A Biopsy of Anti-Perfectionism: Controversies within the Philosophy of Health and their Implications for State Neutrality Towards Non-Autonomous Human Beings

By

Michael McInerney

Submitted to

Central European University

Department of Political Science

In partial fulfillment of the requirements for the degree of Master of Political Science

Supervisor: Anca Gheaus

Vienna, Austria

(2022)

Abstract

In political philosophy, some argue that the state must be neutral towards controversial conceptions of the good life for human beings. These "anti-perfectionists" offer an intuitively appealing way to avoid the conflicts that inevitably arise when states justify their structures and laws upon some conception of the good life that is not universally shared. However, the "life" portion of the phrase "the good life" gets routinely overlooked in these discussions. Any conception of the good life must ask, among other things, "What constitutes a good life as a living creature for human beings qua human beings?" On the surface, there seems to be unanimous agreement on at least one aspect of the answer to this question. Health, a necessity for any life, can be considered an uncontroversial thing for states to provide for their citizens. Yet what exactly health consists of is not universally agreed upon. This thesis will ask if a state that endeavors to be anti-perfectionist can decide how to treat humans that cannot decide on any conception of the good for themselves— non-autonomous human beings— concerning their health. This thesis will argue that there are no legitimate justifications for an anti-perfectionist state to adequately preserve the health of non-autonomous human beings under its protection because many of these justifications must rely upon controversial philosophical concepts that said anti-perfectionist state must reject as illegitimate grounds for state action. *Therefore, anti-perfectionism ought to be seriously re-evaluated and potentially rejected.*

Acknowledgments

I first thank my parents, who have aided me in my life generally both while I was a non-autonomous human being and long afterward. I would not be here without either of them, and my debts to each cannot be calculated. I must also thank my younger brother, whose advice I have learned to appreciate especially when he sees right through me.

I wish to acknowledge and thank my thesis supervisor, Professor Anca Gheaus, for her indispensable feedback and advice both during my coursework and during the process of writing this thesis. Her council over this process has helped me make my arguments far more cohesive and incisive than they would otherwise be. I also want to take this opportunity to thank the advice and input of Professors Zoltan Miklosi and Andres Moles, as the advice of each has contributed to the production of this thesis. I also acknowledge the contributions of all my other professors during my time at CEU, and in particular Professor Matthias Riedl, the head of the Advanced Certificate in Political Thought that this thesis is also contributing to, whose lectures not only gave me a wonderful reason to be awake at 8:50 am on Thursday mornings but helped inform me of the greater intellectual context that it forms a very small part of.

The colleagues of mine who took the time to read and listen to my ideas in their earlier form must also be thanked here: Thomas Mason, Andrew King, Rex Laird, and everyone who attended Methods in Political Philosophy with me, another delightful 8:50 am course. Those discussions were the genesis of the train of thought that now culminates in this thesis.

I additionally thank and acknowledge the contributions of everyone whose name I have inadvertently neglected to mention here. I also acknowledge Connor Fitzgerald.

Table of Contents:

Introduction

This thesis is a work of political philosophy: a work that deals with human beings, those living creatures whom Aristotle called "political animals."[1]

As living creatures, we require a slew of biological needs to be met to conduct any activities in this life. Absent food, water, shelter, health, and other essentials, we perish. The newest members of our species are particularly vulnerable to catastrophic injury, and even the most fit of human beings would face extraordinary, likely fatal hardship if they were cut off from society. Human interdependence renders politics of some kind necessary. Yet there is much that divides us: mutually incompatible goals, competition over material needs, and different ideas about how human life ought to be lived. Thus, according to the historian of philosophy Leo Strauss, speaking for two millennia of philosophical predecessors, the "political philosopher must become the umpire, the impartial judge; his perspective encompasses the partisan perspectives because he possesses a more comprehensive and a clearer grasp of *man's natural ends and their natural order* than do the partisan (emphasis mine)."[2] To determine the true purpose of politics requires a conception of what is good for human beings.

The philosopher John Rawls, in his seminal *A Theory of Justice*, advocates a somewhat different approach. He insisted that even the most brilliant minds would never reach rational consensus on the natural ends of human life. Instead, he argued that the most fitting conception of political principles that ought to order any given society would originate behind a hypothetical "veil of ignorance", whereby "no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural

[1] Aristotle, *Aristotle's Politics*, trans. Carnes Lord. Second edition (Chicago: The University of Chicago Press, 2013), 42.
[2] Leo. Strauss, *Liberalism, Ancient and Modern.* (New York: Basic Books, 1968), 206.

assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties *do not know their conceptions of the good* (emphasis mine)."[3] There is an appeal to impartiality in each account, but in this account, the impartiality is not in service to some conception of what is good for human life or based upon a distinct account of human nature, but instead impartial between these.

This results in a distinct view of political philosophy. For Rawls, the state ought not to promote some view of the good for persons intentionally. No one ought to be discouraged from pursuing such a good, but this will be a choice made by an individual person on their own terms and not imposed by a third party. Rather, the state should provide persons with autonomy and prosperity so they may pursue whatever life they choose to live. The only ways of life that must be forbidden are those that interfere with the ability of others to make that choice autonomously. This conception of the aim of politics is, broadly, anti-perfectionist. Anti-perfectionism's nuances will be explained in the subsequent chapter, but enough has been said to make the aim of this thesis comprehensible.

This thesis will ask if a state that endeavors to be anti-perfectionist can decide how to treat humans that cannot decide on any conception of the good for themselves— non-autonomous human beings— concerning their health. What ought an anti-perfectionist state decide to do with such humans, and on what grounds can this decision be made? This thesis will argue that there are no legitimate justifications for an anti-perfectionist state to adequately preserve the health of non-autonomous human beings under its protection (either directly in the case of wards of the state, or indirectly as individuals entitled to protection against abuse) because many of these justifications must rely upon controversial philosophical concepts that said anti-perfectionist state must reject as illegitimate grounds for

[3] John Rawls, *A Theory of Justice* (Harvard University Press, 1999), 11, https://doi.org/10.2307/j.ctvkjb25m.

state action. *Therefore, anti-perfectionism ought to be seriously re-evaluated and potentially rejected.*

The only clarification to this assertion I will make now is that I do *not* claim that anti-perfectionism provides no legitimate grounds to justify the promotion of the health of non-autonomous human beings in *all* cases. It simply fails to do so in some of them, which is sufficiently damning. To demonstrate this is the task of the subsequent chapters.

The remainder of this thesis is divided into four parts. The first chapter will introduce the key elements of the perfectionism / anti-perfectionism debate, provide an anti-perfectionist account of the state's promotion of healthcare, and then describe two competing philosophical conceptions of health that render that account problematic. The second chapter will explicitly state the foundational assertions of my thesis both in the abstract and within the context of a specific controversy concerning the use of cochlear implants on infants born deaf. The third chapter will address a set of counterarguments to my thesis that will not only be refuted but will work to expand the scope of its argument. Finally, the conclusion will provide a brief acknowledgment of the further troubles haunting the anti-perfectionist position concerning the health, autonomy, and nature of human beings.

Chapter 1: Conceptual Exploration

This chapter aims to lay out the necessary theoretical groundwork for my central claim: that anti-perfectionist justifications cannot provide satisfactory accounts for how non-autonomous human beings are to be treated with respect to their health by the state. I will begin by outlining the basics of the perfectionist / anti-perfectionist debate. I will then proceed to explain how "public reason" is used to provide justifications for state actions that are deemed legitimate by and compatible with anti-perfectionist principles, then explain how Norman Daniels argues that government action concerning human health may be justified in an anti-perfectionist manner. After all of this has been accomplished, I will show that Daniels's claims rest upon a conception of health that is controversial by providing a brief introduction to the ongoing disputes over what health is within the philosophy of health. The full implication of this for anti-perfectionism will be addressed in subsequent chapters.

1.1: Perfectionism and Anti-Perfectionism

1.1.1 Perfectionism

Perfectionism advocates "that the state should promote excellence and/or assist its citizens in their efforts to lead worthwhile lives, even if doing so requires it to undertake political action that is reasonably controversial."[4] By extension, the justifications for state actions may likewise be spelled out by public officials and state actors in expressly these terms. The ultimate justifications for laws, decrees, regulations, and other vehicles of state policy, according to perfectionists, is that they in some way facilitate or promote some ends that are good for human beings in and of themselves, or good intrinsically.[5] To this end, perfectionists may endorse paternalistic policies, which coerce individuals into or away from

[4] George Klosko and Steven Wall, eds., *Perfectionism and Neutrality: Essays in Liberal Theory* (Lanham, Md: Rowman & Littlefield Publishers, 2003), 13.
[5] Thomas Hurka, *Perfectionism*, Oxford Ethics Series (New York: Oxford University Press, 1993), 5.

activities for the sake of the individual being coerced, even if the one being coerced does not consent to this policy or even agree that it is for their own good. However, the acceptance of perfectionism does not entail the acceptance of any given paternalist policy: such policies may be opposed precisely because they do not support but in fact hinder the obtainment of intrinsic goods for human beings. A perfectionist theoretically open to government intervention might balk at a particular government enacting paternalistic policies on the grounds that this government (or even possibly *any* government) is incompetent to implement such a measure effectively.[6] Alternatively, human autonomy itself, the capacity to direct one's own life according to one's will, may be taken as a good either absolutely (such as by John Stuart Mill, if one overlooks his assertions that "barbarians" may be treated paternalistically)[7] or provisionally (as by Hurka).[8]

There are liberal perfectionists, but not all perfectionists are liberals. This thesis is sympathetic to perfectionism broadly but does not endeavor to determine which sort of perfectionism is correct. I merely endeavor to contribute to an account showing that perfectionist considerations have a necessary place in the justification of some state actions towards non-autonomous human beings.

