

# Public goods in Michael Oakeshott's 'world of *pragmata*'

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## Abstract

Michael Oakeshott's account of political economy is claimed to have found its 'apotheosis under Thatcherism'. Against critics who align him with a preference for small government, this article points to Oakeshott's stress on the indispensability of an infrastructure of government-provided public goods, in which individual agency and associative freedom can flourish. I argue that Oakeshott's account of political economy invites a contestatory politics over three types of public goods, which epitomize the unresolvable tension he diagnosed between nomocratic and teleocratic conceptions of the modern state. These three types are the system of civil law, the by-products of the operation of civil law and public goods which result from policies. The article concludes that Oakeshott offers an important corrective to political theories which favour either market mediation or radical democratic governance of the commons as self-sustaining modes of providing and enjoying goods.

## Keywords

Michael Oakeshott, privatization, public goods, the commons, welfare state

## Introduction

While Michael Oakeshott's distinction between civil and enterprise association is much debated, its implications for political economy remain unclear. These

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implications have either been overlooked or have been interpreted to require 'small' government. Instead of focusing on his views on political economy, scholars clarify Oakeshott's distinct take on concepts like contingency, free agency and self-enactment in the baffling essays in *On Human Conduct* (Oakeshott, 1990 [1975]) and 'The rule of law' (Oakeshott, 1991 [1983]) (e.g. Kim, 2016; Podoksik, 2003). Illuminating discussions on the (in)appropriateness of characterizing his thought in terms of liberalism, conservatism, republicanism or scepticism are also given pride of place (Boucher, 2005; Gerencser, 2000; Nardin, 2015). However, when critics do consider Oakeshott's account of political economy beyond a short sidestep,<sup>1</sup> they struggle to avoid the conclusion that Oakeshott adheres, in Dyzenhaus's (2015: 259) phrase, to 'a covert and radical libertarianism that dresses a "Tea Party" agenda in philosophical garb'. While interpretations which stress Oakeshott's influence on neoliberal apologetics are not without a measure of plausibility (e.g. Plant, 2010: 5–6; for pushback, see O'Sullivan, 2014), they are exegetically incomplete and ultimately misleading. Far from having found his 'apotheosis under Thatcherism', as Skinner claims (cited in Koikkalainen & Syjämäki, 2002: 45), I argue that Oakeshott attaches crucial importance to an infrastructure of public goods to ensure just and orderly social life, in which individual agency and associative freedom can flourish.

This article reconstructs Oakeshott's accommodation of public goods in what he calls 'the world of *pragmata*' (Oakeshott, 1990 [1975]: 32–33). My reading shows that public goods are central to his account of political economy, and epitomize his diagnosis of the tension between nomocratic and teleocratic conceptions of the state. Government-provided public goods expose this tension to be fundamentally irreconcilable rather than temporarily unresolved. This irreconcilability opens up space for a contestatory politics in which the character and scope of public goods are constantly renegotiated from the opposite perspectives of nomocracy and teleocracy. The implication of this irreconcilability is that public goods are never more than imperfectly justifiable. Notwithstanding their imperfect justifiability, the scope of public goods that may be extrapolated from Oakeshott's account is not incompatible with, and may even exceed, provision in an extensive welfare state.

Oakeshott's account of public goods offers a sobering perspective on political theories which favour either market mediation (e.g. Buchanan, 2000; Hayek, 1998) or radical democratic governance of the commons (e.g. Dardot and Laval, 2014; Hardt and Negri, 2009) as self-sustaining modes of providing and enjoying goods. Against a blind faith in privatization and deregulation, he reminds us that no civil association is conceivable without both its *respublica* (or system of civil law) and a plurality of (im)material *res publicae* (from schools and bridges to hospitals, utilities and social security arrangements). Moreover, when the commons are appreciated for anti-statist as much as anti-market qualities, their advocates usually target a specific version of the state *qua* corporate enterprise without overcoming what Oakeshott (2004: 374) calls 'the plausible ethics of productivity'. These protagonists fail to take the nomocratic conception of the state into account as a well-suited, indeed indispensable, host to the transformative projects of 'commoning' (Bollier, 2014) they celebrate. Adopting Oakeshott's perspective,

these projects form an endless variety of cooperative enterprise associations. Their viability ultimately rests, I argue, on a durable civil order marked by a strong infrastructure of public goods.<sup>2</sup>

The article proceeds as follows. After situating Oakeshott's views on political economy within his broader account of human conduct, it discloses how public goods epitomize the tension he diagnosed between nomocratic and teleocratic conceptions of the state. Since the character and scope of public goods remain indeterminate within this tension, Oakeshott's theory is misinterpreted if taken to imply 'small' government. Next, the article gives a reconstruction of Oakeshott's accommodation of three types of public goods, each of which must resist subsumption under *the* superordinate common good. The first type is the system of civil law or *respublica*, the second are the by-products of civil law, while the third type of public goods are the outcomes of policies. I conclude that Oakeshott makes us attentive to the indispensability of government-provided public goods, and provides an important corrective to the alleged self-propelling character of either privatization or commoning.

## Human conduct and political economy

Oakeshott's views on political economy are part of his broader account of human conduct, which refers to the provision and enjoyment of goods as the pursuit to satisfy 'wants' (Oakeshott, 1991 [1983]: 131). According to Oakeshott (1990 [1975]: 33), human beings 'inhabit and . . . respond to the invitations of the world of *pragmata*'. In this world of *pragmata*, agents move about as intelligent creatures of 'wants which are imagined, chosen and pursued' and not merely as urge-driven creatures of 'needs which *must* be satisfied. . . . Needs are limited, and are related to some notion of bare existence' (Oakeshott, 2004: 303–304, emphasis in original). This world is located in but not identifiable with the 'economy of nature' in which needs are met. For Oakeshott, it is simultaneously a world of ideas. Since all experience is mediated by thought and judgment, so is the practical endeavour to satisfy our wants, which alters 'one given world of ideas ["What is here and now"] so as to make it agree with another given world of ideas ["What ought to be"]' (Oakeshott, 1995 [1933]: 291).

But the ideational structure of the world of *pragmata* is also specific in two senses. First, the satisfaction of wants is realized through transactions in which responses are exchanged that can only become articulate and intelligible in language. According to Oakeshott, individual action is best understood:

as *response* to a contingent situation related to an imagined and wished-for outcome [which] postulates reflective consciousness; that is, an agent who inhabits a world of intelligible *pragmata*, who is composed entirely of understandings, and who is what he [sic] understands (or misunderstands) himself to be. (Oakeshott, 1990 [1975]: 36, emphasis in original)

Nevertheless, the ideational and linguistic structure of transactional encounters does not deny the 'material' dimensions of such encounters in the world of *pragmata*.<sup>3</sup>

Even if the satisfaction of wants comes to pass in the intelligent responses of agents and therefore falls under the rubric of ‘conduct *inter homines*’, human conduct modifies, occurs in the midst of and is mediated by those *pragmata* or ‘things, existing in various ways by, and in some cases, at the expense of, or *on*, other things’ (Oakeshott, 1990 [1975]: 35; Oakeshott, 2004: 303, emphasis in original).

