to exist peacefully within the international order. Though it theorises towards the ways different states may interact, it does not aim to go beyond borders between independent, individually autonomous nation-states
state must safeguard the exercise of seminal liberal values and norms, it is permissible for it to intervene against these real-world behaviours.

Cosmopolitan theorists are also prone to over-estimate the beneficial outcomes that result from accepting the reality and negative ends associated with globalisation. They assume that global openness, and cooperation between political authority and citizens towards global issues, to the detriment of solving national issues, is an unalloyed good. Yet in the real-world of established nation-states, there exist fears and anxieties, suspicion, and worries about global homogeneity. As Moore (2012, p. 206) claims, liberal theorists can concede ‘that cosmopolitanism is more productive as a prescriptive term underpinning the ‘ought’ of public policy and international regulations and negotiations, and rather less efficacious as a descriptive term for ordinary people’s imaginative and discursive interactions’. The processes citizens may undergo to transfer concerns for co-nationals to global citizens is far from clear. Even if one accepts that citizens should do this, they may be reluctant or unable to without a clear understanding of how to carry this out. Furthermore, citizens belong to particular nations, and some neighbouring nation-states carry histories of conflict, societal unrest, political division or clear divisions in culture. In this context, it is difficult to envisage how potentially generational and embedded difference can be overcome, no matter how compelling the theoretical benefits of combatting world problems from a globalised perspective might be.45

Therefore, the process of enacting a cosmopolitan society, and facilitating a regime of world governance is more difficult than cosmopolitan theorists suppose. Scheffler (2008, p. 70) sheds light on this problem, stating that

there is no global basic structure and no reasonable expectation that one will emerge in the future. There are, to be sure, global institutions and arrangements of various kinds, but they do not add up to a global basic structure that is remotely analogous to the domestic case. Instead, these institutions are largely the product of international agreements among independent states, and they presuppose the existing legal and institutional structures of those states

The crux of these concerns apply clearly to the limitations of cosmopolitan political theory in responding to independent cases of regulatory capture, immoral markets and offshoring

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45 A glance at current global conflicts and disagreements between nation-states show that fundamental, embedded disagreement are common. It is difficult to see how resolutions may be envisaged to present real-world conflicts. Also, one struggles to see how the national, political interests of different nation-states may be made compatible with one another. Common ground and conflict resolution appear unlikely. The appeal to cosmopolitan political theory does little to increase these prospects.
practises. The questions relating to these behaviours, and the specific mechanisms the state may employ to counteract their negative effects are located in specific, real-world contexts. The behaviours themselves may be pervasive features of modern day liberal democratic societies, and different individual manifestations of the behaviours are comprised of similar features and strategies. However, identifying and recognising the negative effects, and trying to counteract individual instances of these behaviours does not require a broad, globalised structure of governance. As mentioned in this thesis, liberal theory can recognise the need to regulate these behaviours, justify a theoretical process for bringing about regulatory principles, and specifically with perfectionist liberalism, can paternalistically interfere in ways which mitigate against the negative implications of these behaviours. The liberal theoretical regulatory approach is therefore cohesive, and can be specifically oriented towards these behaviours without the input of Cosmopolitanism.

The second prominent criticism of liberal theory levelled by cosmopolitan theorists is implied within the cosmopolitan conception of the citizen, and political authority. It states that liberal theory’s nationalistic focus on specific states, and the rights and freedoms associated with individual citizens rather than citizens of the world stalls ambitious and necessary reform. By contrast, prominent cosmopolitans such as Pogge (1992, p. 48) state that re-organising our social and political institutions in accordance with cosmopolitan aims is synonymous with ‘gradual, global institutional reform’. The cosmopolitan conception of citizenship focuses on globalised, rather than national contexts. In effect, citizens are considered as citizens of the world with duties to other world citizens, rather than belonging to a particular tribe/race/nation/community. Embracing this conception of citizenship entails that citizens do not regard their belonging to a particular nation, race, or class as ‘the lodestar of their political identity’ (Pogge, 1992, p. 58). In effect, conceiving of citizens as citizens of the world, with duties to other world citizens removes existing affiliations citizens feel toward their co-nationals exclusively.

