

Justification, coercion, and the place of public reason

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Abstract Public reason accounts commonly claim that exercises of coercive political power must be justified by appeal to reasons accessible to all citizens. Such accounts are vulnerable to the objection that they cannot legitimate coercion to protect basic liberal rights against infringement by deeply illiberal people. This paper first elaborates the distinctive interpersonal conception of justification in public reason accounts in contrast to impersonal forms of justification. I then detail a core dissenter-based objection to public reason based on a worrisome example advanced by Jonathan Quong. While we may be able to impersonally justify coercing the illiberal dissenter, public reason liberals must explain how we can interpersonally justify such coercion—meaning justify given the perspective of the dissenter. The two prominent strategies for dealing with dissenters involve *idealization of reasoning* and *requiring liberal values*; I show that these strategies do not succeed in a way compatible with the public reason project. That is, the prominent strategies leave public reason theorists with a dilemma between denying the legitimacy of using coercion to protect core freedoms against deeply illiberal people or abandoning the fundamental public reason project. I conclude by proposing a different answer to public reason liberalism’s fundamental question: what requires justification? On my account, it is not that coercion requires interpersonal justification for its permissibility, but that such justification is necessary as a constitutive element of a kind of moral community.

Keywords Public reason · Political liberalism · Justification · Gerald Gaus · Moral community · Reactive attitudes

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“*The answer is.... You shoot him.*” – Burton Dreben (2003, p. 329)

Critics barrage public reason liberals with objections based on the threat of evil and illiberal dissenters. Dreben (2003, p. 329) reported that people often asked him, as a public reason liberal, “What do you say to an Adolf Hitler?” Public reason accounts claim that political institutions must be justified by appeal to reasons accessible to the public—all citizens.¹ Someone like Hitler, however, rejects liberalism’s foundational values, so liberal requirements cannot pass a public reason test that includes Hitler. Since we know people like Hitler exist, the objection seems decisive: either public reason liberals fail to show that liberal institutions are legitimate, or else whatever legitimacy they possess does not extend to the terrible dissenter.² Yet it seems that public reason liberals must explain the legitimacy of liberal institutions over terrible dissenters, for as Raz (1998, p. 40) argues, principled illiberals, “such as Nazis and religious extremists, are an important part of the reason why the rest of us think that governments have authority. They are the people we need a government to control.”

The illiberal dissenter objection is serious because it strikes at the conception of justification at the heart of the public reason project.³ This article argues that answering the objection requires fundamentally rethinking the public reason project. After highlighting the distinctive interpersonal conception of justification in public reason accounts, I will detail a core dissenter-based objection to public reason based on a worrisome example advanced by Jonathan Quong. The two prominent strategies for dealing with dissenters involve *idealization of reasoning* and *requiring liberal values*; I show that these strategies do not succeed in a way compatible with the public reason project. That is, the prominent strategies leave public reason theorists with a dilemma between denying the legitimacy of using coercion to protect core freedoms against deeply illiberal people or abandoning the fundamental public reason project. I conclude by proposing a different answer to public reason liberalism’s fundamental question: what requires justification?

1 Justification and the dissenter

The orthodox public reason answer to the fundamental question is that laws backed by coercive political power require justification in accordance with public reason.⁴ Although details differ, all public reason liberals commit to a mode of justification internal to, or starting from, the beliefs and values of citizens. Because the public

¹ Paradigmatic public reason accounts are Gaus (1996, 2011) and Rawls (2005).

² Cf. Gaus (1990, p. 336, 1996, p. 160).

³ For objections of this form, see Abbey (2007), Mack (2011), Okin (2005), Quong (2012, 2013), Raz (1998), Sleat (2013), Taylor (2011, chap. 8). Gaus (2013) provides a recent reply.