Oakeshott’s account of human conduct therefore also encapsulates, instead of juxtaposes it to, fabrication, since most artefacts are useful ‘interpolations’ with which creators seek to elicit responses by other agents:

[In] identifying what I am concerned with as ‘conduct *inter homines*’ (that is, performances understood as transactions between agents), I do not take this to exclude fabrication, but only to exclude what is unique to fabrication, namely a work of art properly so called. Nor does it exclude the activities in which what Bacon called ‘the empire of men over things’ is exerted; here also the immediate is a utility, an intermediate in a transaction between agents. The idea ‘conduct’ I am concerned with is, then, that of an agent disclosing and enacting himself [sic] in performances whose imagined and wished-for outcomes are performances of other agents or other performances of himself: satisfactions, not only pursued in actions and purchased by actions, but wholly composed of actions. (Oakeshott, 1990 [1975]: 35–36)<sup>4</sup>

Transactional encounters are therefore intelligent endeavours which become manifest in the world of *pragmata*, in which the objects of our wants may refer to tangible ‘interpolations’ (e.g. a bicycle) and fleeting occurrences (e.g. a theatre play) alike.

Second, the industriousness entailed in seeking to satisfy wants is not ‘mainly or fundamentally a matter of physical exertion’ but rather ‘an enterprise of immense thought and intelligence’ in which the acquisition of practical knowledge and the invention of tools are coupled with an instrumental, exploitative attitude towards the natural environment (Oakeshott, 2004: 305). Oakeshott suggests that the picture of human beings as creatures of wants who work endlessly to provide and enjoy goods has always been prominent in human self-understanding and antedates recorded history. Typically modern, however, is the belief that industriousness ‘ought to be the exclusive attitude and engagement to which all else should be subordinated’ (Oakeshott, 2004: 306–307). Moreover, this belief was reinforced by a sense of optimism which tells us that when every human being’s full commitment to industriousness results in comprehensive technological control over the natural environment, then surely the ease with which new wants can be satisfied will match the boundlessness of their proliferation.

It is this modern belief which, according to Oakeshott, underlies the ‘plausible ethics of productivity’, a doctrine which:

informs all our politics; it binds us to this necessity of a 4% per annum increase in productivity; and it is a dream we have spread about the world so that it has become the dream common to all mankind. (Oakeshott, 2004: 307–308, 374)

This dream, however, is delusional since ‘it turns out to have no criterion of helping us to know when we are not hungry’ (Oakeshott, 2001 [1989]: 129). In a characteristically disenchanting analysis, Oakeshott argues that:

It is not only that everything which is produced in satisfaction of a want rapidly perishes, or that many wants demand recurrent satisfaction, but that the satisfaction of every want generates a new want which in turn calls for satisfaction. Doing, and the attitude to the world it entails, is (as the hymn says) ‘a deadly thing’. (Oakeshott, 2004: 309)

Oakeshott alleviates the deadliness of doing by moving away from concern for intended outcomes and actual satisfactions towards ‘self-enactment’ or the integrity and audacity of human conduct (Oakeshott, 1990 [1975]: 74; see also Kim, 2016; Segal, 2003). Moreover, he is keen to guard the plurality of other modes of experience against the obtrusiveness of creatures of wants in the world of *pragmata* (Oakeshott, 1991 [1962], 1995 [1933]).

These features of Oakeshott’s work indeed give notable pushback to the ‘economism’ characteristic of some strands of contemporary political thought (Franco, 1990).<sup>5</sup> Nevertheless, from his trenchant critique of the plausible ethics of productivity, it does not follow that Oakeshott escapes into an obscure aestheticism, which fails to offer an institutionally informed account of political economy. This account can be discerned from Oakeshott’s focus on public goods, which epitomize the tension he diagnosed between nomocratic and teleocratic conceptions of the state.

### **The irreconcilable tension between nomocratic and teleocratic conceptions of the state**

Oakeshott’s focus on public goods is suggested by his insistence that political thought must reflect on the modes of association in states and their corresponding office of government, rather than fixing exclusive attention on the latter’s constitutional authorization (democratic or otherwise). By ‘office’ Oakeshott means the authorized ‘status’, occupied ‘position’ or ‘function’ of government which designates the activities or tasks it ought to fulfil as a matter of duty or obligation towards its citizens (Oakeshott, 1975: 321; 1990 [1975]: 67; 1991 [1983]: 164). The obligations government ought to fulfil refer to those public goods the provision of which is its responsibility. These tasks require government to engage in judicial, legislative and executive engagements and secure a set of public goods which is likely to vary according to different contexts (from territorial defence and internal policing to, say, education, healthcare and social services). But this variation is best understood, Oakeshott suggests, in terms of the predominance of either ‘nomocratic’ (rule-governed) or ‘teleocratic’ (goal-oriented) understandings of the state. He spells out the difference between these understandings in terms of his well-known distinction between civil and enterprise association.

Enterprise associations, Oakeshott argues, stand for relationships in which free and equal agents pursue shared purposes with others – associations, in other words, which have private or common goods as their goals. Crucially, these relationships rest on freedom of association, and thus postulate freedom of exit as corollary (Oakeshott, 1990 [1975]: 119). Unlike these enterprise associations, civil association denotes a modally distinct human relationship, namely, a moral practice. This practice consists of the shared acknowledgment of the authority of a legal system which conditions cooperative enterprises ‘adverbially’ (Oakeshott, 1990 [1975]: 58). Civil association does not, in other words, instruct its associates what to undertake in order to attain a superordinate purpose of its own. It only prescribes rules that constrain the means used to undertake whatever they have set out to achieve. Just as the practice of language does not (indeed, cannot) instruct partners in a conversation what to say but only how to utter something in a learned manner, so too does the practice of civility remain indifferent and unaware of agents’ self-chosen aims. Civil association is concerned with the just manner or moral propriety in which agents pursue substantive goals, obliging them to subscribe to the moral conditions it authoritatively imposes.