Duties to other world citizens manifest in a multitude of ways. Pogge (1992, p. 49) states that ‘all persons stand in certain moral relations to one another: we are required to respect one another's status as ultimate units of moral concern - a requirement that imposes limits upon our conduct’. Responsibilities include not subjecting other citizens to unjust regimes, or ensuring that resources are divided in a way which prevents world hunger and poverty. Additionally, if residing somewhere in the world that is safer from existential threats and natural disasters, cosmopolitan citizens actively try to reduce the threats faced by others, and not act in ways to
further harms to citizens who are more vulnerable. This also represents a shift in the liberal theoretical conception of political authority. Rather than focusing on the protection and safeguarding of their own citizens and co-nationals before everything else, ‘all human rights violations have come to be, at least potentially, everyone's concern’ (Pogge, 1992, p. 51). Consequently, a cosmopolitan conception of political authority pays due diligence to the role of individual states in enhancing and improving the conditions of individuals who may not reside within their territory. Moreover, a cosmopolitan state focuses upon protecting and safeguarding its residents exclusively, as well as taking its duties to citizens across the world seriously. Therefore, actively preventing conflict, greater inter-governmental correspondence, collective governance and heightened international aid packages would all represent duties of cosmopolitan states.

The implied criticisms of liberal theory levelled by cosmopolitan theorists pertain to the theoretical limitations of the stance, and the shortfalls in the implementation of the stance towards real world issues. In effect, liberal theorists operate with a distorted conception of political authority and the citizen, which fails to recognise the responsibility each citizen and nation-state has to one another. Suspected shortfalls of the liberal paradigm include the idea that the anti-perfectionist emphasis on ascertaining what reasonable citizens could agree to in idealized conditions, and the perfectionist theoretical justification for pre-emptive, paternalistic authoritative directives do not help to solve real world problems. At best, they are effective procedural principles. As Maynard (2018, 769) argues, these ‘principles fail to provide the sort of practical resolution of disagreement that real political processes—and principles that arise imminently from such processes—can’. Consequently, the cosmopolitan perspective regards itself as better placed to ignite change, due to its acknowledgement of the reality of globalised problems, and a sophisticated, global perspective towards solving these issues.

Cosmopolitans claim that the global approach and scope of cosmopolitan political theory leaves it well-placed to identify glitches more concretely within existing regulatory systems than liberal theory. In particular, it could theoretically identify negative consequences associated with global, multi-national corporations, and global markets. Presently, the position of multi-national corporations is one of increased power, which can negotiate and take advantage of state borders, by operating both within and beyond them. Despite this, they rely upon and have residence within ‘the legal, fiscal, environmental and human organization of the nation state’ (Garsten, 2003, p. 355). The expanded presence of transnational corporations upon the global scene implies that these companies are well-positioned to exert greater global
influence. Chiefly, they possess a large body of resources, comparatively much greater than other groups and organisations within the nation state.

In this environment, cosmopolitan theorists argue that it is globalised, rather than nation-specific sets of checks and balances that are appropriate. More globalised standards and systems of regulation instil a greater expectation for corporations to relate their activities to the wider social context. In effect, checks and balances in the form of strict legal laws, and harsh penalties for breaking them can be implemented. Furthermore, embracing the central claim of cosmopolitanism concerning the need for a collaborative, collective approach to the solving of global problems could lead multi-national corporations to self-regulate, or to be a driver of its own regulatory alignment. This alludes to ‘the transnational corporation as a cosmopolitan in the world, with a degree of cultural sensitivity and cultural competence as part of its competitive advantage’ (Garsten, 2003, p. 357). This may involve refraining from engaging in activities which further their own private, vested interests, or cross-subsidising profits to assist with the needs of the wider community. Potential regulatory principles can also emanate from enhanced ‘negotiations between organizations of various sorts and at various levels. Partnership, collaboration, supplementation, and the like’ (Garsten, 2003, p. 360). Effective regulation stems from encouraging corporations and firms to see themselves as responsible, world citizens who can have a role in solving global problems; rather than acting as self-interested, competitive entities. In other words, the failure to adopt globalised conceptions of the citizen and of political authority means that these promising regulatory avenues are not open to liberal theorists, and are problematically absent from the liberal theoretical perspective towards regulation. Subsequently, one is better off embracing Cosmopolitanism; due to the more effective regulatory strategies and the heightened global application they hold.