⁴ Eberle (2002, p. 54), Estlund (2008, p. 41), Larmore (2013, p. 293), Macedo (2000, pp. 17, 35), Quong (2010, pp. 233–250), Rawls (2001, pp. 18–19, 2005, pp. 12, 86, 136), Vallier and D’Agostino (1996), and even Neufeld and Van Schoelandt (2014).

reason liberal also holds that these beliefs and values differ among individuals, for one person to justify a principle or institution requires that she engage the perspectives of others. Such justification is directed to others; I shall call it *interpersonal justification*.⁵ This is to be contrasted with *impersonal justification*, which focuses on reasoning directly about the reasons there are, rather than the beliefs, values and commitments that are somehow implicit in the diverse views of actual people.⁶ Though impersonal justification is not focused on the self-exploration of the individual theorist's own commitments—the theorist is reasoning about what reasons there are—such reasoning must always be undertaken from the first-personal perspective.⁷ It is me, the theorist, reasoning about what reasons there are. Wall (2010, p. 136ff), a defender of such impersonalist justification, argues that public reason accounts fail to adequately address this crucial first-personal aspect of moral deliberations. To employ an example of Wall's: when Jill is seeking to decide whether or not euthenasia is morally wrong, her deliberations are about what *she*, from her perspective, should conclude about the reasons that there are regarding euthenasia. According to Wall (2010, p. 139), she should not be swayed in her belief, or her willingness to coercively enforce her belief, should she discover that Jack “cannot rationally accept it.” Impersonal justification appeals to the true or genuine reasons that apply to the subjects (or what is thought true). There is no direct concern for what the subject's own actual views are, particularly as real people may be confused or corrupt.⁸

In contrast, interpersonal justification is justification *to* someone. According to Quong, “whether or not some principle can be justified to a person, Peter, depends on what else Peter is justified in believing.” (2010, p. 141; cf. Rawls 1999, p. 508) This leaves the possibility that some proposition, A, “might well be true, but the grounds of A's truth are not accessible to Peter...” and so cannot be justified *to him* (2010, p. 141).⁹ Though Quong only mentions the relevance of beliefs, justifying to someone also depends upon her values, or what Bernard Williams (1981, p. 105) calls her subjective motivational set, constituted by desires, as well as “dispositions

⁵ Interpersonal justification may be called “justificatory internalism,” as by Gaus (1996, chap. 3), which is related to reasons internalism (à la Bernard Williams) in regarding the agent's psychological states, but distinct from Quong's (2010, pp. 5–7, and chap. 5) conception of justification internal to liberalism.

⁶ Steven Wall (2002, p. 386) refers to this as “correctness-based justification.”

⁷ David Enoch, in defending impersonalist justification against public reason theorists, emphasizes this point, though he admits that it is “hard to distinguish, from the first-person perspective, between *that-p* and *that-I-believe-p*.” According to Enoch (2013), when you coerce based on impersonalist justification, “[y]our reason for action... is *that-p*, not *that-you-believe-that-p*.” Against this view, see Locke (2010, para 1), Hobbes (1994, chap. V.3), Rawls (2005, p. 61), and Van Schoelandt and Gaus (forthcoming, sect. 2.1).

⁸ To be sure, externalists might discuss collective deliberation as a discovery procedure to help in arriving at the independently right answer. In addition, externalists are apt to pragmatically consider the actual views of people.

⁹ Quong (2010, p. 142) elaborates: “The mere fact that there exists a valid justification based on true premises for some proposition Q does not mean that we have justified Q to Peter,” for the latter justification depends “on Peter's wider epistemic situation.”

of evaluation, patterns of emotional reaction, personal loyalties, and various projects... embodying commitments of the agent.”¹⁰ The agent’s values help ground what reasons she has in this internal sense. For interpersonal justification, we say that an agent has a reason to endorse a law when such endorsement relevantly follows from her beliefs and values. An institution cannot be justified to someone if the justification depends upon values she finds alien. Suppose Abraham tries to justify legally requiring traditional dress, citing that modesty requires compliance with such a code. Elvira may agree that modesty favors the law, yet as someone who does not value modesty the imposition is not justified to her. As she sees it, the law would be imposing Abraham’s values on her. To show that a law is justified to an agent, we must show that her own beliefs and values should lead her to endorse the law.