1.1.2 Anti-Perfectionism

In contrast to this view is that of anti-perfectionism, also known as political liberalism. Political liberals begin from the premise that people should be treated as free and equal, not due to any metaphysical claims about the nature of human beings but as a practical expedient to achieve justice.[9] This entails that everyone acknowledges that everyone else

[6] Klosko and Wall, *Perfectionism and Neutrality*, 16.
[7] John Stuart Mill, *On Liberty: Annotated Text Sources and Background Criticism*, ed. David Spitz, A Norton Critical Edition (New York, NY: Norton, 1975), 11.
[8] Hurka, *Perfectionism*, 148.
[9] John Rawls, "Justice as Fairness: Political Not Metaphysical," *Philosophy & Public Affairs* 14, no. 3 (1985): 39–40.

possesses the capacity to reason about and peruse their own conceptions of the good independently from others.[10] Moreover, basing state policies on specific conceptions of the good or human flourishing is bound to cause controversy in modern societies characterized by many different competing conceptions of the good, anti-perfectionists advocate for a principle of state neutrality towards it. According to this principle, "The state should not aim to do anything to promote any particular conception of the good, or give greater assistance to those who peruse it, unless a plausible *neutral justification* can be given for the state's action (emphasis mine)."[11] The conflict between perfectionists and anti-perfectionists is thus primarily about what sets of justifications may be used to justify state action. Anti-perfectionists hold that specific conceptions of the good, perfectionist justifications, are entirely inadmissible. By extension, actions that can *only* be justified by an appeal to these considerations may not be legitimately undertaken at all.

The anti-perfectionist stance does not require one to accept that there are no objectively correct or knowable standards of human flourishing and does not depend on skepticism towards these questions.[12] Anti-perfectionism is compatible with a wide range of beliefs about the nature of the good but requires that citizens in free and equal societies recognize that they have an obligation to their fellow citizens to not engage in political activity that cannot be justified to all fellow citizens in terms they can accept. There is room for personally held moral convictions to *motivate* an individual's political efforts: one might advocate that euthanasia be banned due to their privately held philosophical or religious belief that suicide is *ipso facto* non-virtuous. But when publicly *advocating* why the state should adopt this policy, they must resort to justifications acceptable by all reasonable

[10] Rawls, 242.
[11] Klosko and Wall, *Perfectionism and Neutrality*, 8.
[12] John Rawls, *Political Liberalism*, The John Dewey Essays in Philosophy, no. 4 (New York: Columbia University Press, 1993), 63.

citizens, such as claiming that the perverse incentive structures legal euthanasia creates may result in health insurance companies attempting to coerce their ill clients into committing suicide as a cheaper alternative than their undergoing extensive (and costly for the insurance company) medical treatment. While the philosophical or religious doctrine would be an invalid justification for state policy because of its appeal to controversial metaphysical views that are not universally shared by reasonable citizens, the concern raised in the publicly provided justification (avoiding coercion) is shared by all reasonable citizens.

It is important to clarify that anti-perfectionists do not insist that the state must create effects that are neutral toward every conception of the good life. As Jonathan Quong argues, "It is both unrealistic and undesirable for the liberal state to be neutral in this way. The question instead refers to the reasons that *justify* state action."[13] It is precisely the justification of state action that this paper is concerned with, so nothing further will be said about the principle of "neutrality of effect"[14] here.

1.2 Public Reason

1.2.1 Characteristics of Public Reason

If controversial conceptions of the good such as the aforementioned religious or philosophical doctrines are illegitimate as justifications for state action, public reason must serve as the guide for state activity instead. Public reason is a form of "*democratic deliberation*, one where 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."[15] Anti-perfectionist liberals claim that the desirability of this reasoning stems from the reality of

[13] Jonathan Quong, *Liberalism without Perfection* (Oxford; New York: Oxford University Press, 2011), 18.
[14] Klosko and Wall, *Perfectionism and Neutrality*, 8.
[15] Quong, *Liberalism without Perfection*, 257.

modern liberal democratic political life. State coercion is required for society to function, but this must be justifiable to everyone in a society defined by value pluralism, where people disagree over religious and philosophical matters.[16]

Public reason relies upon its own special conception of justice, called by Rawls the "political conception of justice." While many perfectionist accounts of the good have their own conceptions of what justice demands, this anti-perfectionist account of justice instead relies, in Rawls' own version, upon the construction of an original position, a state where all free and equal citizens might be able to reach an agreement on what principles they will agree to govern the basic structure of their regime.[17] As such, "the parties are not allowed to know the social position they represent, or the particular comprehensive doctrine of the person each represents."[18] This excludes notions of human flourishing from being a legitimate aim of justice or an organizing principle of an anti-perfectionist state. However, the structures of basic justice are not blind to matters of fact, and constitutional frameworks can be established considering areas of overlapping consensus, a consensus of the sort that all free and equal citizens would agree to, such as "common sense, and the methods and *conclusions of science when they are not controversial* (emphasis mine)."[19]

1.2.2 The Proper Scope of Public Reason

While Rawls and other anti-perfectionists typically argued that the use of public reason should be restricted to the basic structure of a regime, there are very persuasive anti-perfectionist arguments that public reason ought not to be limited in this way. As Quong argues, "… it would be inconsistent with the idea of society as a fair system of social cooperation if we were to base our political decisions on one or more comprehensive

[16] Rawls, *Political Liberalism*, 217.
[17] Rawls, *A Theory of Justice*, 131.
[18] Rawls, *Political Liberalism*, 27.
[19] Rawls, 224.

doctrines when there is reasonable disagreement over such doctrines… there are no good reasons to resist the view that the requirements of public reason must regulate all our political decisions…."[20] I agree with Quong's remarks on the scope of public reason as it seems to more consistently and coherently apply anti-perfectionist aims than its alternative. I will therefore rely upon this conception of the scope of public reason from here on out while acknowledging that this is not an uncontested position. A full defense of this premise would have to be completed elsewhere.

1.2.3 Public Reason in Action

Though anti-perfectionists ought to rely on public reason justifications in day-to-day political argumentation, this does not entail that all anti-perfectionists will reach the same conclusions on any given issue of policy. What matters is that justifications for state action are made on considerations acceptable to all free and equal citizens, not that these citizens weigh all these kinds of considerations in the same way.[21] The example discussed in section 1.1.2 is instructive: all free and equal citizens may agree that preventing people from being coerced by insurance companies is a legitimate justification for state policy but may grant this concern a greater or lesser weight in their considerations.

The reliance upon overlapping consensus and the political depiction of people as free and equal citizens led Rawls to propose that public reason does allow for some conceptions of what is good to be the basis of public policy: but these conceptions, along with the political conception of justice, are *political* conceptions of what is good. In Rawls's own words, "To find a shared idea of citizens' good appropriate for political purposes, political liberalism looks for an idea of rational advantage within a political conception that is independent of

[20] Quong, *Liberalism without Perfection*, 288–89.
[21] Blain Neufeld, *Public Reason and Political Autonomy: Realizing the Ideal of a Civic People*, 1st ed. (New York: Routledge, 2022), 32, https://doi.org/10.4324/9781315185316.

any comprehensive doctrine and hence may be the focus of overlapping consensus."[22] These will include basic, "all-purpose means" that may be useful to all free and equal citizens, whatever lives they may wish to lead.[23] In matters of healthcare, the early work of Norman Daniels is briefly drawn upon by Rawls to show that the legitimate pursuit of equality allowed by public reason is a sufficient justification to promote healthcare of the sort that endeavors to make citizens "once again… fully cooperating members of society."[24] It is equality of opportunity, not moral values or metaphysical conceptions, that is appealed to.

Yet Daniels's book cited by Rawls was later acknowledged to have some deficiencies by Daniels himself and to be in need of an update.[25] It is now to this update that I turn to.