One of the chief difficulties for recognizing this rule-governed rather than goal-oriented character of civil association lies in the temptation to attribute ‘order’, ‘happiness’ or ‘justice’ as an overarching purpose and intended outcome of an operative legal system. However, calamities aside, such locutions to designate *the* public interest are too abstract to be properly called a purpose at all. A civil association may be characterized but is neither cause nor consequence of any of these abstract desiderata. Purposes, goods or interests are specific, Oakeshott insists: ‘I cannot *want* “happiness”; what I want is to idle in Avignon or to hear Caruso sing’ (Oakeshott, 1990 [1975]: 53; see also Oakeshott, 1991 [1983]: 175). Instead of conceiving civil laws as prudential contrivances to realize the superordinate common good, they are better understood as moral conditions that shape the pursuit of self-chosen goods.

This ‘purposeless’ character of civil association is crucial, according to Oakeshott, since the imposition of a superordinate public interest on an association from which members cannot exit would sever ‘the link between belief and conduct’ on which their free and equal standing, and self-understanding, rests (Oakeshott, 1990 [1975]: 495). In short, since civil association denotes a relationship in terms of a structure of ineluctable and inescapable authority, it can only host, but is not itself, a teleocratic enterprise: the idea of compulsory purposiveness is incoherent and compromises the scope for voluntary enterprise association under the purview of rule-governed authority (De Jongh, 2018: 533–534). Recall that Oakeshott does not express a preference for civil over enterprise association, and nor should he should be misunderstood as a critic of purposiveness per se:<sup>6</sup> what he does criticize is the understanding and recommendation of the state as itself a cooperative enterprise, not least because historically the teleocratic state has proven to be as likely to hinder as to enable our self-chosen pursuits in the world of *pragmata* (Oakeshott, 1976: 367; 1990 [1975]: 119; see also Kim, 2016).

Thus, civil and enterprise association denote ideal characters that are conceptually distinguished, in which the former stands for an adverbial moral practice that formally qualifies, and hosts, an endless variety of the latter as relationships concerned with the substantive dimension of human conduct. Agents subscribe to the ‘public’ practice of civility whenever they substantively undertake ‘private’ or ‘common’ enterprises: these two modally distinct relationships, as Oakeshott (1990 [1975]: 146) insists, ‘meet in every substantive engagement’.

By contrast, the modern state refers to a self-divided empirical phenomenon which displays both nomocratic (civil) and teleocratic (enterprise) elements in continuously varying proportions (Nardin, 2001: 197). And this self-division can already be discerned in medieval political thought, where ‘the distinction between rulership and lordship from which rulership had circumstantially emerged’ was articulated (Oakeshott, 1990 [1975]: 218). On this reading, European states became recognizably ‘modern’ primarily in the transition from *Gemeinschaft* to *Gesellschaft*, or as a result of the disjunction between impersonal rule (*regnum* over free and equal individuals) and patrimonial management (*dominium* over role-performers in an ineluctable enterprise).<sup>7</sup> Nevertheless, Oakeshott (1990 [1975]: 219) claims that ‘the relic of lordship acquired a by no means recessive character’ in the hands of modern governments, thus overshadowing the recognition of states in terms of nomocracy. Among the most important manifestations of modern *dominium* or lordship, Oakeshott lists the management of natural resources and human capital, imperial expansion and colonial exploitation, near-continuous warfare and leadership over the masses – all of which lend plausibility to the teleocratic conception of a state (Oakeshott, 1990 [1975]: 267–273).

Yet while Oakeshott’s theoretical distinction and historical diagnosis are considered profound, his critics claim that a state must become a purposive enterprise in order to realize its civil character. How else is it possible for the nomocratic state to sustain itself and host free and equal agents who seek self-chosen goods in an intelligible world of *pragmata*? Is it not readily apparent to Oakeshott that an office of government which is restricted to upholding what he calls *respublica* (that is, the public good of a purely formal system of laws which consists exclusively of moral, ‘adverbial’ conditions) is not self-sustaining (e.g. Galston, 2012)? Norris’s answer to these puzzles captures a widely held judgment that Oakeshott’s account of civil association assumes a much too limited reality:

It would seem that neither realizing nor preserving civil association will be possible without taking the question of its postulates [or conditions of intelligibility and possibility] more seriously than Oakeshott himself does; and that doing so entails recognizing that it is not, as he claims, ‘an independent, self-sustaining mode of association’. In the end, civil association is entangled with enterprise association not merely for accidental or non-essential reasons, but because it postulates conditions that it itself cannot provide. (Norris, 2017: 844)

While this discomfort is understandable, there is no reason to concur with the conclusion that the state must undergo some dialectical resolution of its self-division between nomocracy and teleocracy.

The chief problem is that this reading fails to acknowledge Oakeshott's own repeated insistence that a purely formal nomocracy is unattainable for a state as an empirical phenomenon, even if there are some regrettable instances in which he suggests otherwise (e.g. Oakeshott, 1990 [1975]: 274). Far from being self-divided 'merely for accidental and non-essential reasons', as Norris's interpretation goes, Oakeshott explicitly stresses that 'too much has often been claimed' for the state as nomocracy, since 'when properly understood the rule of law [or nomocracy] *cannot*, without qualification, characterize a modern European state' (Oakeshott, 1991 [1983]: 168, emphasis in original). He cautions against the historical viability of nomocracy, since:

[although] the disposition at least to seek to become associations in terms of the rule of law has been lively, the circumstances of modern Europe have always made it impossible for any state... to achieve this condition without qualification or interruption. And I take this to be, not a criticism of the notion of the rule of law, but a warning to be exact about it and to distinguish between unavoidable qualification and corruption or vacillation. (Oakeshott, 1991 [1983]: 176)

Note that Oakeshott does not attribute this impossibility exclusively to the 'interruption' of war (or other emergencies) in which security temporarily assumes the status of *the* superordinate public interest, but more radically emphasizes nomocracy's *unavoidable qualification*. Stressing the need to distinguish between its qualification and vacillation, Oakeshott in effect invites us to specify the office of government by negotiating the character and scope of its provision of public goods. So understood, they epitomize the tension he diagnoses between nomocratic and teleocratic conceptions of the state, and expose this tension to be fundamentally irreconcilable rather than temporarily unresolved. How does this irreconcilability play out?