Impersonalist critics of public reason argue that absurd results follow from a requirement that all citizens can access considerations to endorse our laws. These critics insist that it is not required that citizens be able to reason themselves into endorsing the law, but only that there *be* sufficient reason to do so, or that the law is justified by the truth or rightness of the values supporting it. Though we can discuss the problem of dissenters abstractly, an example will help. Consider Quong’s case of Carl who, in terms of interpersonal justification, has sufficient reason to believe he is obligated to kill infidels (2013).¹¹ Carl does not have isolated murderous commitments, but instead “adheres to a religiously-inspired form of fascism which denies that infidels are free and equal, and maybe Carl is justified in adhering to this doctrine given his unusually intolerant upbringing and social environment, and the large epistemic costs involved in reconsidering many of his most strongly held beliefs.” (Quong 2013; cf. Taylor 2011, p. 249) These beliefs and deeply held religious commitments imply that he lacks access to sufficient reasons to endorse even basic liberal laws, like restrictions on his religious murders.

Public reason theorists have a serious problem if they conclude that true liberals cannot prevent Carl from killing infidels. Carl lacks sufficient reason to endorse the laws that would stop him. It thus seems, critics charge, that public reason requires allowing his murder and mayhem (Mack 2011; Raz 1998). Surely that would be a *reductio ad absurdum* of the public reason project. After all, impersonalists like Raz find it easy to explain the legitimacy of stopping Carl—simply appeal to the reasons that, in fact, apply to Carl, whether he knows it or not.¹² The relevant reasons may concern flourishing, but they may also concern facts about justice, Lockean rights, or whatever the real reasons may be. Before declaring the battle over, we must first consider two important replies from the public reason theorists.

¹⁰ On the relevance of each subject’s point of view and interests, see Nagel (1991, p. 35). Rawls (2005, p. 390), tellingly, refers to a subject’s “deepest religious and philosophical commitments,” rather than beliefs.

¹¹ Cf. Quong’s (2012, p. 55) related, though less pernicious, case of Anna.

¹² Raz (1999, p. 17) writes: “reasons are used to guide behaviour, and people are to be guided by what is the case, not by what they believe to be the case.”

2 The limits of idealization

Public reason liberals focus on what citizens have reason to endorse, not what they in fact endorse. Sometimes agents fail to actually endorse what they have reason to either because of errors in reasoning, biases or poor information. Interpersonal justification does not require actual endorsement, but merely that such endorsement follows from the beliefs and commitments of the subject (Eberle 2002, pp. 198–201; Gaus 1996, pp. 130–131). This allows public reason liberals to idealize the subject, or model what she would endorse after reasoning well about the matter. What an idealized version of the agent recognizes establishes what reasons she has. Consequently, liberal protections are justified to Carl if his suitably idealized counterpart would endorse them. Suppose Carl was not thinking clearly about the protections the law provides him, or perhaps closer consideration of the purportedly infidel-killing passage would lead him to a different interpretation. We should therefore consider idealization's potential to bring Carl into the liberal fold.

An agent can be either moderately or radically idealized. I will begin by considering the moderate idealization to which Gerald Gaus appeals in addressing some illiberal dissenters. He defends a form of moderate idealization in which we should consider the reasons the agent would recognize after a "respectable amount" of reasoning. Such reasoning "must be accessible" to the agent in question, *qua* a rational agent living in a world "in which cognitive activity has significant costs." (Gaus 2011, p. 253) In this case, rationality does not require the agent to "keep on with the quest to discover less and less accessible reasons." (Gaus 2011, p. 253) Interpersonal justification, on Gaus's view, is achieved when agents "have accessible undefeated reasons to affirm" the law in question (2011, p. 255).