1.3 *Just Health* and Norman Daniels

Working in this philosophical tradition, Norman Daniels set out to demonstrate why healthcare needs may be legitimately met by the government and are a viable source of public distribution and redistribution. His two books on the subject, *Just Health Care* (1985) and *Just Health* (2008) both aim to serve as an enhancement of Rawls's project, which he considers to be fundamentally correct even though it paid insufficient attention to the ways in which human beings are subject to various health ailments that reduce their equality of opportunity relative to other free and equal persons.[26] This is an alternative approach to positing that healthcare is an intrinsic right,[27] or as something that intrinsically contributes to human welfare as an end in itself.[28] In his own words, "meeting health needs promotes health… and since health helps to promote opportunity, then meeting health needs protects

[22] Rawls, *Political Liberalism*, 187.
[23] Rawls, 187–88.
[24] Rawls, 184.
[25] Norman Daniels, *Just Health: Meeting Health Needs Fairly* (Cambridge: Cambridge University Press, 2008), 2.
[26] Daniels, 21.
[27] Daniels, 15.
[28] Daniels, 48.

opportunity."[29] This is of paramount importance for anti-perfectionists, as robust health allows individuals to more freely act according to whatever conception of the good they may have and provides more leeway in revising these conceptions.[30]

While he is interested in the distribution of health, Daniels does not advocate for a sort of egalitarian distribution of healthcare that would aim for the abolition of natural differences. Instead, Daniels focuses on the role that the government can play in eliminating natural dysfunctions to the benefit of those who "lose" the natural health lottery, or who suffer medical misfortune later in life either through accidents or environmental disadvantages (such as lacking access to clean water from poverty).[31] It is hard to conceive of how anyone could disagree with these claims in the abstract: the overwhelming majority of medical ailments are conditions that individuals have no control over, and everyone benefits from having their healthcare needs met, regardless of how they wish to live their lives.

All these arguments are dependent upon a specific account of health that Daniels uses, known as the biostatistical model, where health is functioning at or above normal functioning for human beings.[32] At first glance, this seems plausible: but note that health conceived in this way is not good intrinsically but instrumentally. Daniels says that "Health care is not a primary social good, but neither are food, clothing, or other basic needs."[33] It is the extent to which all these things promote individual opportunity that they are a basic social need.[34] But health is directly linked to opportunity because the lack of health "is a harmful departure from species typical functioning."[35] This lack of functioning that some other human beings may possess is thus taken to be an objective harm, and is no less objective an infringement of

[29] Daniels, 30.
[30] Daniels, 35.
[31] Daniels, 58.
[32] Daniels, 38.
[33] Daniels, 57.
[34] Daniels, 57.
[35] Daniels, 39.

opportunity, though the extent that it is an infringement on *equality* of opportunity potentially will vary among different societies.[36] Daniels spends much of his work writing about healthcare inequalities in underdeveloped countries, where what would be colloquially considered basic medical needs cannot be met for the entire population, so for him this is not an idle consideration.[37] Yet even here, public health may be rationally evaluated, and what most justly contributes to the equality of opportunity by objectively contributing to normal functioning may be accurately determined: "Meeting health needs has the goal of promoting normal functioning: It concentrates on a specific class of obvious disadvantages and tries to eliminate them."[38] For each society, there is a "normal opportunity range" that may be defended more broadly when a state tries to promote equality of opportunity, and this concept may thus be applied to health as well.[39] But because the commitment to defending and preserving health is based on how it promotes opportunity, Daniels readily concedes that "we can enhance otherwise normal traits even if we give priority to treatment [of negative departure from the natural baseline]."[40] Given conditions far more ideal than are currently enjoyed by even the wealthiest parts of the world, it is not at all clear what would prevent there from being a shift from remedial medical services to overtly enhancing care if Daniels's proposals were implemented.

For Daniels's claim to be anti-perfectionist, there must be a way to justify his premises in a way compatible with public reason. But his argument does not only rely upon one specific concept of health to be correct, but instead the much stronger claim made consistently through both *Just Health Care* and *Just Health*, "that the line between disease and the absence of disease is, for the general run of cases, *uncontroversial* and *ascertainable*

[36] Daniels, 45.
[37] Daniels, 24.
[38] Daniels, 58.
[39] Daniels, 45.
[40] Daniels, 155.

through publicly acceptable methods, such as those of the biomedical sciences."[41] In *Just Health*, Daniels replaces the term "disease" with "pathology," yet the argument remains essentially the same.[42] Even if the ambiguous "general run" caveat is permitted despite its lack of specificity, this is an overstatement of the case. To his credit, Daniels acknowledges the extent of the disagreement with his conception of health. For one thing, it is set against the definition of health provided by the World Health Organization as "complete wellbeing", which gets dismissed out of hand as too broad.[43] Moreover, he openly disagrees with a series of "normative" accounts which claim that evaluations of health and pathology are instead evaluative commitments, not statements of objective fact.[44]

While Daniels insists that health claims are objective claims, that does not necessarily help his case. As previously discussed in this thesis, public reasoning does not rely upon skepticism on the ability to know philosophical truth. Resorting to philosophically controversial doctrines to determine state policy, even to doctrines that may be objectively known, is deemed to be illegitimate by public reason. The naturalistic claims in Daniels's argument about health rely upon several controversial philosophical commitments: that health is such a thing that may be known objectively, that this does not intrinsically entail moral commitments, that some things are objectively healthy or unhealthy for human beings (which itself is to make a claim about the nature of human beings, another source of controversy), and that all these departures from what is taken to be normal functioning deprive people of opportunity. Though he devotes the bulk of chapter four to showing how questions of healthcare *allocation* may be decided by methods that ensure, "even losers will know that

[41] Norman Daniels, *Just Health Care*, Nachdr., Studies in Philosophy and Health Policy (Cambridge: Cambridge Univ. Press, 2001), 30.
[42] Daniels, 37.
[43] Daniels, *Just Health*, 37.
[44] Daniels, 42.

their beliefs about what is right were taken seriously by others,"[45] he applies this only to the more practical questions of health distribution, not the question about what health is and what things promote equality of opportunity as such.

Daniels does not attempt to dispute this fact: he simply contents himself to arguing against the alternative views about what promotes opportunity and what health is, and by emphasizing that in any event he holds health to be something that should only be promoted via its ability to promote equal opportunity, not because it is an intrinsic contribution to human flourishing. The preliminary difficulties for anti-perfectionists who wish to sidestep these difficult issues will be examined in the next section.

1.4 Different Conceptions of Health

This section will demonstrate the extent to which there are controversial conceptions of health by elaborating the account that Daniels himself relies upon, the biostatistical model, and then providing a constructivist account of health. The latter view presents not only a challenge to the biostatistical model's claim that it accurately describes the thing that health truly is, but also challenges the view that it provides a clear picture of what sorts of departures from what is taken to be normal function are an inherent inhibition on human opportunity.

1.4.1 The Biostatistical Model of Health

The biostatistical model of health that Norman Daniels relies upon was developed by Christopher Boorse, which stated simply asserts "that health is... statistical normality of function, i.e., the ability to perform all typical physiological functions with at least typical efficiency."[46] Accounts of health of this sort are typically referred to as naturalist, and stress

[45] Daniels, 116.
[46] Christopher Boorse, "Health as a Theoretical Concept," *Philosophy of Science* 44, no. 4 (December 1977): 542, https://doi.org/10.1086/288768.

that they make value-free empirical claims about the nature of what health is.[47] This seems credible: if typical efficiency in human eyes entails 20/20 vision, then someone whose vision is below this can be said to have unhealthy eyesight to a greater or lesser extent. Outright blindness would then be a more extreme form of unhealth, moving from a defective function to the absence of the function entirely. In contrast, those humans with tetrachromacy, which allows individuals to see significantly beyond the standard range of colors, would not be unhealthy as their eyes perform functions at *more* than typical efficiency. However, those without tetrachromacy would not be considered unhealthy simply because there are a few people with this exceptionally superior functionality.

Boorse's model has some strong similarities with Aristotelian philosophy and requires the existence of some human nature that can be objectively ascertained. In his own words, "health and [pathology] belong to a family of typological and teleological notions. . . Our version of the nature of the species will be a functional design empirically shown typical of it."[48] But crucially, Boorse rejects the claim that identifying something as unhealthy necessarily entails any moral evaluation of that condition: dysfunction is thus a statement of fact. This dysfunction relies upon reference classes: "a natural class of organisms of uniform functional design; specifically, an age group of a sex or a species."[49] It is these very natural classes that Daniels draws his arguments from: the lack of a function is, if nothing else, surely the lack of the opportunity of utilizing that function in some way.

Yet what is taken by Boorse to be fixed may rest on shakier grounds than he cares to admit. After all, in one of his later works, he changed his own evaluation that age should constitute its own reference class. While re-affirming that sexual dimorphism in human

[47]Havi Carel, Rachel Cooper, and Elselijn Kingma, "Health and Disease: Social Constructivism as a Combination of Naturalism and Normativism," in *Health, Illness and Disease: Philosophical Essays* (Hoboken: Taylor and Francis, 2014), pp. 37-56, 38.
[48] Boorse, "Health as a Theoretical Concept," 554–55.
[49] Boorse, 555.

beings still provides the empirical grounds for two separate reference classes, the "typical" human functioning is taken to be that of a young adult of each sex.[50] Yet the fact that the leading proponent of the "naturalistic" account of health changed his mind (or at least is considering changing his mind) on whether or not *aging*, a universal fact of human experience, is pathological or not, raises questions about the grounds on which it can be determined that these claims are meaningfully free of evaluation. With these doubts raised, we now turn to constructivist accounts of health.