While cosmopolitan theorists have highlighted a limitation surrounding the global application of liberal ideas, it can be dismissed as an improvement or a rival to liberal theory when it comes to questions concerning regulation. In effect, the problem of the cosmopolitan perspective towards regulation is that it requires, as a precursor, that political authorities and individuals are cosmopolitan and embrace cosmopolitan ideas in their structure and attitudes. This is a significant hurdle. Current political authorities and citizens remain a long way from emulating a cosmopolitan structure, hence, the recommended regulatory perspective it may offer may be promising, but it is difficult to see how it could be clearly implemented. By contrast, given that current western societies more closely emulate liberal democratic states, liberal theory does not suffer from the same hurdles of implementation.
The concerns against the theoretical credibility of cosmopolitanism, and the limited prospects of effectively implementing its recommendations have found support from multiple scholars. The accumulation of these concerns help to offset the impact of the cosmopolitan critiques of the liberal theoretical perspective towards regulation. Cosmopolitan theorists are guilty of failing to appreciate the extent and influence which national identity, and belonging to specific nation-states has on one’s character and choices. Requiring citizens and nation-states to move beyond or ignore borders, and prioritise global issues ‘is too abstract, not possibly realizable in a world of actual people with real emotions’ (Brock, 2012, p. 317). This entails that achieving a global cosmopolitan society is a utopian aim, and one that is not practically realizable. Some critics take a harder line than this. Moore (2012, p. 202) argues that ‘Cosmopolitanism as a set of abstract ideals or normative structures may have heuristic value, but […] in practical terms it is both implausible and impracticable to elevate ‘world citizenship’ over ‘local attachments’.

Besides these more general concerns of implementation and feasibility of the cosmopolitan conception of citizens and political authority, there are issues surrounding the compatibility to questions of regulation specifically. It is unclear that implementing directives which limit the impact of political lobbying on specific national governments can be improved by a globalised perspective, which documents the pervasive nature of lobbying practises. While such insights might be useful, by themselves, exposing the realities of global systems and global impacts of harmful forms of political lobbying does much to document, but little to resolve these problems. Similarly, exposing the effects on national communities from specific markets or illicit commodification’s of certain goods is not enhanced or understood in greater clarity if it is shown that such commodification’s and market transactions are conducted across the world in differing degrees. Lastly, the extent of tax avoidance and offshoring practises can be understood on a global level, however, such observations fall short of identifying how globalised forms of governance might tackle these problems. Tackling these behaviours can be carried out effectively through national governance structures; and the liberal theoretical perspective towards regulation illustrates how this should proceed. Therefore, insight surrounding the global reach and impact of behaviours such as regulatory capture, immoral markets and offshoring practises are helpful. A cosmopolitan conception of citizenship and political authority may assist with these ends. However, with respect to the actual production of and implementation of regulatory principles, there is no benefit provided by Cosmopolitanism over and above the comprehensive ways in which the liberal theoretical perspective towards regulation solves these issues.
The final cosmopolitan criticism of liberal theory is that the liberal theoretical perspective towards regulation fails to possess a sufficiently critical observation of current realities and circumstances. Accordingly, it is unable to recognise and recommend significant changes. Cosmopolitan approaches should therefore be adopted, due to their greater potential for social transformation.

The critics state that Cosmopolitanism is a viable rival to liberal theory because of its adoption of ‘a critical as opposed to an affirmative view of current realities’ (Delanty; Harris, 2019, p. 91). The benefits of the cosmopolitan, critical perspective is its heightened perception and issues with the global order. By contrast, liberal theorists are more likely to neglect these realities, or fail to accord them the appropriate level of concern (Delanty; Harris, 2019, p. 94). Additionally, Cosmopolitanism criticism rather than affirmation of the existing world order possesses the potential for transformation. As Delanty and Harris state (2019, p. 96), it is the ‘concern with societal problems’ that ‘animates the cosmopolitan imagination and gives to cosmopolitanism a critical edge’. It is through addressing global social, political and economic problems whereby ‘the broadening of moral and political horizons occurs’. Through critique, new conceptions of governance emphasising the need to solve global concerns can be envisaged, and implemented.