On one hand, a strict reading of nomocracy requires a delimitation of the office of government to the maintenance of *respublica* if our individuality is to be respected. Only on this condition will government preserve 'the link between belief and conduct' of agents, since only then will it abstain from providing goods they have not chosen for themselves. But a pure nomocracy does assume a much too limited reality: it warrants setting up court rooms and police stations but is hardly capable of maintaining fire brigades. While even nomocracy unavoidably requires some substantive public goods (protecting against external threats and internal disorder, like a diplomatic service, armies, prisons and police stations), which Oakeshott deems internal to the preservation of *respublica* as a purely formal system of civil law, it cannot accommodate those numerous public goods which also depend upon government's means of compulsion and coordination (bridges, schools, pensions, etc.).<sup>8</sup>



On the other hand, once we allow for nomocracy's qualification, the office of government runs the risk of vacillating towards the teleocratic imposition of *the* public good in its monist sense (from commendable notions like fairness or happiness, to comprehensive designs to promote productivity, sanity or 'moral idiocies' like the glorification of God, racial purity, etc.). Here, realizing that the superordinate common good is deemed more successful when guided by the imperative that it is always better to be safe with public goods provision by the compulsory means of a managerial government than sorry with fickle supply by voluntary associations. Not only are our associative capacities underestimated at best, and encroached upon at worst (see also Kim, 2016: 267), but public goods which ideally serve a plurality of self-chosen purposes are instead instrumentalized for the achievement of *the* public good in its monist, and potentially exclusionary, sense (Oakeshott, 1990 [1975]: 315–316; see also Galston, 1991). Compulsory education is a case in point, for while it has both intrinsic value and is instrumental to a variety of purposes, governments justify it predominantly in terms of its instrumental value to the superordinate public interest of productivity.<sup>9</sup>

The character and scope of public goods therefore exemplify, and render concrete, Oakeshott's 'ambiguity thesis' concerning the modern state and the office of its government (Nardin, 2016). But instead of lamenting the absence of a prescriptive resolution of this self-division, Oakeshott's diagnosis may be more profitably appreciated, if not celebrated, as calling for a contestatory politics of public goods. Indeed, the upshot of irreconcilability is that the specification of the office of government is played out in ongoing contestation over which public goods count as nomocracy's unavoidable qualification by teleocracy, and when they make the modern state liable to vacillate too closely towards the latter's totalizing demands.

Public goods, from Oakeshott's perspective, are those 'general arrangements' of a society which are never more than imperfectly justifiable. They resist attempts at conclusive justification by subsuming them under an overarching, externally imposed notion of the common good. Instead, such arrangements are subject to recurring contestation and amendment 'by exploring and pursuing what is intimated in them' (Oakeshott, 1991 [1962]: 56). Here we are reminded of Oakeshott's early claim that:

[The] political economy of freedom rests upon the clear acknowledgement that what is being considered is not 'economics' (not the maximization of wealth, not productivity or the standard of life), but *politics*, that is, the custody of a manner of living; that these arrangements have to be paid for, are a charge upon our productive capacity; and that they are worth paying for so long as the price is not a diminution of what we have learned to recognize as liberty. (Oakeshott, 1991 [1962]: 406, emphasis in original)<sup>10</sup>

Oakeshott specifies this political character of political economy in institutional terms by distinguishing three types of public goods.

### Three types of public goods in Oakeshott's 'world of *pragmata*'

While his reflections on public goods are scattered over his writings, three types of public goods may be reconstructed from his account of political economy. Moreover, these types can be illustrated both by his own examples and by those which may be extrapolated from that account. These three types are *respublica* or the system of civil law; public goods as the by-products of civil law; and public goods which result from the design and execution of lordly policies.

#### *The system of civil law: Respublica*

Since, according to Oakeshott, civil association 'begins and ends' in the recognition of the authority of formal civil laws (Oakeshott, 1990 [1975]: 124; 128), it seems impossible to expect any substantive public good to be provided and distributed by its government. Indeed, Oakeshott bluntly asserts that:

there is, of course, no place in civil association for so-called 'distributive' justice; that is, the distribution of desirable substantive goods. Such a 'distribution' of substantive benefits or advantages requires a rule of distribution and a distributor in possession of what is to be distributed; but *lex* cannot be a rule of distribution of this sort, and civil rulers have nothing to distribute. (Oakeshott, 1990 [1975]: 153; see also Oakeshott, 1991 [1983]: 170, 178)

In other words, public goods are, strictly speaking, a misnomer since civil laws cannot by themselves offer substantive goods, but only qualify their (private and common) provision and enjoyment by individual agents who are voluntarily related to others.

Nevertheless, in a more metaphorical sense civil laws may be understood as public goods par excellence, the ones without which our self-chosen goods cannot be pursued and enjoyed in accordance with considerations of 'justice'. Reading Marsilius of Padua as an early explorer of nomocracy rather than teleocracy, Oakeshott argues that transactional engagements are:

difficult, if not impossible, to sustain without some common rules of conduct; and consequently human beings may be said to have a common need which cannot itself be satisfied in individual transactions but the satisfaction of which is the condition of all transactional undertakings (Oakeshott, 1990 [1975]: 2016).

Oakeshott reads Marsilius as claiming that 'a realm has no "end" other than the satisfaction of the common need for a compulsory order' (Oakeshott, 1990 [1975]: 217). And yet *respublica* and its order are, emergencies aside, not so much themselves the objects of concrete, substantive wants but rather formal, enabling conditions and moral qualifications which mitigate the contingency that marks the pursuit of goods (see also Claassen, 2011: 475; Mapel, 1990; Norris, 2017: 842).

In this sense, Oakeshott calls the system of civil law *respublica* (the system that relates the members of a civil association or *civitas*) and refrains from referring to it as a ‘good’ or a ‘thing’. He prefers usage of the Latin term, as it is less marked by semantic ambiguity, or translates it as the public or common ‘concern’ (Oakeshott, 1990 [1975]: 146, 172). These terminological choices allow him to underscore that no item in the world of *pragmata*, least of all human-made laws, is ‘public’ by essence but only by artful institution. Something is rendered a public good when it becomes a ‘concern’, ‘matter’ or ‘affair’ for all subjects and gives rise to political and legal contestation. Nevertheless, understood as formal conditions rather than substantive goods, *respublica* no less belongs to the world of *pragmata* in which it qualifies human transactions. Unlike substantive goods, the thing-like character of *respublica* distinguishes itself in that, as a practice, it ‘may be modified in use, but in being used it is not used up’ (Oakeshott, 1990 [1975]: 121). And further, ‘[were] it to be established’, says Oakeshott, a nomocratic state ‘would certainly be a work of art’ (Oakeshott, 1991 [1983]: 162).

With these disclaimers in mind, the question arises of how *respublica* operates as a public good. How does it function as the constitutive framework within which agents can satisfy their wants in a just and orderly manner? Answering these questions is not straightforward, since Oakeshott’s account of civil law has remained rather enigmatic. He argues that:

practices identify actions adverbially; they exclude (forbid) or enjoin them in terms of prescribed conditions. A criminal law, which may be thought to come nearest to forbidding actions, does not forbid killing or lighting a fire, it forbids killing ‘murderously’ or lighting a fire ‘arsonically’. (Oakeshott, 1990 [1975]: 58)<sup>11</sup>

But apart from the examples taken from criminal law, one hardly encounters specific illustrations in either his own writings or those of his commentators of what civil laws look like, other than laws of contract and the aforementioned analogy with grammar and language (e.g. Norris, 2017: 843).