1.4.2 Social Constructivist Accounts of Health

Unlike the Biostatistical model, which has been defended by Boorse and others with a great degree of consistency for several decades, the advocates of constructivist accounts of health are more disparate in their aims and claims. Nevertheless, several strands bind all these accounts together. As Elselijn Kingma argues, if naturalists wish to promote value-free accounts of function and dysfunction, they first must prove that their reference classes are also value-free.[51] To address the issue Boorse himself grappled with later in his work, are there value-free grounds to determine that age is a valid reference class? What about more dramatic changes to what is colloquially understood as normal human functioning, such as Down's syndrome?[52] If such an account were adopted, we would then speak of a healthy human with Down's syndrome in the same way we might speak of a healthy human with brown or blue eyes, rather than a human with the pathology of Down's syndrome.

While Kingma does not commit herself to this latter claim, she uses it as one of many examples to highlight what social constructivist accounts of health aim at. She stresses that the sorts of classifications made by naturalists are indeed made upon "existing, *real*,

[50] Christopher Boorse, "A Second Rebuttal On Health," *The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine* 39, no. 6 (December 1, 2014): 683, https://doi.org/10.1093/jmp/jhu035.
[51] Kingma, *Health, Illness and Disease*, 40.
[52] Kingma, 40.

discontinuities … the structure of nature did provide some constraints: it provided several salient lines or discontinuities for classification."[53] But constructivists claim that the lines that ultimately are drawn are the result of historically contingent processes. Natural kinds may exist, but our methods of classifying them depend on evaluations shaped by culture, customs, and the practices of which we are a part. Thus, while not denying that health and pathology are real things of some sort, Kingma concludes by saying that "all naturalism has managed to do is present a concept that is the product of socio-historical processes in naturalistic, value free terms. And this, I argue, is not sufficient to justify the naturalistic claim that health and disease are value-free concepts."[54]

For one more concrete account of what a concept of health informed by this social constructivism entails, I now turn to the work of Ron Amundson, "Against Normal Function." As the name suggests, the work is an assault on the concept of health developed by Boorse, but it furthermore takes Daniels to task for his applications of Boorse's theory. By his account, "the doctrine of biological normality is itself one aspect of a social prejudice against certain functional modes or styles."[55] Though writing about Daniels's earlier book, Amundson levels a critique that applies just as much to Daniels's most recent book when he says, "Daniels does not actually argue for the reality of species-normal functioning. He cites Boorse and accepts it as an obvious fact. He goes beyond Boorse in one important respect: the linkage between normality and opportunity. Abnormals have reduced opportunity, and so maintenance of normality is maintenance of opportunity. Health care sustains normality, and normality sustains opportunity."[56] His primary issue with the conception of health that Daniels uses is that it does not pay enough attention to the subjective experience of health:

[53] Kingma, 49.
[54] Kingma, 51.
[55] Ron Amundson, "Against Normal Function," *Studies in History and Philosophy of Science Part C: Studies in History and Philosophy of Biological and Biomedical Sciences* 31, no. 1 (2000): 33.
[56] Amundson, 46.

"Abnormal people who report a high quality of life are simply mistaken about the quality of their own lives. . . The abnormals are said to be disadvantaged by nature itself."[57]

His critique pays attention to how Daniels does not pay enough attention to the circumstantial and social characteristics of health, but there is some overlap between Daniels's later work and Amundson's article on this point. Amundson argues that, given the right circumstances, those in wheelchairs may be said to be more mobile and have greater opportunities (insofar as they have a greater capacity for mobility), and in said circumstances should not be seen as suffering from a health defect unless they themselves agree that they are.[58] Daniels actually agrees that providing people with wheelchairs (along with the infrastructure with which to use them) qualifies as a means of expanding opportunities for individuals.[59] Yet Daniels's greater attention to the social origins of medical inequality in *Just Health* does not resolve the tension between the two. Daniels still does assert that those who suffer from a medical ailment may, at least sometimes, be intrinsically disadvantaged simply due to lacking a species-normal function, and this remains the case in circumstances where the imposition of that lack of function had a social origin (say by malnutrition) and not a purely natural one (such as a genetic defect). Perhaps due to resource constraints or the lack of existing medical technology, providing people with wheelchairs may well be the best way to address the loss of opportunity caused by being unable to walk. But absent these constraints, there is no doubt that Daniels would claim that restorative surgery would be a fuller restoration of health and opportunity. It is *this* claim that Amundson would still take issue with.

[57] Amundson, 47.
[58] Amundson, 50.
[59] Daniels, *Just Health*, 147–48.

Various constructivist accounts of health have been used to develop the social model of disability, which takes disability to be the result of socioeconomic and cultural factors.[60] This model of disability is frequently used by disability rights advocates who are worried about the paternalistic implications of approaches to health that seek to cure disability, sometimes over the objections of (some of) the disabled themselves who may not wish to be cured.[61] This is because many of them adopt a "mere difference" view towards disability, which entails some combination of disability being analogous to sex or race, disability not actually being a departure from normal function, disability being a valuable part of human diversity worthy of preservation, and that the bad effects of disability stem from society's treatment of the disabled.[62] It does not entail a sort of "disability supremacism", whereby disability is seen as a *more* valuable condition than the corresponding ability.[63] To speak plainly and use a clear example: it does not require holding that deafness is intrinsically preferable to hearing, only that hearing is not intrinsically preferable to deafness. A mere-difference view of disability does also not necessarily deny that there are *any* valid distinctions between pathology and health: it instead challenges some currently existing distinctions as incorrect.

1.4.3 Clarifications of Health Concept Pluralism

This list of conceptions of health within the philosophy of health is not exhaustive, either in its depth or scope. Individuals who agree with any one of these conceptions may differ from other individuals who hold the same conception over specific details. My claims in this thesis rest upon the existence of any sort of plurality of health conceptions, and the

[60] Lorella Terzi, "The Social Model of Disability: A Philosophical Critique," *Journal of Applied Philosophy* 21, no. 2 (2004): 141.
[61] Elizabeth Barnes, "Valuing Disability, Causing Disability," *Ethics* 125, no. 1 (2014): 88, https://doi.org/10.1086/677021.
[62] Barnes, 93.
[63] Barnes, 92.

existence of any additional number of them do not alter those claims. Neither do I require either of these conceptions of health to be correct. I am more sympathetic to the Biostatistical model than constructivist accounts but consider both to be flawed. Dealing with their shortcomings is beyond the scope of this thesis. By sidestepping this issue, I do not intend to make the more unsound concept of health equal to the sounder concept. No arguments in this paper rely upon either account being the correct one. It is enough that free and equal citizens may (and do) argue for either.

A note of clarification: different conceptions of health are not questions of medical techniques and their efficacy. I do not assert in this paper that an anti-perfectionist stance requires the state to be neutral to empirical medical evidence or to what are truly uncontroversial health needs, such as access to clean drinking water, meeting caloric intake enough to maintain metabolism, and the like. Public controversy over vaccination illustrates the distinction I make here more precisely. When Rawls speaks of public justifications from science that are not controversial, it is fair to say that he is referring to what can be considered *reasonable philosophical controversy*, not to simple errors of readily available fact or to sheer contra factual claims. While anti-vaxxers and those who support the use of vaccines certainly hold different opinions about a medical issue, this is not necessarily a dispute concerning different concepts of health. An anti-vaxxer might simply assert that while the absence of a given disease is indeed conducive to health due to their (reasonable) concept of health H, they do not believe the vaccine will further this goal. At the same time, one who supports vaccines might also agree with concept of health H and argue that a particular vaccine does in fact support health so conceived. Though far less worthy of our consideration, this is functionally the same sort of debate that two doctors who are trying to remedy a broken leg could conceivably have if they disagree about whether their patient must wear a cast for five weeks or six weeks. Neither doctor here needs to disagree about what

health is: they simply disagree on what medical input (the duration the cast must be worn) will achieve the desired medical outcome (a mended bone). It is not a philosophical controversy. It will be happily granted that an anti-perfectionist state may make regulations, laws, etc. on all matters of this sort, as these are questions of medical *techne*.

Yet the question remains: on what account is a mended bone a desirable medical outcome? On what account is walking (as opposed to mere mobility) a desirable medical outcome? For these questions, resorting to a concept of health is required. It is possible for there to be public reason justifications to determine healthcare allotment if an entire conception of health (and the extent to which health so conceived promotes opportunity) is positioned as a simple matter of fact. But there is no public reason justification for this maneuver.