Idealization should help answer some dissenters, as we can see in Gaus's (1990, pp. 292–293) application of idealization to Nazis. Nazis made grossly inconsistent attributions to Jews, holding them morally accountable for supposed crimes against Germany while denouncing them as sub-human. They also justified their racist beliefs by appeal to manifestly erroneous science. Once we moderately idealize their reasoning to see what they have reason to endorse, we may conclude that they in fact have reason to endorse liberal protections for all people, including the people they want to kill when not idealized. Even Nazis may recognize on reflection that being open to moral condemnation requires a human standing, so the idealized members may recognize that Jews cannot be treated as subhuman, and from here that their basic rights must be respected. Yet for this response to succeed, Nazis must be rationally unable to render their illiberal commitments consistent in light of the new considerations. It is implausible that the moderate idealization favored by Gaus will always succeed in showing that each Nazi has reason to endorse liberalism. Moderate additions of better scientific data or further moral reasoning may result in minor changes essentially conserving the original view. The full range of corrections necessary to bring someone from a complex ideology like Nazism to liberalism likely requires idealization beyond that allowed by the moderate view.

To consider the more general case, while moderately idealizing may help with some dissenters, we cannot be confident that such idealization will neutralize every troubling case. Dissenters often have a variety of intellectual resources available to

interpret new information compatible with their views, and may correct many errors of reasoning in ways that preserve reprehensible commitments, say by giving up the various beliefs that conflict with those commitments, and the illiberal conclusions may be over-determined, arising from diverse elements of their views. Moreover, much idealizing will still leave the agent under burdens of judgment, weighing diverse values and interpreting in light of their complete life experience.¹³ The dissenter can find many ways to respond to challenges to his atrocious commitments, even if it involves a few theoretic epicycles, or even a few contradictions.¹⁴ At this point, the obvious thing to do is idealize further.

Radical idealization, according to Gaus (2011, p. 236; note excluded), considers what the agent would endorse as a fully rational agent that “follows impeccable epistemic norms... changes his beliefs by making all the inferences from his current set of fully affirmed beliefs, and who employs the fullest possible information set.”¹⁵ Since we are justifying *to* Carl, we begin with his actual beliefs and values, and then consider how those would change through reasoning and investigation. The difference from moderate idealization is that radical idealization goes beyond a “respectable amount of reasoning,” even beyond the reasoning any human can be expected to carry out. This reasoning process could, eventually, lead Carl to fundamentally change his world-view. A fully rational Carl may not only have a different interpretation of his religion, but an entirely different religious view, perhaps convinced by an exhaustive consideration of historic evidence and philosophic arguments about the existence and nature of God. It is in no way obvious, however, why we should be confident that fully rational Carl would settle on liberal views. As confident as we liberals may be in our liberal conclusions, we cannot know from our very non-ideal reasoning not only that those conclusions would remain at the end of our fully rational deliberation, but also that they would be the result of such deliberation from any starting set of commitments. Where one ends in deliberations is likely influenced by where one begins (in Bayesian terms, by one’s priors), as well as influenced by the order in which diverse considerations and information are processed (Gaus 2011, pp. 239–243).

To be sure, there is no demonstration that radical idealization would not liberalize everyone. Perhaps a Kantian transcendental deduction would show that everyone is irrevocably committed to liberalism merely by seeing themselves as agents or some similar argument (e.g., Gewirth 1980, chaps. 2, 4). Without such a proof on hand, however, we should remain skeptical that radical idealization would vindicate liberalism for the dissenters, or necessarily any substantive political conclusion. In any event, public reason theorists should reject radical idealization. Such idealization would produce, unsurprisingly, a perspective diverging radically from the agent’s actual perspective, perhaps rejecting her actual deepest

¹³ On the burdens of judgment, see Rawls (2005, p. 56).

¹⁴ Agents may also maintain their commitments in light of objections they cannot answer if they have reason to believe that relevant authorities in their tradition could answer the objection.