This implies several further criticisms of liberal theory, and of the liberal theoretical perspective towards regulation. Liberal theory is limited in its ability to theorise toward and develop new forms of governance sufficient to design against the negative features of the modern, globalised world. This is touted as one of cosmopolitanism’s chief strengths over liberal theory. In effect, the global economic, legal and regulatory terrain is complex, and transient. Faced with these challenges, Scheffler (2008, p. 76) advises that ‘it would be rash to assume that the principles of justice with which we are already familiar, whether they apply to individuals or to the institutions of an individual society […] will suffice to regulate’. As a result, one should look past liberal theory, and embrace cosmopolitan alternatives. These involve the idea that tackling societal issues, and critiquing and transforming the status quo brings one closer to the cosmopolitan ideal: a collective, cooperative governance structure, and a conception of citizenship without borders, whereby world-citizens recognise their duties to one another.

However, these critiques also fail to apply to the liberal theoretical perspective towards regulation. For cosmopolitan theorists, the response to regulatory issues stems from the critical evaluation of existing realities, and the potential for social transformation that these possess.
However, the critical evaluation of existing realities is also carried out by the liberal theoretical perspective towards regulation. Specifically, analysis of real-world instances of regulatory capture, immoral markets, and offshoring practices is carried out, and the harms and negative consequences associated with these behaviours are measured. What social transformation means in this context is difficult to quantify. If it means the transition to new forms of governance, then the liberal theoretical perspective towards regulation does not facilitate this. However, neither is this its aim. The aim of the liberal theoretical perspective towards regulation is to recognise real-world behaviours that threaten the effective instantiation of liberal value and norms, and outline principles of regulatory alignment that safeguard these values. If implemented, this would represent significant reform in liberal democratic society, regardless of whether wholesale social transformation is achieved.

Moreover, one should be tentative over proposing that achieving social transformation, and transitioning to a cosmopolitan world order represents a common aim of citizens. No significant frameworks or measurements indicate this to be so. This is ratified by Orts. He (2004, p. 342) states that ‘the percentage of individuals who view themselves as “cosmopolitan” is still relatively small. This is evidenced through polling and modelling of the likelihood of embracing cosmopolitan aims. Schueth and O’Loughlin (2007) explore conditions and expectations under which a cosmopolitan society may emerge, analysing and measuring criteria such as attitudes to immigration, geographical location, levels of patriotism, and age. Their (2007, p. 14) main conclusions are that

many values and attitudes found to be associated with cosmopolitanism are generally positive, such as a lack of xenophobia and a propensity to political activism. Yet, many of these values and attitudes are highly contested, such as a concern for the environment over economic growth or a tendency towards less patriotism.46

This entails that the transition to a cosmopolitan society is difficult to achieve. Moreover, such a criticism is redundant in relation to questions concerning regulation. The liberal theoretical perspective towards regulation achieves its aim of safeguarding liberal values and norms. It need not be judged by additional rubrics of social transformation.

III. Responding to Anti-Liberal Perspectives Towards Regulation

46 Full details of their findings are available at URL: https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.582.5561&rep=rep1&type=pdf
Accepting the liberal theoretical perspective towards regulation means that rival, non-liberal theoretical critics of the stance can be responded to. The claim inherent and common to these perspectives is that liberal theory cannot be relied upon as a theoretical perspective which can solve real world issues. The fact that liberal theory can provide a credible theoretical perspective towards regulation rebuts these ideas.

Some non-liberal theoretical perspectives take a hard line in their rejection of liberal theory, and as a result, rebut the liberal theoretical perspective towards regulation. These theorists state that effectively regulating against negative features of the modern world requires a more structural re-designing of society, and its basic institutions. These claims are chiefly forwarded by critical theorists:

1. Effectively responding to regulatory capture, immoral markets, and offshoring practises requires re-designing and re-imagining entrenched, liberal state structures.

2. Therefore, regulating from the perspective of liberal theory is self-defeating.

Advocates of these claims highlight the prevalence and impact of strategies of regulatory capture, immoral markets, and offshoring practises. This pays particular attention to the disproportionate power this provides to financial institutions and corporations. Since much attention has been placed in this thesis to exploring these behaviours, and their negative effects, recounting the claims made will not be revisited here. What is of interest is the implied claim made by these scholars against liberal theory. The crux of the concern is that due to the fact that these behaviours proliferate in liberal democratic societies, using liberal theory as a model to respond to these behaviours will not work. In other words, because the identified negative consequences of these behaviours manifest in liberal societies, this exposes the inability of liberal theory to adequately respond to regulatory capture, immoral markets and offshoring practises. In its strongest form, some theorists argue that failing to address these behaviours reflects liberal theory’s complicity with them, and that far from regulate them, liberal theorists encourage their practice, or defend the rights of those involved to carry out these behaviours.