There is a parallel here between the reasoning of the doctors and the reasoning of public officials. The politicians and bureaucrats in an anti-perfectionist state remain competent to reason about whatever means are most *efficacious* at achieving the ends set forward by public reason, but their scope of legitimate ends is limited. According to the anti-perfectionists, they may not directly aim at human flourishing, however it is conceived. Yet public reason does not endorse any one conception of health, as these conceptions are all philosophical doctrines that reasonable citizens can and do disagree on. The nearly half century long debate between Boorse and his legion of critics is a testament to this. If philosophical doctrines of health cannot be used as legitimate grounds for government policy in cases where there is a genuine controversy between these doctrines, then how might the non-autonomous be treated in relation to what nearly everyone (but crucially, not truly everyone) would consider to be pathologies? I will explore this in the next chapter.

Chapter 2: A Crisis of Legitimacy

With the theoretical groundwork on the nature of anti-perfectionist legitimacy conferred by public reason and the existence of multiple conceptions of health now established, I shall demonstrate in this chapter how the latter poses problems to maintaining the former.

2.1: The Basic Argument

The foundational elements of the claim I make in this thesis are as follows:

i. Anti-perfectionism requires that for a state's action to remain legitimate, the state must be able to provide plausible public reason justifications for its actions, the basis of which can be accepted by all free and equal citizens and that do not rely upon controversial philosophical, religious, or ethical concepts.

ii. There are a variety of different reasonable concepts of what sort of thing health is within the philosophy of health.

iii. As a result of this plurality of concepts, all concepts of health are philosophically controversial.

iv. A free and equal citizen might reasonably accept any one of these conceptions of what health is, to the exclusion of others.

v. Premises ii-iv apply not only to health but to conceptions about what human functions contribute to the opportunities of free and equal citizens.

vi. Therefore, the state cannot appeal to any specific conception of health or function-based opportunities as a justification for its policies in a legitimate way according to anti-perfectionist standards of legitimacy.

vii. This limitation, at a minimum, leaves the state without the means to legitimately promote the health of its self-evidently non-autonomous wards in many cases (such as infants).

I will focus on infants in this thesis to avoid controversy about who ought to be considered autonomous. There is no shortage of debate on the extent to which mental illness renders someone non-autonomous, or on whether mental illness is even a natural category in the first place. Likewise, there are disputes on when children ought to be considered autonomous by the state. But whatever else human infants may be, they are not autonomous. While the arguments here may have implications for more than the self-evidently non-autonomous, the work to establish those implications must occur elsewhere.

Moreover, infants will one day become autonomous if nature takes its proper course.[64] They will join the next generation of free and equal citizens. It will be taken as a given here that an anti-perfectionist state has some interest in securing its continued existence both in general and as an anti-perfectionist state. This is enough for it to provide children with an education, see that their nutritional needs are met, and so on. This will not be contested and is not detrimental to my thesis, which focuses on cases where what advances the opportunity of individual non-autonomous human beings is controversial due to involving controversial conceptions of health, not on cases when what promotes this is readily apparent. Furthermore, what obligations the anti-perfectionist state may or may not have towards non-autonomous human beings who hold little if any chance of eventually becoming autonomous (such as adults who have been comatose for years) is beyond the scope of this thesis.

I also choose to limit my claims here to the promotion of the health and opportunity of infants because this is where the clearest difficulties for the anti-perfectionist position lie

[64] I am indebted to Professor Andres Moles for the point discussed in this paragraph.

concerning government action on health. When discussing adults, an anti-perfectionist can posit that all of them ought to be permitted to peruse any reasonable conception of health they wish. The state need not have any concept of health in mind, and simply require licensed doctors to be sufficiently well informed about what medical inputs result in the patient's desired medical outcome. But infants, of course, have no concepts of health they can voluntarily pursue. They cannot voluntarily pursue much of anything. That said, there are certainly grounds to question if anti-perfectionist justifications really do provide the means to promote or support the health of adults in more complex cases, such as via workplace safety standards, as Daniels claims. He himself considers it necessary to address accusations that legally imposed workplace safety standards are too paternalistic.[65] But evaluating these claims is also a task for elsewhere.

The above list of claims does not yet include the whole argument I wish to make. There is more to be said about the sorts of laws concerning the treatment of infants in general (as opposed to merely those who are wards of the state) that anti-perfectionists may also need to find illegitimate in order to remain consistent with their principles. Nevertheless, focusing on wards of the state clarifies the issue. It is an instance where the state holds direct power over a non-autonomous human being and must act directly on their behalf in some manner or another. Even inaction in such circumstances is clearly an action that must be justified. If the initial argument I present here is shown to be in error, then so will any later claims that I make.

2.2 A Thought Experiment

Even if the disputes within the philosophy of health are real, one might expect that they are of such negligible importance as to have no impact on what state policy ought to be.

[65] Daniels, *Just Health*, 192.

Yet I would like to demonstrate the human implications of my claims and what entails from consistent adherence to the anti-perfectionist stance on this matter.

Consider the following story. Elizabeth is the director of a state-run orphanage for young children in a materially prosperous country that maintains steadfast adherence to public reason justifications and anti-perfectionism. One cold winter night before she is about to fall asleep, she hears a baby crying from outside her house. As she looks out the window, she sees a newborn infant wrapped in blankets resting on her doorstep. As she goes outside to rescue the baby, she finds a note pinned to the blanket saying, "Though we live in a society that has well-functioning institutions that redistribute resources to provide everyone with abundant opportunities, I do not consider myself fit to be a parent due to personal shortcomings. Please look after my poor Fatma and let her grow up in a place where she is taken care of."

The following morning, Elizabeth brings Fatma back to the orphanage with her to ensure that she is properly enrolled in the institution. Shortly after this, a basic and routine medical examination is performed, where it is discovered that Fatma is deaf but otherwise entirely healthy for an infant of her age. While this is not an immediate concern, the doctor recommends that Fatma receive a cochlear implant in about a year. This device works as follows:

> In implantation, a receiver is surgically implanted behind the ear and an attached silicon-covered array of electrodes is threaded into the cochlea, the small, circular tube in the inner ear that translates mechanical sound waves into electrical signals. A microphone and a speech processor are then magnetically attached to the receiver via the skin behind the ear. Together, the internal and external components translate sound waves into electrical signals, which are sent directly to the auditory cortex.[66]

[66] Laura Mauldin, "Precarious Plasticity: Neuropolitics, Cochlear Implants, and the Redefinition of Deafness," *Science, Technology, & Human Values* 39, no. 1 (2014): 131.

The result of this process is that it, in effect, allows the user to hear. While adults may also receive these implants to restore damaged healing, not only hearing but the capacity to process and understand spoken language from an early age is at stake. Empirical studies show some success[67] and some mixed results in this regard.[68] But as even the worst-case results allow those given the implants to enjoy some of the benefits of hearing, the doctor (an adherent of Boorse's biostatistical concept of health) argues that there is no downside to giving it to Fatma.

Upon hearing that a deaf infant will be given a cochlear implant, the Deaf community of the country organizes a protest at the orphanage, arguing that it should be illegal for this procedure to be performed on children. While they of course highlight the more pessimistic studies on the efficacy of these implants, this is not their main concern. As they argue:

> the predominant view of deafness-that the deaf are "merely and wholly" disabled is wrong and that we should quickly disabuse ourselves of this ill-begotten notion. Considered in the proper light, the decision to forgo cochlear implantation… far from condemning a child to a world of meaningless silence, opens the child up to membership in the Deaf community, a unique community with a rich history, a rich language, and a value system of its own.[69]

Even if the implant could be shown to have a much higher rate of efficacy, they would still object to the implant being given to Fatma.[70]

Pressing the argument further, the Deaf community claims that they constitute a linguistic minority whose rights deserve to be protected.[71] Furthermore, the academic scholars among them have studied Rawls, and argue that he correctly points out that the state

[67] Mario A. Svirsky et al., "Language Development in Profoundly Deaf Children with Cochlear Implants," *Psychological Science* 11, no. 2 (2000): 153–58.
[68] Louise Duchesne, Ann Sutton, and François Bergeron, "Language Achievement in Children Who Received Cochlear Implants Between 1 and 2 Years of Age: Group Trends and Individual Patterns," *Journal of Deaf Studies and Deaf Education* 14, no. 4 (2009): 465–85.
[69] Robert A. Crouch, "Letting the Deaf Be Deaf Reconsidering the Use of Cochlear Implants in Prelingually Deaf Children," *The Hastings Center Report* 27, no. 4 (1997): 17, https://doi.org/10.2307/3528774.
[70] Crouch, 17.
[71] Crouch, 19.

only has an interest in health to ensure that individuals "are fully cooperating members of society."[72] Even if deafness is objectively pathological in human beings (which they contest), it makes no difference to the state as deaf people are already full members of society, already free and equal citizens. They take any assertion to the contrary as an insult. The only threats to their equality are legal ones that codify audism (the discrimination against those who cannot hear) to deprive them of their rights,[73] and the failure of society as a whole to integrate deaf members. Giving Fatma a cochlear implant is nothing short of depriving a cultural or ethnic minority of a community member, and there is no justification for cultural or ethnic discrimination under anti-perfectionist principles.