¹⁵ Gaus rejects such idealizations as ultimately incoherent.

commitments.¹⁶ Justifications from this perspective would be alien to the actual agent, and it is strange to claim a law is justified *to* an agent when the justification appeals not only to evidence and values she lacks, but to reasoning she, with her human cognitive limitations, could never complete.¹⁷

3 Let's be reasonable

Quong (2013) believes moderate idealization accounts, such as Gaus's, fail because their premises are too normatively sparse or modest to yield robust normative principles showing the error of the dissenter. He thus insists that justification must begin with a commitment to certain values ensuring that it will produce sufficiently liberal principles. Quong's public reason account thus limits the justificatory public to "reasonable" people, *defined* as people both accepting and giving deliberative priority to the liberal values of freedom, equality, and fairness (2010, p. 291, 2012, p. 54). Call these the "liberal values." Only people endorsing, with deliberative priority, liberal values are owed a justification, and it is not hard to justify liberal laws to them. Quong thus avoids the problem of illiberal dissenters undermining the legitimacy of liberal laws, for Quong does not think that justification is owed to such people. Or, more precisely, justification does not need to be provided to unreasonable dissenters based on their own beliefs and values, but can instead be given in terms of the liberal values even if the dissenter neither endorses those values nor would endorse them after idealized reasoning (Quong 2010, p. 313).¹⁸

It is essential to Quong's account that all reasonable people not only endorse the liberal values, but also give those values deliberative priority over all other values. The contrast here is with what Quong calls an "All Things Considered Reasoner": someone endorsing the liberal values, but weighing them against other values. Such reasoners may accept a *pro tanto* argument from the liberal values to liberal principles, but think those principles can be defeated in light of their comprehensive values.¹⁹ As Quong argues, inclusion of All Things Considered Reasoners makes a public reason account vulnerable to illiberal dissenters. To see this, consider Carl* who accepts the liberal values, but balances them against his religious values. On balance, Carl* still thinks he should kill infidels, or otherwise violate basic liberal

¹⁶ This starkly contrasts with Rawls (2005, p. 390) aim for justifying to citizens without "criticizing their deepest religious and philosophic commitments."

¹⁷ Weithman connects "intellectually alien" justification to subjection (2002, pp. 201–202). Vallier (2014, chap. 5) and Wolterstorff (2007, p. 152f.) raise related worries in terms of violation of integrity.

¹⁸ Quong's argument shows why Rawls's own account cannot answer the dissenter-based objection, and Rawls never explicitly addresses this form of argument, so I do not discuss Rawls's own account in detail.

¹⁹ Rawls (2005, p. 386) holds that the liberal values ground a "freestanding argument" that is only "*pro tanto*, it may be overridden by citizens' comprehensive doctrines once all values are tallied up." This overriding is possible because, on Rawls's (2005, p. 386) account, "it is left to each citizen, individually or in association with others, to say how the claims of political justice are to be ordered, or weighed, against nonpolitical values." Vallier (forthcoming, sec. V) also defends permitting such balancing against the public values.

protections.²⁰ Put generally, we cannot include in the justificatory public those who consider their other values in the justificatory public and “also guarantee that the content of the theory will remain suitably liberal.” (Quong 2012, p. 55; emphasis removed)²¹ Quong (2005, p. 304, 2010, p. 37 cf. 146) excludes such people, for inclusion makes “justice hostage to... unjust views”—or, put another way, hostage to the views of the “many ignorant, immoral, self-obsessed, or otherwise troublesome people...”²² Real people, after all, “might hold *mistaken beliefs about... normative matters.*” (Quong 2010, p. 146) Only by restricting justification to those giving priority to the public values can one guarantee justification for the sorts of liberal laws those values support.²³ Since an appeal to reasonableness can thus answer dissenter-based objections only if the liberal values are given priority, Quong requires that priority (2012, p. 52).

Without the need to vindicate laws in the light of diverse commitments, justification for Quong not only begins with the liberal values, but ends there too. Notice, however, that doing so effectively adopts an impersonalist position *vis-à-vis* those deemed unreasonable. Let me explain. Quong (2012, p. 53) makes it clear that the liberal values are “not themselves subject to any test of public [or interpersonal] justification, nor do we check to see if these values can be the subject of an overlapping consensus amongst *real* citizens here and now.”²⁴ So Quong is not, for instance, appealing to these values as justificatory for us because these values are implicit in our liberal-democratic culture or the like.²⁵ Since the liberal values provide the basis for justification independent of the views of other people, they must be discovered through some form of first-personal reasoning, as the “correct” values.²⁶ That is, they are discovered and verified like any other impersonal justification. We must coerce dissenters in accordance with our own commitments, according to Quong (2010, p. 314), “because to do otherwise would be to ignore

²⁰ Quong’s gives the example of Anna, who balances the liberal values against religious concerns, and on balance she rejects laws prohibiting employment discrimination (2010, p. 169, 2012, p. 55; cf. related cases at 58). Okin (2005, p. 242) argues against including in the justificatory public members of faiths that exclude women from the priesthood, undermining the opportunities and self-respect of women. Quong (2005, pp. 312–313), however, writes that it would be reasonable to *permit or prohibit* gender discrimination in the Catholic priesthood.