This scarcity is quite surprising in light of Oakeshott’s repeated insistence that the scope of *respublica* is virtually unlimited. Even if nomocracy respects a ‘circumstantial privacy’, Oakeshott argues that ‘there can be no action . . . in principle exempt from civil conditions’ (Oakeshott, 1990 [1975]: 179), and he stresses with Hobbes that ‘the circumstantial silence of the law . . . may at any time properly be broken’ (Oakeshott, 1991 [1983]: 172). These claims show how misleading interpretations are which align Oakeshott with a neoliberal preference for ‘minimal’ government or ‘deregulation’, as there can be no premeditated delimitation of the regulatory scope of *respublica*.

Instead, Oakeshott argues that the endless proliferation of wants invites recurring political debate on the moral propriety of how to pursue them. For instance, if an agent openly criticizes certain persons, they are obliged to subscribe to the moral condition of not doing so in a defamatory manner. But the exact specification of such a rule is likely to change as new forms of communication emerge, such

as posting anonymous messages on social media platforms. Changing wants (and the novel transactions to which they give rise) therefore occasion contestation to amend existing laws or enact new ones. Oakeshott explains such political contestation in exacting terms:

There is, indeed, no want which may not set going a project to change *respublica*. Nor does it mean that no benefits or advantages accrue to assignable interests from the conditions or changes in the conditions prescribed in *respublica* . . . What it means is that a proposal which may begin in a want, a wish for a benefit, or a plea for the removal of disadvantage must lose this character and acquire another (a political character) in being understood, advanced and considered as a proposal for the amendment of the *respublica* of the civil association. . . . And a prescription of *respublica* is understood in its proper character only when it is recognized as a condition imposed upon conduct totally indifferent to the advantage or disadvantage it may have for any interest. (Oakeshott, 1990 [1975]: 169–170)

Oakeshott insists here that enacted civil laws must assume a general character such that they are unable to foretell, serve or hinder the promotion of the particular interests which they formally qualify. Moreover, he stresses that the recognition of their authoritative character must be distinguished from political considerations about their moral desirability (see also Gerencser, 2000). For instance, the adverbial condition ‘defamatory’ is indifferent to whether it qualifies an animal rights activist interested in voicing their criticism of un-anesthetized killing of animals, or those concerned with publicly defending traditional Jewish or Muslim dietary practices on social media.

But the general character of civil laws, and the fact that they both exist prior to and outlast the specific transactions they regulate, does not mean they are without substantive and distributive effects. Note that Oakeshott argues that the operation of *respublica* should not be misunderstood as incapable of accruing ‘benefits or advantages . . . to assignable interests’. Civil laws in fact do so whenever they qualify our self-chosen conduct; the point is rather that their authoritative status and moral desirability cannot be reduced to, or made contingent upon, these effects. Thus, particular interests occasion proposals to change *respublica* but legislative deliberation and decision-making must become blind to their particularity. Moreover, the jurisdiction of *respublica* must adhere to a strict impartiality with regard to how particular interests are affected on specific occasions. How, then, do civil laws affect interests?

Given the formal character of *respublica* as a system of civil laws, it is unsurprising that Oakeshott insists that nomocracy ‘bakes no bread, it is unable to distribute loaves or fishes (it has none)’, hence excluding ‘distributive justice’ aimed at securing ‘substantive conditions of things’ (Oakeshott, 1991 [1983]: 178; 1990 [1975]: 245). But that exclusion does not leave nomocracy unequipped to redress, say, inequality of wealth. This aspect of nomocracy can only be properly appreciated if we recall that Oakeshott shares Hegel’s ‘deep misgivings’

about the disruptive aspects of modern industrial enterprise and commercial exchange. He admires Hegel for his contribution to the articulation of a nomocratic conception of the state, which ‘promised to provide a “home” for the lost and distracted human beings which he and Hölderin imagined they saw around them’ (Oakeshott, 1990 [1975]: 256–257). Since these lost and distracted human beings were coeval with the masses living in abject poverty, Oakeshott explicitly agrees with Hegel’s requirement to qualify the pursuits of productive enterprises with laws that are updated to modern economic circumstances. It is therefore no surprise that he also endorses Hegel’s early argument in favour of a social minimum:

[Great] disparities of wealth were an impediment (though not a bar) to the enjoyment of civil association; and this hindrance could and should be reduced by imposing civil conditions upon industrial enterprise (similar perhaps to those designed to prevent fraud or the pollution of the atmosphere), and where necessary by the exercise of a judicious ‘lordship’ for the relief of destitute. (Oakeshott, 1990 [1975]: 304–305)<sup>12</sup>

Note that Oakeshott contends that civil laws *could and should* redress, in both a positive and negative sense, such ‘public bads’ as inequality, fraud or pollution.<sup>13</sup> These examples enable us to conceive of the operation of *respublica* as excluding those economic transactions that exacerbate inequality of wealth, pollution of the atmosphere or other morally reprehensible forms of conducting them. And yet, here again civil laws must assume a general character and become indifferent to particular interests.

For instance, the adverbial condition of an environmental law (excluding, say, usage of toxic chemicals) is indifferent to, and cannot forecast, whether a specific producer wants to fabricate stuffed animals or construct a table; if a consumer’s satisfaction lies in playing all day with these toys, which would increase exposure to toxic substances, or merely sleep with them; or again whether the table shall be used for dinner, as a desk or both. Similarly, for the adverbial rule of a social law (enjoining, say, payment of a decent minimum wage), it is irrelevant whether an employer wants to sell fast food or produce clothes; if an employee happens to be a single parent with four children to feed or a person whose household consists merely of themselves and their pet.

Thus, civil laws are neither contrivances for nor obstacles to the promotion or protection of specific interests (that is, the pursuit and enjoyment of common and private goods). The injustice of not paying a minimum wage is not contingent upon the fate of the parent and their children, nor is the impropriety of fabricating toys with toxic chemicals dependent upon them being intensively played with rather than merely slept with. The illegal actions of the employer and the producer are improper and unjust on any and all occasions, even if we may judge these actions to be especially morally reprehensible on particular occasions or under specific circumstances.

### 'By-products' of *respublica*

While *respublica* operates, in this strictly formal sense, as a set of moral rather than instrumental conditions, we have also pointed out that this does not imply that they are without substantive and distributive effect.<sup>14</sup> These effects accrue to assignable interests on specific occasions, but they also contribute to the enjoyment of substantive public goods (or wants deemed common to all rather than some subset of citizens), such as a stable currency or anti-trust. To the extent that civil laws indirectly benefit each citizen, Oakeshott calls these effects 'by-products' of the operation of *respublica*. Providing substantive public goods does not vacillate but merely, and unavoidably, qualifies nomocracy (Oakeshott, 1991 [1983]: 176–177). Similarly, Oakeshott argues that when "government" is identified with the provision of substantive satisfactions the rule of law is compromised' (Oakeshott, 1991 [1983]: 177). His quarrel is not with the provision of substantive public goods per se, only with the reduction of the office of government to this task.