Both sets of claims can be rejected. The observation motivating the first set of claims are that liberal theorists fail to pay adequate attention to regulatory capture, immoral markets, and offshoring practises. This leads to the accusation that the liberal state, and liberal theory more generally is responsible for allowing these controversial behaviours to prosper. This implies that if other theoretical perspectives had been more influential, the prospects for regulatory intervention would have been higher.
Some proposals from non-liberals aim to highlight what these potentially more effective regulatory proposals may consist of. Shaxson (2012, p. 291) comments that effective regulation requires ‘new guidelines and codes of conduct’ for financial institutions and corporations, ‘outlining responsible and irresponsible behaviour’. Other non-liberal responses focus on highlighting the deficiencies of liberal theory when approaching the issue of regulation. Finlayson (2015, p. 144) claims that to have any relevance with regards to regulation, liberal theorists must refrain from attempting to arrive at broad definitions and conceptions of “society”, or “justice”. This neglects focus on how these broad ideas are to be applied to specific, modern social issues, or used as a means to design against injustices in the world today. Shaxson (2012, p. 263) further illustrates this. He argues that by ignoring problematic features of modern-day societies, liberal theory has endured ‘great difficulty noticing the Corporation, let alone appreciating its significance’. This exposes the limited attention paid by liberal theorists to modern day institutions, and their potentially negative influence on society.

In summary, critics claim that liberal theorists focus too heavily on the basic structure of society, e.g. the responsibilities of the liberal state, and the freedoms citizens should enjoy within society. They have collectively failed to consider things such as the coercive interference with individuals from bodies other than the state. This is supported by Sangiovanni (2008, p. 164), who claims that liberal theorist’s narrow focus when theorising about society means that they are unable to recognise how first principles vary ‘at a fundamental level, with respect to the institutional context they are meant to regulate’. Different contexts will inevitably require different resolutions, and it is plausible to expect that being aware of the realities of institutional and corporate misconduct should play a role in determining or altering the implementation of liberal ideas (Sangiovanni, 2008, p. 137). This is reflective of liberal theory’s tendency to try to ‘enact comprehensive moral blueprints for social life’ (Maynard and Worsnip, 2018, p. 785), and continually validating a specific, idealized set of principles, rather than focusing upon how to solve problems in specific contexts.

Upon accepting the viability of the liberal theoretical perspective towards regulation, there is no reason to uphold these criticisms. The fact that liberal theoretical perspectives have to date had little to say with regards to regulatory issues does not entail that they can offer no valuable insights. Advocates of these non-liberal approaches are therefore too quick to dismiss any prospect of liberal theory offering any insight to questions concerning regulation on the basis of the fact that they have not yet done so. As has been outlined throughout the thesis, perfectionist and anti-perfectionist liberal theorists can recognise the need for regulation, and
outline a theoretical process for establishing principles of regulation. On top of this, the accommodation of paternalistic intervention specifies perfectionist liberal theory as the most appropriate liberal stance to carry out and implement principles of regulation to counteract the negative benefits of these behaviours. Attention to modern liberal debates indicate that questions bearing on the implementation of liberal ideas can be theoretically responded to. This is enough to render untrue the claims that liberal theory is unable to be used as a means to solve real-world problems.

The further claim made by advocates of non-liberal theoretical perspectives can also be dismissed. This relates to a response to regulation which may be adopted by critical theorists. The claim is that liberal theory is reminiscent of a system which is beyond repair, and in need of radical alteration. As such, when confronting questions concerning regulation, we should turn to other theoretical avenues. Thompson (2017, p. 2) highlights that critical theory engenders a ‘form of thinking that is designed not only to comprehend, but also to transform’. The concern is that the levels of social transformation necessary to allay and resolve modern world problems cannot be set into motion by adopting a liberal theoretical response. As stated by Thompson (2017, p. 3), emphasising the need for transformation highlights that: ‘defective forms of reasoning lead to the re-creation and sedimentation of the prevailing, existent reality, and to the continued endorsement by members of that society of its irrational and dominating relations and forces’. In this sense, since regulatory capture, immoral markets, and offshoring practises have proliferated within liberal democratic societies, attempting to mend or correct for their negative features from the perspective of liberal theory represents a defective approach. Finlayson (2015, p. 23) further illustrates this critique. She claims that ‘thoughts and theories that we find in a society will only reflect the kind of society in question, its material conditions and the interests dominant within them, but will shape themselves in such a way as to reinforce those conditions and protect those interests’. In other words, those forwarding liberal theoretical ideas within liberal democratic societies will either not recognise these behaviours as problematic, or else dismiss the idea that liberals are complicit in the formation and continuation of these practises. This is due to the entrenched nature of liberal democratic values, and the tendency by those in power to reiterate the benefits of their own political system, and of wider society.