²¹ Gaus (2003, p. 138) raises doubts about tailoring a view of justification to secure particular outcomes.

²² Quong (2010, pp. 162, 166, 190, 216 and 233) makes the same claim in terms of “unjust” people, sometimes with accomplices.

²³ The liberal values must be seen as wholly sufficient for reasoning about political justice. If reasonable people disagree about what *other* values are relevant, they would still require Rawls’s overlapping consensus test.

²⁴ Quong’s test begins “with certain fairly substantive commitments” instead of “a commitment to public justification...” (2012, p. 56).

²⁵ Rawls grounds the values in democratic culture (2001, p. 15). Taylor criticizes this view for the implication that liberalism is only contingently justified and may not be justified at all for those in undemocratic cultures (2011, pp. 238, 298).

²⁶ Quong (2010, p. 2) claims we “correctly think of ourselves as free and equal from the moral point of view.” The first-personal nature of the reasoning can also be seen in Quong’s discussion of reflective equilibrium (2010, pp. 155–156). In related vein, Blain Neufeld argues that political liberalism’s foundation principle “should be affirmed as the ‘true’ or ‘correct’ one...” (2005, p. 287).

what we... believe political justice demands.” Coercion, then, is justified when it is in accord with the proper values (correct beliefs about “normative matters”), like on any impersonalist account, and not justified to the subjects as in a public reason account.²⁷

It may seem that this must be wrong. Quong (2010, p. 313) appears committed to interpersonal justification and justification *to* dissenters when he writes: “All persons are offered a justification for the exercise of political power that they could endorse *in their capacity* as free and equal citizens committed to the idea of society as a fair system of social cooperation.”²⁸ The proper interpretation of this critical claim is not clear, however. It is difficult to see how Quong can be interpreted as claiming that the justification to “all persons” could mean all actual persons, for not all actual persons are in fact committed to that liberal idea. And, in any event, he stresses that “the justification of liberal principles at no point depends on the beliefs of real people.” (Quong 2010, p. 144, cf. p. 149 and, 2012, p. 53) The best interpretation, I believe, is that justification is addressed to all persons committed to the liberal idea in the sense that justification is provided to each *insofar as she fills the role of citizen*—a role partially constituted by liberal commitments.²⁹ In seeing oneself as a free and equal citizen, one sees oneself as committed to fair cooperation. This interpretation, though, still leaves us with two problems. First, though *some* justification is indeed provided to each via appeal to her role as citizen, the justification may not be decisive in light of her full variety of roles and commitments. Second, appeal to the commitments of citizenship only provide justification to a subject actually accepting or taking up that role (at least under moderate idealization). Given their interpersonal understanding of justification, only if Carl *sees himself* as a liberal citizen can liberals appeal to the intrinsic commitments of citizenship when justifying to him. Even if there are impersonal reasons for Carl to take up the role, we cannot suppose it is a role that he takes up. Conscripting him into a role would not provide interpersonal justification. This may constitute some form of justification, but it is not justification *to* the subjects in the sense central to public reason liberalism.

Claiming legitimacy to coerce a dissenter like Carl based on values he rejects, and may be unable to reason himself to endorsing, makes sense only if those values justify coercion independent of the views of the subject. For a perfectionist like Raz (1988, p. 53), the relevant justificatory values are the “reasons which apply to” the subjects, whether or not those subjects are in a position to know those reasons.³⁰

²⁷ Quong (2010, p. 313) claims state action is justified, regardless of subjects’ views, purely “by appealing [to] the values of freedom, equality, or fairness.”