An environmental law further illustrates how *respublica* works at once as a constitutive public good that imposes moral constraints, and as being instrumental to the provision of a substantive public good like clean air. Such a law may, for instance, enjoin industrial enterprises to produce by means of renewable energy rather than fossil fuels, resulting from the obligation of these enterprises to subscribe to the adverbial condition of not producing in a polluting manner. On one hand, *respublica* does manifest itself here in its general and formal character. This law is indifferent to, and incapable of foretelling, which specific industrial interests will be affected by its jurisdiction. Yet while it cannot specify or settle end-states, this law does contribute to the establishment of 'substantive conditions of things' or 'states of affairs', since its by-product lies in a diminution of the emission of carbon particles and therefore a comparative increase of the availability of the public good of clean air. Notwithstanding the formality of an environmental law, the transitory, though substantive, effect of clean air would not be brought about in the absence of its jurisdiction – as Oakeshott puts this purposive dimension, it is 'designed to' do so (Oakeshott, 1990 [1975]: 305, emphasis added).

This twofold reading of *respublica* shows once more that he is misinterpreted if viewed as a critic of purposiveness per se, but not merely because Oakeshott's critique is directed towards the attribution of a superordinate public interest to the state. Oakeshott instead acknowledges and accommodates this purposive dimension of *respublica* as part of nomocracy's unavoidable qualification, and carefully distinguishes this dimension from the authoritative status and moral character of its civil laws. In this light, Oakeshott's account of public goods belies Parekh's early claim that '[Oakeshott] is right to stress that [nomocracy] is constituted in terms of authority not purpose; but wrong not to appreciate that its conduct is necessarily purposive in nature' (Parekh, 1979: 504, emphasis in original). Similarly, while this instrumental dimension of *respublica* remains far removed from the rationalist style of politics he criticized, we fail to properly apprehend it by merely calling these by-products 'incidental' (Kiss, 2015: 75–76).

To see how public goods epitomize the state's self-division between nomocracy and teleocracy, consider once more the example of environmental politics. As the disastrous effects of the plausible ethics of productivity upon the public good of a clean environment accumulate, it may be tempting to prefer a teleocratic rather than nomocratic conception of the state and international law. For instance, the Paris Agreement on Climate Change, which seeks to unite all states around the 'common cause' or superordinate global purpose of 'sustainability', illustrates the urgency many attach to goal-oriented government. Let teleocracy 'sever the link between belief and conduct', it may be said, if we are to avoid doom. Should it not be feared, the objection goes, that translating the goal of the Paris Agreement (of no more than a two degrees Celsius increase in global temperature compared to pre-industrial levels) into merely 'adverbial' environmental laws across overlapping jurisdictions will fail to avert catastrophe?

Two responses are in order here. First, it remains consistent with Oakeshott's account to conjecture that 'runaway climate change' constitutes at least an equally existential threat to the preservation of a civil order when compared to war or other emergencies. Such a threat thus warrants a temporary 'desuetude' of nomocracy in favour of teleocracy. It would remind us again that 'necessity knows no law' (Oakeshott, 1991 [1983]: 177–178). Nevertheless, there is no reason to accept the tacit assumption in this scenario that the compulsion and coordination of civil laws have less bite compared to goal-oriented policy and instrumental law. In this respect, Oakeshott's longstanding critique of rationalism casts a welcome, sceptical light on the fortunes of social and ecological engineering under the direction of managerial governments.

Second, if circumstances are imagined less dire, Oakeshott's image of a concrete public good like clean air as an enabling condition which, though not exclusively formal, allows us to cultivate our individuality, is indeed much more attractive compared to the total mobilization required for the achievement of *the* public good of sustainability in its abridged sense. In any case, the provision of this public good, like so many others, perpetuates the tension between nomocracy and teleocracy, and epitomizes how, as polar conceptions of the state, they are 'continuously exposed to modification in intercourse with the other' (Oakeshott, 1990 [1975]: 326). To fully appreciate this irreconcilability, the third type of public goods which Oakeshott distinguishes must be considered, the provision of which is most likely to push the office of government in a teleocratic direction.

### *Lordly policies*

Alongside the formal system of *respublica* and those public goods provided as by-products of the operation of its civil laws, Oakeshott adds another type of 'common substantive satisfactions', which result from the design and execution of policies aided by instrumental laws. It is decisive that for the provision of this type of public good the executive branch of government itself engages in substantive performances which are not internal to (that is, in a narrow sense, directly

necessary conditions for) maintaining *respublica* as a formal system of law. By contrast, even if the first two types of public goods cannot be brought about in default of the formal conditions imposed by civil laws, their pursuit and enjoyment still reside in, and coincide with, the self-chosen transactions of variously associated individuals. Recall here that public relationships of civility meet, according to Oakeshott, with common and private enterprise relationships 'in every substantive engagement' (Oakeshott, 1990 [1975]: 146). In short, instead of providing public goods by qualifying whatever subjects may be doing, for this third type government takes the doing upon itself (or substantively orders third parties to do so).<sup>15</sup>

Oakeshott considers the provision of this type of public good as a clear instance of nomocracy's qualification by teleocracy, since:

to pursue 'policy' and to exercise authority to make . . . subventions imposes upon the associates the *persona* of members of a co-operative undertaking, upon a state the character of an enterprise association and upon government the character of estate management. (Oakeshott, 1991 [1983]: 176)

The provision of public goods by means of policy most clearly exemplifies, for Oakeshott, the impossibility of a complete disjunction between *regnum* and *dominium*. But this impossibility does not warrant a collapse of the distinction between these two understandings of the office of government. Rather, they serve as reference points to negotiate the character and scope of public goods. And while Oakeshott calls for exactness, they must remain indeterminate as these negotiations unfold. Indeed, although on a nomocratic understanding 'rule "signified", not an inheritance, nor a property, nor a usufruct but an office', it can never fully achieve its 'design to remove from that office its surviving discretionary, prerogative, proprietary, patronal, benefactor, managerial engagements and to recognize it as a sovereign authority' (Oakeshott, 1991 [1983]: 165).