They, in short, advocate for state recognition of the "mere-difference" view of disability as discussed in section 1.4.2. While they value their deafness, they do not make a claim that deafness is required for health, and by extension do not advocate that hearing infants be surgically deafened. Instead, they argue for what Elizabeth Barnes, a philosopher of disability, describes as non-intervention. This is because in their view, "there is no discrepancy between the cases of causing an infant to be disabled and causing an infant to be nondisabled. [These scenarios] are on a par. … [W]e shouldn't cause a child who would otherwise grow up to be disabled to instead grow up to be nondisabled. Doing so would be an unjustified interference and could reasonably be said to communicate ableism."[74] For the same reason that it would be unjustifiable to change the color of Fatma's eyes or to deliberately deafen a hearing infant, the Deaf community holds it is equally unjustifiable to provide her with this implant that will remove her deafness.

[72] Rawls, *Political Liberalism*, 184.
[73] H-Dirksen L. Bauman, "Audism: Exploring the Metaphysics of Oppression," *Journal of Deaf Studies and Deaf Education* 9, no. 2 (2004): 240.
[74] Barnes, "Valuing Disability, Causing Disability," 103.

These claims rely upon a constructivist account of health: the Deaf community does not deny that there is an objective difference between being able to hear and not being able to hear. What they object to is the claim that this difference either results in diminished flourishing for Fatma (which is irrelevant for anti-perfectionist justifications) or that it meaningfully impacts her opportunities (which is of great interest to us here). They instead advocate that she be raised in an orphanage and school for the deaf, which would provide her with a fair education that can ensures she has everything she needs to become a free and equal citizen. The surgery would just be a cruel violation of Fatma's autonomy.

2.3 The Stakes of The Controversy

Elizabeth is thus confronted with a scenario that does not afford a middle ground, let alone overlapping consensus. Not only action but inaction by the state (and by her as an agent of the state) must be positively justified. If perfectionist justifications were permitted, this task would be easier: the state would just act in whatever way they took to advance Fatma's good. The doctor has one view, and the Deaf community another, both clearly incompatible. The fact that neither side's reasoning would be justifiable to the other, while perhaps regrettable, would be of no real consequence. What would ideally matter would not be public opinion, but the good of the non-autonomous human being in question.

This cannot be done if the state ought to rely on providing public reason justifications for its actions. Both sides of this dispute will happily grant that the state should only promote Fatma's equality of opportunity in an anti-perfectionist society. But this apparent agreement is hollow, as each side rejects all the justifications by the other side designed to peruse this for relying upon controversial philosophical doctrines they do not accept: either the biostatistical model and Daniel's account of opportunity from species typical functioning, or a social constructivist account of health and corresponding claims about the unique

opportunities of deafness. One rational but controversial account of opportunity squares off against an equally rational but equally incompatible account of opportunity. Likewise, one controversial concept of health is being used in opposition to another controversial conception of health. *Both* sides of this debate are correct to assert that the other side's justifications are in violation of public reason and are illegitimate, so none of their justifications can be appealed to. This leaves us with no grounds to decide how Fatma should be treated.

Are there any guidelines for what may guide the state's treatment of Fatma that are compatible with public reason? I will argue in the next chapter that no justification for either course of action can remain both action-guiding and anti-perfectionist.

Chapter 3: Counterarguments and Responses

The foundational assertions of my argument have now been clearly stated: that there is no way for the state to justify promoting the health of its non-autonomous wards that is legitimate according to public reason in cases when what health and opportunity genuinely consist of is philosophically controversial. To further explore the implications of this assertion and to evaluate its soundness, I will provide hypothetical anti-perfectionist counterarguments for one decision or another in the case of Fatma. This will not be an exhaustive list of potential counterarguments, but it will hopefully cover the most robust arguments against my claim.

I will first briefly show that simply appealing to the de facto reality of the diminished opportunities faced by the deaf (while taking no stance on what causes that diminishment, either social prejudice or an intrinsic deprivation) has unacceptable implications and still fails to resolve the issue conclusively even if those implications are accepted. I will then address a claim that directly promoting the good and flourishing of non-autonomous wards of the state is actually compatible with public reason. I will tentatively agree with this claim but demonstrate that if one takes it seriously, then it means that public reason creates an obligation that it cannot fulfill, as it simultaneously renders all possible ways of fulfilling this obligation illegitimate. I will finally consider a proposal that anti-perfectionist states simply ought not to have any wards, and that decisions of the sort described in the previous chapter ought to be left to parents, private orphanages, or other third parties. After demonstrating that a laissez-faire policy on the cochlear implantation of infants (i.e.: letting third parties make the decision to implant or not implant the deaf infants under their care) is unjustifiable, I will extend the scope of my claims from non-autonomous wards of the state to the non-autonomous generally. Anti-perfectionism does not have adequate action-guiding justifications to promote or protect the health of these non-autonomous human beings either.

3.1 The Insufficiency of De Facto Diminished Opportunity[75]

Another sort of counterargument might say that no appeal to deafness being an intrinsic bad, or even an intrinsic deprivation of opportunity is required in the face of the de facto diminished opportunity faced by the deaf. After all, no philosophical view about deafness itself is required to acknowledge that deaf people face undue discrimination currently. The Deaf community itself frequently makes this claim. This can be taken as a fact, and to save Fatma the trouble of enduring such prejudice, she could be given a cochlear implant instead. No appeal to the philosophy of health is required here.

However, an appeal to de facto inequality opportunity has extremely troubling implications. Regardless of what one makes of the Deaf community's claims to be victims to discrimination, it is undeniable that African Americans in the United States are still victims of racial discrimination which diminishes their opportunities in life. If one holds that one may provide the cochlear implant to Fatma *exclusively* on the grounds of currently existing discrimination, then it would then be permissible (and perhaps something closer to obligatory) for anti-perfectionists to insist that, if such a procedure existed, African American infants be made Caucasian to spare them the trouble of dealing with racism in the United States.

It is deeply implausible that many (or even any) anti-perfectionists will willingly accept this cost. They will, quite rightly, find the prospect of "race reassignment procedures" on infants horrifying. Even if it were true that the de facto opportunity of infants who undergo this hypothetical race reassignment procedure would improve, it is easy to see how this procedure would not solve the underlying societal injustice of racism and would even perpetuate it. Most anti-perfectionists would instead argue that comparing deafness to skin

[75] I am grateful for Professor Andres Moles raising this point to me.

color is a category error: the former is a pathology and an intrinsic inhibition of opportunity, and the latter is not. In the latter case, anti-perfectionists just need to dismantle unjust discriminatory practices that violate public reason, while in the former case the lack of opportunity is, at least in part, caused by the deafness as such. Such a view is clearly compatible with opposing discrimination against the deaf and being in favor of the government seeking to ensure that those who are already deaf enjoy lives free from prejudice. Meanwhile, Barnes and the Deaf community would argue that deafness and skin color are analogous and that the "common sense" view about disabilities being intrinsic deprivations is itself the product of prejudice.[76] Our partisans are once again appealing to controversial conceptions of what health and opportunity are for human beings, and we are back where we started.

Yet even if an anti-perfectionist *were* willing to embrace such a radical solution to ensure wards of the state may be "spared" the trouble of enduring actually existing social prejudices, no matter if the conditions they choose to alter are intrinsic deprivations of opportunity or not, this would only narrow the scope of the problem I raise with anti-perfectionism instead of eliminating it. Human societies have been horrifically creative in the forms of prejudice that they have developed over the course of history. Racism is not an inescapable reality of the human condition but rather something contingent. We can also imagine a society where the deaf are truly not discriminated against by anyone just as we can imagine a society that is not racist. Even if we remain skeptical that any existing society will be free of prejudice entirely, we can simply assume that other forms of prejudice will have to be addressed then. If we wish to push the hypotheticals even further, we can even assume the primary language of this society is signed and not spoken. In such a society there could still be philosophical disagreement about if the lack of hearing *itself* constitutes a diminution of

[76] Barnes, "Valuing Disability, Causing Disability," 104.

opportunity or health intrinsically. These arguments would be made even more intractable because an appeal to an account of opportunity befitting "free and equal citizens", free of any metaphysical concerns, would not be of assistance. The Deaf community's members will continue to deny that their deafness makes them less free or unequal to their hearing co-citizens. Their active participation in public life makes it rather difficult to dismiss *these* claims, whatever one makes of their claims about deafness not being an intrinsic deprivation. We can imagine people debating if Fatma should receive the implant or not even if it could be reasonably expected that Fatma will not lose any opportunities or face any social stigma regardless of if she receives the implant or not. Each side of this debate will still make appeals on grounds that are unacceptable to their fellow citizens. We are yet again back where we started.