To get around the vulnerability to engage in defective reasoning, critical theorists claim that one ought to adopt an approach involving a conscious discontinuity and separation with the current world order. Liberal theory is unable to sufficiently respond to questions concerning
regulation, since it can only offer reforming proposals that fail to tackle underlying, overarching problems which enable these behaviours to manifest. What is required is a transformation of society, consisting in a radical re-structuring of its basic design. This would include, if necessary, a re-imagining of the type of government, and its relationship to individuals and institutions. Similarly, critical theorists dismiss claims that the dominance of liberal theory and of liberal theoretical discourse provides any reasons to privilege it as a perspective when it comes to responding to questions concerning regulation. Marcuse (2002, p. xlv) goes as far to claim that ‘the fact that the vast majority of the population accepts, or is made to accept, this society does not render it […] less reprehensible’. As a result, confronting issues relating to regulation from the perspective of liberal theory is contributing to the problem, and exposes the inadequacies of attempting to reform from within. This suppresses more radical or non-liberal alternatives which may offer effective regulatory responses. Moreover, approaching regulation from the perspective of liberal theory is uninspiring, and represents approaching new problems with old and controversial political perspectives. Graeber (2012, p. 384) echoes this, stating that ‘new ideas won’t emerge without the jettisoning of much of our accustomed categories of thought’. Marcuse (2002, p. 254-55) also claims that ‘to liberate the imagination so that it can be given all its means of expression presupposes the repression of much […] that perpetuates a repressive society’. It is claimed that a rejection and overhaul of the liberal state provides one initial framework from which to begin anew, and re-organise society from the basis of other political perspectives.

Having shed light on the viable liberal theoretical perspective towards regulation, the claims made against liberal theory by critical theorists are lessened. The fact that liberal theory can produce a theoretical perspective towards regulation dispels any notion that liberal theorists are somehow complicit in or content with the manifestation of these behaviours. This thesis has shown that the proliferation of regulatory capture, immoral markets and offshoring practises violates and problematises the instantiation of liberal values and norms. Moreover, it illustrates that liberal theorists can extend their political justifications to instances of the behaviours in ways which counteract these negative practises. Thus, the liberal theoretical perspective towards regulation highlights that far from being defective, liberal theory can be successfully applied to new domains.

While it is true that the dominance of liberal theory may stifle more ambitious attempts at social transformation, this does not mean that the sole reason why these models of transformation are not adopted is because of the dominance of liberal theory. Other reasons,
such as the lack of clarity surrounding the critical theorists conception of ‘social transformation’, what its ends are, and how it could be brought about also play a part. This view is supported by other scholars. Arnold (2009, p. 14) claims that even if the arguments for social transformation are plausible, and call for the transformation of totality, and the mass overhaul of existing political structures, one must also recognise the following:

The apparent stability of the existing order makes the project of radical criticism appear to be, at least for now, merely an academic exercise […] For the foreseeable future, modern Western societies are liberal democratic capitalist societies […] When times change, the terms of the debate will change. As for now, […] radical critics’ admonitions to tear down the system and replace it with something else seem largely irrelevant.

Arnold thereby acknowledges that non-liberal, radical approaches exist, but sees no need for such a view to invalidate approaching the issue of regulation from the perspective of liberal theory. Neither, he argues, should we expect the over-hauling and re-building of entire state structures to bring us closer to a resolution. He (2012, p. 364) further claims that ‘when it comes to the question of actually making changes in existing institutions, caution favors the status quo’. This means that in order to enact lasting change, it is better to modify state structures as they exist, rather than abolish all facets of an entrenched system, and start from the bottom-up. This links to the problems and vagueness surrounding the idea of social transformation. How the transition from entrenched state structures to a new institutional model would occur remains clouded in uncertainty.