Oakeshott accounts for this indeterminate character and scope of public goods by distinguishing the intellectual protagonists of the teleocratic state (championed by Bacon) from the classical economists. Whereas the teleocrats consider the state as 'itself a corporate industrial enterprise' guided by the superordinate public good of productivity, the classical economists, by contrast, lean more towards a nomocratic conception: for the former the state *is* an economy, while for the latter it only *has* an economy (Oakeshott, 1990 [1975]: 288). Among the theorems of political economy put forth by the classical economists stands the insight that economically productive transactions are not self-sustaining and therefore require, on Oakeshott's interpretation, 'defence against external enemies and against internal corruptions, and it is the office of civil authority to provide this defence' (Oakeshott, 1990 [1975]: 294). But the classical economists did not reduce public goods to the 'order' which civil laws provide, despite their critique of managerial governments convinced of their epistemic ability to centrally coordinate and direct economic transactions. As Oakeshott writes approvingly, to resist this reduction,



which would assume a much too limited reality, the classical economists allow for nomocracy's unavoidable qualification by accommodating public goods which result from the design and execution of policies:

Nevertheless, they thought that there was a place for the exercise of 'lordship' of a sort, as well as rulership, by the governments of states. . . . [It] is a government, not distributing benefits, but providing satisfactions for wants which all, or nearly all, may be supposed to have in common and which would not otherwise be satisfied or not so easily satisfied: what the Romans call *res publicae*. (Oakeshott, 1990 [1975]: 295)

Oakeshott seems to concur here with the standard economic definition of public goods, according to which government must provide those goods which markets fail to supply because they exhibit non-excludability and non-rivalry in consumption (e.g. Ostrom, 1990). But the appearance is illusive. The economic definition identifies goods as being public on account of the inherent properties of non-excludability and non-rivalry (see also Malkin and Wildavsky, 1991). Oakeshott, by contrast, does not categorize goods as being public independent from, and anterior to, political and legal contestation in which they are rendered so. He carefully acknowledges the designation of things or goods in the world of *pragmata* as 'public' to be a matter of *supposition* and judgment, which is consistent with his claim that political economy is concerned with politics rather than economics.

From this perspective, Oakeshott is not held captive by the unduly restrictive scope of provision which results from the exacting criteria of non-rivalry and non-excludability. Instead, the underlying logic of Oakeshott's account is that just as there can be no premeditated restriction of the regulatory or qualifying scope of *respublica*, so there can be none for the provision of lordly *res publicae*. The point is not a matter of degree but of kind:

[The] belief in *nomocracy* is not even remotely connected with the belief that the proper business of government is to do as little as it can possibly manage to do – a belief which is sometimes read into the expression *laissez-faire* and which belongs only to the lunatic fringe of modern European political thought. The difference between *telocracy* and *nomocracy* is a difference, not between two different amounts of activity, but between two different kinds of activity. (Oakeshott, 2006: 488)

It follows that there can be no obstacle to extrapolate numerous public goods that result from managerial policies – from, say, sewage systems, schools and bridges, to hospitals, pension schemes and public parks. To remain consistent with Oakeshott's account of political economy, the only stricture placed on this extrapolation is, again, that these public goods must qualify rather than corrupt nomocracy by teleocracy.

How to interpret this stricture is, of course, itself a political question which cannot be determined according to a premeditated formula. The distinction between lordly public goods which unavoidably qualify and those which corrupt

nomocracy is continuously settled, and unsettled, in a contestatory politics that is casuistic and contextual. However, while such qualifications need not conform to any ring-fenced definition (e.g. non-excludability and non-rivalry), the fact that there is a plurality of public goods up for contestation does not imply that some cannot, or should not, have priority over others.<sup>16</sup> For instance, if calls for lordly public goods assume extreme proportions, such that they can only be provided at the expense of maintaining *respublica* itself (and thus undermine the free and equal standing of all), such calls must be recognized as corruptions rather than qualifications.

Finally, it may be objected that while Oakeshott's accommodation of this type of public good is in principle compatible with the scope of provision in, say, extensive welfare states, his distinction between 'providing satisfactions' and 'receiving benefits' belies this compatibility. At first sight this critique seems warranted, to the extent that it is characteristic of welfare states to also distribute targeted benefits which serve particular interests (e.g. unemployment, disabilities, parental leave) rather than to restrict provision to public goods which all enjoy in common. Upon closer inspection, however, this critique has little force. First, benefits need not be particularistic but may be universal: from old age pensions in contemporary welfare states (since nearly everyone may be presumed to grow old) to a universal basic income in a radicalized welfare state. Second, the 'judiciousness' which Oakeshott calls for in pursuing lordly policies (Oakeshott, 1990 [1975]: 304–305) leaves ample room to include targeted benefits like parental leave, and not merely a social minimum for the poor. Third, many particularistic welfare institutions are properly understood as composing a complex overall insurance scheme which, in its composite character, does constitute a public good for all subjects.<sup>17</sup> Finally, Oakeshott's critique of receiving benefits helps to push back against the view of citizens as mindless recipients of a distributive machine at the disposal of a managerial government.<sup>18</sup>

## Conclusion

The interpretation offered here suggests that the provision of public goods far from undermines 'the central categories of Oakeshott's political thought' (Norris, 2017: 842). Instead, Oakeshott accommodates these goods and the contestatory politics to which they give rise. To argue that public goods undermine Oakeshott's thought is plausible only if one expects a dialectical resolution, rather than a historical diagnosis, of the state's self-division. This critique implicitly conceives of him as a problem-solver which, of course, is far removed from his self-understanding as a political theorist (Oakeshott, 1990 [1975]: 26).

Relatedly, Honig's (2009: 165) critique that 'Oakeshott too [gives] a purified account of what the rule of law is' fails to acknowledge his own stress on nomocracy's unavoidable qualification. What if Honig's (2017) own laudable proposal for an agonistic politics of public goods (see also Plotica, 2015) turns out to presuppose, if not to require, the binary oppositions which she criticizes as its

obstacle? Instead of asking with Honig – ‘what is lost by way of such polarization?’ – our reading suggests what is gained by the irreconcilable opposition in which such a politics plays out: precisely ‘the fecundity of undecidability’ that Honig (2007: 24) theorizes.<sup>19</sup>

Of course, this interpretation must confront Oakeshott’s repeated criticism of managerial public goods provision (e.g. Oakeshott, 1990 [1975]: 267). In an unmistakably polemical tone, he argues that the corruption of nomocracy by teleocracy is often accompanied by euphemistic usages of the adjective ‘public’, as teleocratic leaders tirelessly extended and intensified the reach of their managerial activities:

[the] entire project obfuscated by calling it ‘public’ (instead of recognizing it as ‘lordly’), by speaking of it as a ‘social’ engagement, and in the Continental convention in which the word ‘state’ came to mean the managerial apparatus itself and ceased to stand for an association of human beings. (Oakeshott, 1990 [1975]: 301)