3.2 Perfectionism for Children: An Unfulfillable Obligation

But what if it were compatible with public reason to explicitly promote the good of non-autonomous wards of the anti-perfectionist state directly? An argument quite similar to this is made by Tim Fowler in his article *Perfectionism For Children, Anti-perfectionism for Adults*. In his own words, “anti-perfectionist arguments, even if they are accurate more generally, do not apply to the state’s treatment of children.”[77] Though his arguments center on the education of children, the reasoning he provides can be extended to promoting the health of infants who are wards of the state.

This would admittedly be a rather heterodox form of anti-perfectionism. Fowler himself claims that he is a perfectionist[78], but his account in this article is one that could be compatible with anti-perfectionism. As Fowler emphasizes, his focus is on the *site* of anti-

[77] Tim Fowler, “Perfectionism for Children, Anti-Perfectionism for Adults,” *Canadian Journal of Philosophy* 44, no. 3–4 (August 2014): 306, https://doi.org/10.1080/00455091.2014.925620.
[78] Fowler, 321.

perfectionism.[79] So one could be a committed anti-perfectionist in his view, but simply say that this just doesn't restrict what justifications the state can use to justify the education of children in one way or another. Anti-perfectionists who dismiss this claim need not be troubled by anything else I say in this section. Of course, they then must then avail themselves of a different counterargument to my assertions from the second chapter.

Fowler bases his argument on the reality of human childhood: put simply, “children are not generally regarded as equals in the same way as adults.”[80] Moreover, being treated paternalistically can hardly be a negative impairment to a child’s status: all human beings either were or are children at some point, so such treatment does not induce any additional inequality among peers.[81] And there is a good reason for children to have this status: children are more likely to make poor choices and more vulnerable to their effects, so it makes sense to shield them from this natural disadvantage.[82] If this is true of children generally, surely it is all the more true of infants who cannot yet make decisions at all. When an infant is at risk of seriously hurting itself in some way or suffering from a medical malady, it is not an interference with their autonomy to intervene on behalf of their good. Moreover, intervening in an infant's life for the sake of their health is even less problematic on the surface than intervening in education. As the saying Fowler cites goes, "give me a child for his first seven years and I will give you the man": education shapes what desires, aims, and conceptions of the good children will eventually have.[83] We typically do not think of healthcare outcomes as having a direct effect on this.

However, Fowler's argument that it would be *legitimate* in the eyes of anti-perfectionists for children to be educated in a perfectionist way—that is, to provide them with

[79] Fowler, 305.
[80] Fowler, 310.
[81] Fowler, 311.
[82] Fowler, 315.
[83] Fowler, 309.

an education designed to peruse their good directly— is very unconvincing. He is correct that such an education would not violate "core liberal principles,"[84] but that is not what he needs to be concerned with. Not all liberals are anti-perfectionists. His response to concerns that individuals who disapprove of the educational policies aimed at inculcating certain moral beliefs in children is simply that "their democratic attempts to stop the use of schools to promote genuinely valuable beliefs would have been outvoted."[85] This is in flagrant violation of public reason's criteria for legitimacy. Quong makes the point that the constituency of public reason, despite the name, is not actually the given citizenry of a given state. In his words, "the constituency of reasonable persons is an idealization: a hypothetical group of citizens who accept (a) [a plurality of conflicting conceptions of the good], and have the motivation described in (b) [that citizens will want to propose and abide by fair terms provided others do the same]."[86] The beliefs of the people of a democratic society have no bearing on the matter of what is a legitimate decision according to public reason, as they are not the constituency that public reason appeals to. The democratic process is surely the right way to choose between various legitimate decisions, but it does not confer legitimacy on its own.

That said, there is a more persuasive line of argumentation in favor of directly perusing the good of non-autonomous human beings that is compatible with public reason. I am unsure if I am convinced by this line of reasoning, but it is at least plausible and thus is worth mentioning. It is an uncontroversial fact of the natural world, the sort of fact that Rawls mentions in *Political Liberalism* that I referenced in section 1.2 of this thesis, that all human beings will be infants and young children at some point in their lives. In this stage, we are not only non-autonomous but entirely dependent upon the others for their survival. Likewise, if

[84] Fowler, 318.
[85] Fowler, 318.
[86] Quong, *Liberalism without Perfection*, 143–44.

there is any principle that can be agreed to from behind the veil of ignorance and is in accordance with public reason, it would be that nobody ought to be treated as the end of someone else before they have the capacity to make any decisions at all. To ensure that nobody is treated as the mere means to another's end while in such a helpless state, it makes sense to dictate that the good of these individuals be directly promoted, even by agents of the state if necessary. Raising a child and especially an infant with their own good in mind is precisely what is required to not treat them as a tool.

So anti-perfectionists who think that children may be educated in this way in accordance with public reason could take the same attitude towards health. If a child may be legitimately educated for the sake of promoting that child's flourishing, then it seems uncontroversial to assume that this same justification may extend to providing for the healthcare of infants who are wards of the state. Whatever ambiguity about the autonomy of children generally exists is entirely absent in the case of Fatma. If anything should guide our treatment of individuals like her, it ought to be their own intrinsic good, and not what is instrumentally beneficial and convenient for society generally or the whims of special interest groups. To do otherwise would be to turn this infant into a means to our own ends, which cannot be justified per public reason.

If these arguments were adequate, they would indeed thwart the project of my thesis. Here we would have an account that there are legitimate public reason justifications to act directly to advance the health of infants. I will grant that this sort of justification exists, albeit with a caveat that renders it not merely irrelevant to my thesis but that creates another difficulty for anti-perfectionism. Public reason simultaneously not only fails to endorse but *actively forbids* appealing to any possible conception of health and any possible account of what is in the infant's good that could be appealed to in order to satisfy this obligation. It does so on the same grounds that it forbids any other justifications based on controversial

philosophical or religious doctrines: they rely on premises that free and equal liberal citizens might reject. What we are left with is the following paradox, which forms the next two parts of my argument:

viii. There are legitimate public reason justifications that obligate enacting policies that intentionally advance the good of non-autonomous human beings who are wards of the state.

ix. All possible policies designed to achieve (viii) will be rendered illegitimate according to those same standards of public reason, as they will rely upon premises that free and equal citizens might reject (such as what the good for these non-autonomous human beings consists in).

We are back at the same sort of controversy that I outlined in Chapter 2. The problem that reliance on public reason introduces here is not that it forbids the promotion of the health of the infant directly, but that makes it impossible for any given conception of health to be aimed at in the pursuit of this goal.

At this point a clarification is in order: I am not simply asserting that anti-perfectionists cannot provide *conclusive* justifications for how to tend to the health of non-autonomous human beings in controversial cases. I am making the stronger claim that they cannot provide *any* justifications for how to tend to their health when there are reasonable philosophical controversies over what health does and does not consist of. That public reason admits a plurality of legitimate justifications is a feature, not a defect of anti-perfectionist theory. Instead, the issue here is that all appeals to a philosophically controversial concept of health or concept of the good are forbidden by anti-perfectionism and remain so even if there is a legitimate reason for the health and the good of non-autonomous human beings to be promoted in the abstract.

3.3 Free and Equal Citizenship is not Enough: Regulating Third-Party Decisions

At this point, an anti-perfectionist may concede the argument made within my thesis so far to be correct, but simply find this to be a good reason for an anti-perfectionist state to stop having infant wards. If the anti-perfectionist state simply retreats from running orphanages altogether and leaves this task to civil society organizations, that would sidestep all the arguments I have made so far. This proposal is not without surface-level merits: there have been and are private orphanages that exist today, many of whom do great work for infants and raise children to be free and equal citizens. In this view, it would be up to the orphanage Fatma wound up at to decide if she gets the cochlear implant or not. The same logic would be present in an appeal to embrace parental choice on such matters. Many parents who are deaf want children who are deaf and would reject giving their children cochlear implants, and vice versa for hearing parents who have deaf children. This could all be accomplished by an appeal to the realities of reasonable pluralism and an understanding that the state only has an interest in infants as eventual free and equal citizens.

Yet a laissez-faire attitude toward cochlear implantation of infants is itself a state policy that must be justified in a way compatible with public reason. Can it be? I intend to use the occasion of the state's retreat from having non-autonomous wards to further expand the scope of my assault on anti-perfectionism. The final elements of my argument are as follows:

x. The anti-perfectionist state does not only have an interest in the "end product" of childhood, the formation of free and equal citizens. They rightfully will seek to curtail abuse of children in all forms (i.e. medical neglect or medical abuse) by parents and private institutions, even if the children under their care turn out to be fully autonomous human beings upon reaching adulthood.

xi. The nature of cochlear implantation is such that a laissez-faire attitude toward it being done on infants is incoherent. It is either a legitimate medical procedure or a horrific violation of infant autonomy. It cannot be both at once.

xii. Absent practical considerations (such as a lack of sufficient resources or lack of capacity to enforce such a measure), the anti-perfectionist state must either choose to ban or mandate this procedure for deaf infants generally, presuming that it is in fact efficacious. Yet just as before, public reason forbids all possible justifications for making either choice.