As a result, there is no basis from which to claim that liberal theory practises defective reasoning, nor that approaching questions concerning regulation from the perspective of liberal theory implies that there is nothing wrong with these behaviours. Therefore, while posited by a number of different scholars, the claims against liberal theory, specifically the categorical unviability of liberal theory as a means to resolve real world problems can be rejected. The plausibility of the liberal theoretical perspective towards regulation devalues any such claim.

**Conclusion: Re-Affirming the Liberal Theoretical Perspective Towards Regulation**

The liberal theoretical perspective towards regulation cannot by itself, render the cosmopolitan, methodological, and non-liberal theoretical perspectives as redundant. Cosmopolitans, non-ideal theorists, and other non-liberal political theorists will continue to critique the stance.
However, exposing liberal theory’s viability as a means to respond to questions concerning regulation represents an effective response to these claims.

Critics of liberal theory’s use of ideal theory can be checked on the basis that the liberal theoretical perspective towards regulation can acknowledge and respond to non-ideal, real-world problems, and situate itself within the real contexts of politics. Moreover, the plausibility of the liberal theoretical perspective towards regulation highlights how the liberal state can respond to real-world instances of the behaviours. Moreover, liberal theory’s effective response to questions concerning regulation, and the way it is equipped to tackle and respond to specific instances of these behaviours is enough to reject the idea that cosmopolitanism is a significant rival to liberal theory. Lastly, advocates of non-liberal theoretical perspectives that regard liberal theory as an unviable perspective when it comes to solving real world problems can be rejected. The existence of the theoretical perspective towards regulation dismisses both areas of this critique. Firstly, it shows that liberal theory can recognise, and is not complicit in the spread of these behaviours. Secondly, approaching these issues from the perspective of liberal theory is not representative of defective reasoning; recognising the harm they represent and proposing workable alternatives is implied within the liberal theoretical defence of its values and norms.

The liberal theoretical perspective towards regulation thus has wide, under-emphasised significance. Despite liberal theory representing a dominant paradigm within modern political theory, scarce attention is paid among its advocates to matters relating to the effective implementation and instantiation of liberal values and norms. Similarly, scarce attention is paid by political theorists as a whole to questions concerning regulation, despite the known illicit, controversial activities and behaviours of firms, individuals and corporations. These activities pose a threat to the successful implementation of liberal values and norms. This thesis has conceptualised a liberal theoretical response to prominent cases of regulatory capture, immoral markets, and offshoring practises. This is not a new conception of liberal theory. It applies and interrogates existing, modern, neo-Rawlsian accounts, and uncovers plausible responses in existing accounts of perfectionist and anti-perfectionist liberalism. This occurs through applying perfectionist and anti-perfectionist liberalism to new domains.

The basis for the liberal theoretical perspective towards regulation stems from the fact that instances of regulatory capture, immoral market proliferation, and offshoring practises violate and threaten the effective instantiation of prominent liberal values and norms. These pertain to the rights and freedoms afforded to citizens, and outline the roles and responsibilities
of liberal political authority. Therefore, effectively advancing and implementing these liberal values and norms entails that liberal theorists should actively intervene against real-world circumstances that threaten their effective instantiation. The internal results for liberal theorists are that prominent disputes which have stagnated the debate between perfectionist and anti-perfectionist liberal theorists pertaining to state neutrality, and the prioritisation of public reason can be adjudicated. It also highlights that the dispute surrounding the permissibility of paternalistic interference is the most prominent when answering questions related to the implementation of liberal ideas. Its resolution with respect to questions concerning regulation outlines a preference for perfectionist liberalism, since this accommodates the type of paternalistic interference necessary to respond to pressing instances of the behaviours.

Therefore, this thesis shows that with respect to questions concerning regulation, and the implementation of liberal ideas, far more unites than divides perfectionist and anti-perfectionist liberalism. Moreover, liberal theory is not an incoherent perspective when it comes to responding to questions concerning regulation, nor a perspective unconcerned and untroubled by real-world threats to the effective instantiation and implementation of its seminal liberal values and norms. The richness of liberal theory is such that deliverable theoretical guidelines concerning the regulation of these illiberal features of society can be theorised towards, and implemented.
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