And one of the bluntest instances of his polemics against compulsory purposiveness appears when Oakeshott argues that the ‘profound feeling of guilt’, which should haunt all teleocrats, is:

[customarily] assuaged by self-contradiction. The sayings of the teleocrats rarely fail to make a bow in the opposite direction: ‘we desire a fully planned economy, the public ownership of all the means of production, secure employment, greater and better social services, a single compulsory educational system, and all within the framework of a free society’. (Oakeshott, 1990 [1975]: 321–322)

It is unfortunate that these overcharged statements have obscured Oakeshott’s much more fundamental acknowledgment and threefold accommodation of public goods provision by government which this article has reconstructed from his own writings. However, while his polemics have done a disservice to the intelligibility of his account of political economy, it must be remembered that they are directed against the underestimation, if not outright disregard, of managerial governments vis-a-vis the endless plurality of self-chosen pursuits on markets or in the commons. So understood, Oakeshott does not only provide a sobering perspective on the alleged self-sustainability of market mediation or commoning, but also offers an attractive vision of how to accommodate self-chosen projects under the primacy of a just public order.

It is fair to say that in coming to terms with what Habermas felicitously calls the welfare state’s ‘dialectic of empowerment and tutelage’ (Habermas, 1996: 433), Oakeshott (much like Foucault) exaggerates the element of tutelage, while insufficiently crediting its empowering dimension. But if the welfare state, with its extensive provision of public goods and social services, is taken as teleocracy’s contemporary historical manifestation, this verdict also loses much of its force. After all, Oakeshott himself concludes that nomocracy and its counterpart are best understood as ‘sweet enemies’ (Oakeshott, 1990 [1975]: 326). Taking his views on

public goods as the appropriate hermeneutical thread through which to reconstruct his account of political economy, this article has argued that their provision is consistent with, and may be extrapolated from, Oakeshott's own theoretical edifice.

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### Notes

1. Segal (2014) considers the congeniality of a universal basic income to Oakeshott's praise of individuality. The question whether Oakeshott's notion of civil association can accommodate his views on (liberal) education without assuming enterprise features forms an important exception, to which we will return below. See Norris (2017) and McCabe (2000).
2. I borrow the capacious term 'infrastructure' from Honig (2017).
3. Oakeshott finds the material/ideational or physical/mental distinction misleading, favouring instead different 'orders of inquiry' for 'exhibitions of intelligence' and natural processes. See Norris (2017: 828).
4. Oakeshott estimates that Arendt presses the distinction too hard when she asserts that 'action [is] the only activity that goes on directly between men without the intermediary of things or [matter]'. Arendt is more enlightening when she claims that words and deeds are always 'about an objective worldly reality' yet spoken 'to one another' (Arendt, 1958: 7, 183, emphasis in original).
5. Franco's charge is akin to Young's (1990) critique of the predominance of the 'distributive paradigm' in various theories of justice.
6. This misunderstanding is evident in Gray's reading, who argues that '[if] one had to express the spirit of Oakeshott's thought in a single phrase, one might say that it is a *critique of purposefulness*' (Gray, 1996: 46, emphasis in original).

7. For an illuminating analysis of Oakeshott's relationship to Tönnies, see Podoksik (2008).
8. The unstable distinction between public goods that are internal to the preservation of civil association and those that are not, or only indirectly so, is mirrored in France by the designation of 'regal ministries' – the armed forces, police, judicial and fiscal authorities, as well as the diplomatic service – the responsibility for which, unlike other public goods, cannot be delegated to third parties in civil society or to markets.
9. Take, for instance, the justification for compulsory education provided on the website of the Dutch government: 'A degree offers more chances for a job. Therefore, young people from five years old must attend school, until they have a diploma (start qualification) or become 18 years old'. As regards the 'qualification obligation', the government again states that 'it must increase the chances of young people on the labour market' (Rijksoverheid, n.d., author's translation). One does not find any remarks about the intrinsic moral worth of education, or about it being instrumental to other purposes as well, e.g. social inclusion.
10. Following Henry Simmons, one of the founders of the Chicago School of Economics, Oakeshott concurs here with the problematic assumption that public goods are a 'charge', failing to stress that they are also one of productivity's own conditions of possibility.
11. Is Oakeshott's 'line between procedure and substance', as Galston (2012: 238) claims, 'impossible to maintain'? He argues forcefully against the elusiveness of 'adverbial' proceduralism, objecting that it led Oakeshott 'to cross the line separating philosophical radicalism from outright implausibility. Murder is a noun, not an adverb; peace is not only a condition but also a goal of action. Law prohibits as well as enables, political deliberation always has an end in view. It is not unreasonable to ask a theory so explicitly rooted in concrete practice to attend to these simple truths' (Galston, 2012: 242). Galston's critique overlooks Oakeshott's explicit accommodation of the purposive and substantive dimension of civil laws (e.g. Oakeshott, 1990 [1975]: 169, 305), to which I return below.
12. I thank an anonymous reviewer for aptly pointing out that Oakeshott fails to credit Kant's (1996 [1797]: 109) earlier arguments for (proto-)welfare arrangements as part of the office of government.
13. Norris (2017: 841–842, emphasis in original) argues that the 'comparison between state-sponsored or -supported education and a judicial system and police force is misleading: the latter *prevent violations* of the formal rules of civil association, they do not *provide goods* to particular members of that association'. But this negative interpretation of the operation of *respublica* is too restrictive: an environmental law at once prevents the public bad of pollution and positively provides the public good of clean air.
14. Oakeshott vindicates this interpretation at several points in his earlier writings: e.g. in his discussion of the Factory Acts and Truck Acts as examples of the rule of law in the British context, as well as his call for 'a thorough investigation of the morals and economics of bequest and inheritance' (Oakeshott, 2011: 143, 146, 227).
15. For instance, to reduce the public bad of inequality of wealth, the employer needs to pay and the employee needs to receive a minimum wage; whereas to improve the public good of transportation infrastructure, officials of government need to construct bridges or railroads, or substantively order a contracting party to do so. Thus, we should note

that that the distinction between providing (or at least indirectly ensuring adequate provision, e.g. through funding) and enjoying public goods is especially salient for the third type of public goods.

16. I thank Paul Nieuwenburg and an anonymous reviewer for encouraging me to clarify this point.
17. Concrete enjoyments of public goods always serve particular interests, and this may result from both chance and choice: one can use bicycle lanes rather than highways while enjoying infrastructure, or one can receive treatment for prostate rather than breast cancer while relying on healthcare.
18. For similar pushback, see Nozick (1974), but also Forst (2014) and Young (1990).
19. For an agonistic reading of Oakeshott, which does not render it incompatible with a properly conversational tone, see Plotica (2012).

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