I do not think any anti-perfectionist will object to (x) once elaborated. We can imagine an orphanage that had abusive staff members. They occasionally lock an orphan in a closet for two days as punishment for failing to do chores, depriving them of food and water for the duration. No child has ever died in their care or suffered long-lasting medical damage due to this. By the time the children leave this orphanage as adults they report high satisfaction with their upbringing, their life as it is now, and by every measure are free and equal citizens that can make their own decisions about what they hold to be good autonomously. Despite this successful outcome, I expect that anti-perfectionists would insist that such a practice be banned, the staff responsible for it fired, and possibly for the orphanage to have its license stripped altogether if this was the orphanage's explicit policy. I would also anticipate that they would be strongly in favor of the state taking the custody of children away from parents who inflicted this punishment on them, even if those parents had shown themselves capable of raising free and equal citizens in the past, and even if we could somehow know with certainty that the children enduring this abuse would ultimately become free and equal citizens in the future.

I now turn to cochlear implantation and point xi. Can providing it or failing to provide it be coherently delegated to parental preference? Are implantation and non-implantation

something more akin to encouraging a child to root for one sports team over another, or more akin to choosing between locking a child in a closet for two days without food or not doing so? I will stress that I am not relying upon a specific claim about the correct course of action here when I say that it is more akin to the latter. Regardless of which position one takes about deafness (whether it is a mere difference or a bad difference), the choice to provide or not provide the cochlear implantation to an infant remains a choice between non-abuse and abuse. Those in favor of implementation hold it to be a procedure that will restore a normal human function to Fatma, and that to deprive her of this treatment would be abuse via neglect, denying her an opportunity to restorative biotechnology. Those opposed to implementation will view non-implantation as the justly required respect for human difference and hold that implanting the device is an abuse intrinsically. It amounts to nothing less than horrifically jamming metal into the skull of an infant and subjecting them to sensory bombardment for the rest of their childhood. I do not find a view that holds implantation or non-implantation of infants to be a trivial choice, akin to sports team selection by parents, to be coherent. Either decision will play an enormous role in the course of Fatma's life, for good or ill. Even if circumstances mandate that the laissez-faire policy be adopted, choosing it on its own terms, regardless of if one supports implantation or non-implantation, is as coherent a stance as the state being "neutral" towards orphanages and parents locking their children in a closet for two days without food and water. The neutral state cannot resort to the ostensibly "neutral" policy of letting third parties decide the matter for themselves. If providing the implant to infants is abusive, there are no necessary grounds to permit parents and private orphanages to provide it. If failing to provide the implant is abusive, there are no necessary grounds for the state to permit any third party to opt infants under their care out of the procedure. These two positions are incommensurable.

Given that the anti-perfectionist state obviously can (and ought to) intervene in the event of the abuse or neglect of infants by third parties (private orphanages and parents), the question remains: which of the two acts is abusive: implanting or failing to implant? The answer to this question is of crucial to determine if the state ought to adopt a policy mandating or forbidding the procedure. For all the reasons already discussed in this thesis, the anti-perfectionist state remains unable to justify action in favor of *either* policy. What held true of decisions taken on behalf of wards of the state is true of laws concerning the abuse of infants generally.

Conclusion

I have only scratched the surface of the problems that anti-perfectionism encounters when dealing with those who are not or might not be free and equal citizens. Though the non-autonomous status of infants can be taken for granted, the autonomy or lack thereof in the mentally ill is a far more complicated subject. But an appeal to "the science" in the abstract is of little help here: there is scholarly debate over if mental illness is even genuinely illness, to say nothing about the extent to which any mental illness is an impairment to human autonomy. How are we to even determine what an autonomous human being is without resorting to controversial philosophical doctrines about what human beings are? What exactly is the political animal? What is the nature of human beings? Do humans have some obligations to living things that are non-autonomous, human or otherwise? What distinguishes health from pathology in human beings?

Answering these questions requires an appeal to philosophical doctrines that will not be universally agreed to. Yet answering them is nevertheless of great importance to determining both the basic structures of the political orders human beings ought to live in and the day-to-day governance of those political orders. Ought the state to accept the wishes of deaf parents to refuse cochlear implantation for their baby precisely *because* it is efficacious at letting the baby hear? I answer no to this question, but to answer in this way requires a conception of what is good and bad for human beings, whereby willfully depriving one of hearing is harmful to them. Public reason and anti-perfectionism cannot provide such a conception. I suggest that political philosophers begin looking elsewhere for it.

Bibliography

Amundson, Ron. “Against Normal Function.” *Studies in History and Philosophy of Science Part C: Studies in History and Philosophy of Biological and Biomedical Sciences* 31, no. 1 (2000): 33–53.

Aristotle, *Aristotle’s Politics*. Translated by Carnes Lord. Second edition. Chicago: The University of Chicago Press, 2013.

Barnes, Elizabeth. “Valuing Disability, Causing Disability.” *Ethics* 125, no. 1 (2014): 88–113. https://doi.org/10.1086/677021.

Bauman, H-Dirksen L. “Audism: Exploring the Metaphysics of Oppression.” *Journal of Deaf Studies and Deaf Education* 9, no. 2 (2004): 239–46.

Boorse, Christopher. “A Second Rebuttal On Health.” *The Journal of Medicine and Philosophy: A Forum for Bioethics and Philosophy of Medicine* 39, no. 6 (December 1, 2014): 683–724. https://doi.org/10.1093/jmp/jhu035.

———. “Health as a Theoretical Concept.” *Philosophy of Science* 44, no. 4 (December 1977): 542–73. https://doi.org/10.1086/288768.

Carel, Havi, Rachel Cooper, and Elselijn Kingma. “Health and Disease: Social Constructivism as a Combination of Naturalism and Normativism.” Essay. *In Health, Illness and Disease: Philosophical Essays*, 37–56. Durham: Acumen, 2013.

Crouch, Robert A. “Letting the Deaf Be Deaf Reconsidering the Use of Cochlear Implants in Prelingually Deaf Children.” *The Hastings Center Report* 27, no. 4 (1997): 14–21. https://doi.org/10.2307/3528774.

Daniels, Norman. *Just Health Care*. Nachdr. Studies in Philosophy and Health Policy. Cambridge: Cambridge Univ. Press, 2001.

———. *Just Health: Meeting Health Needs Fairly*. Cambridge: Cambridge University Press, 2008.

Duchesne, Louise, Ann Sutton, and François Bergeron. “Language Achievement in Children Who Received Cochlear Implants Between 1 and 2 Years of Age: Group Trends and Individual Patterns.” *Journal of Deaf Studies and Deaf Education* 14, no. 4 (2009): 465–85.

Fowler, Tim. “Perfectionism for Children, Anti-Perfectionism for Adults.” *Canadian Journal of Philosophy* 44, no. 3–4 (August 2014): 305–23. https://doi.org/10.1080/00455091.2014.925620.

Hurka, Thomas. *Perfectionism*. Oxford Ethics Series. New York: Oxford University Press, 1993.

Klosko, George, and Steven Wall, eds. *Perfectionism and Neutrality: Essays in Liberal Theory*. Lanham, Md: Rowman & Littlefield Publishers, 2003.

Mauldin, Laura. “Precarious Plasticity: Neuropolitics, Cochlear Implants, and the Redefinition of Deafness.” *Science, Technology, & Human Values* 39, no. 1 (2014): 130–53.

Mill, John Stuart. *On Liberty: Annotated Text Sources and Background Criticism*. Edited by David Spitz. A Norton Critical Edition. New York, NY: Norton, 1975.

Neufeld, Blain. *Public Reason and Political Autonomy: Realizing the Ideal of a Civic People*. 1st ed. New York: Routledge, 2022. https://doi.org/10.4324/9781315185316.

Quong, Jonathan. *Liberalism without Perfection*. Oxford ; New York: Oxford University Press, 2011.

Rawls, John. *A Theory of Justice*. Harvard University Press, 1999. https://doi.org/10.2307/j.ctvkjb25m.
———. "Justice as Fairness: Political Not Metaphysical." *Philosophy & Public Affairs* 14, no. 3 (1985): 223–51.
———. *Political Liberalism*. The John Dewey Essays in Philosophy, no. 4. New York: Columbia University Press, 1993.
Strauss, Leo. *Liberalism, Ancient and Modern.* New York: Basic Books, 1968.
Svirsky, Mario A., Amy M. Robbins, Karen Iler Kirk, David B. Pisoni, and Richard T. Miyamoto. "Language Development in Profoundly Deaf Children with Cochlear Implants." *Psychological Science* 11, no. 2 (2000): 153–58.
Terzi, Lorella. "The Social Model of Disability: A Philosophical Critique." *Journal of Applied Philosophy* 21, no. 2 (2004): 141–57.