²⁸ Charles Larmore (1990, p. 352) similarly claims that we can justify to dissenters on the counterfactual supposition that they share certain liberal values. Wall (2010, p. 134) proposes a related move converting any impersonal justification into supposed interpersonal justification by attributing to the subject “[a]wareness and appreciation of the full range of evaluative considerations that apply to the situation at hand.”

²⁹ I thank Jerry Gaus and Jon Quong for very helpful discussions regarding this point.

³⁰ Raz (2006, pp. 1025–1026) adds a “knowability condition” for authority, but this remains in stark contrast to the access requirement of interpersonal justification.

The state is justified to, say, prohibit drugs not because all of the subjects can appreciate reasons, from their own perspectives, to abstain. Instead, the laws are justified by independent facts about the harms of drug use. Alternatively, Lockeans like Eric Mack or Robert Nozick hold that states are only justified in protecting natural rights, including rights of entitlement to property. What Raz and the Lockeans share is the view that justification comes from facts independent of the views of the subjects about those facts, be they facts about the nature of good lives, rights, or whatever. Quong's disagreement with Raz and other perfectionists comes strictly from Quong's insistence that some reasons that there are, which might otherwise be relevant to political justification (such as those based on human flourishing) should be set aside.³¹ On Quong's view, political justification can only appeal to the sub-set of the reasons concerning duties of justice (2010, pp. 118–120).³² These justifying reasons are specifically the *actual* duties of justice, presumably *known* by state officials or other elites, not what the subjects think their duties are or can reason themselves into thinking, so dissent does not undermine the legitimacy of an imposition (Quong 2010, pp. 128, 313). All the justificatory work is “done by our views regarding who holds which rights and who is under which duties: the allocation of legitimate authority is simply parasitic on our beliefs about the distribution of rights and duties.” (Quong 2010, p. 116)³³ In the end, these impositions are based not on what can be interpersonally justified, but instead simply on personal or sectarian commitment.³⁴

We are forced to conclude that the apparatus of public reason is superfluous in Quong's account. Though he discusses agreement between reasonable people, the justificatory work is in fact done by the conditions of reasonableness. Recall that Quong holds that only the views of reasonable people count, and reasonable people all, by definition, give deliberative priority to the very same liberal values. When considering what institutions are legitimate, we thus can forgo investigating what can be agreed to and, instead, simply appeal to the required liberal values. On this account, a reasonable person need never verify the results of her personal deliberation from anyone else's perspective.³⁵ Given the definition of reasonable people, however, we can simplify further to say that a law is legitimate when

³¹ Perhaps Quong's political liberalism is distinguished from perfectionism for holding only that the liberal values are relevant for political justification. Note, however, that Lockean and some other externalist accounts also have a purely political scope.

³² According to Quong (2010, p. 135, cf. pp. 128, 130, 313): “Since we cannot rightfully refuse to do what justice requires, others can justify their legitimate authority over us by demonstrating they are merely enforcing the claims of justice that others have against us.” This distinction from the perfectionist vanishes if, as Wall (1998, p. 12) argues, perfectionist reasons are not additional to justice-based reasons, but instead are part of what determines the duties of justice.

³³ Quong (2010, pp. 115, 110) also holds that the duties, including to promote justice, exist prior to the authority.

³⁴ Quong (2010, p. 313) claims that “[i]f you believe freedom, equality, and fairness are the fundamental political values from which reasoning about justice must proceed, then you cannot also believe that other people are exempt from the normative requirements implied by these values.”

³⁵ In contrast, Rawls's original position can involve the reasoning of a single agent, but his overlapping consensus stage necessarily involves multiple people with diverse perspectives.

justified by the liberal values. Thus, agreement really is superfluous, with the liberal values really providing the justification.³⁶

The superfluity of agreement is further demonstrated by Quong's denial that agreement on any values or principles outside the liberal set is politically justificatory. In particular, he argues that policies to promote perfectionist values cannot be justified even if all of the actual reasonable people in a society rationally agree on them. Suppose that, literally, everyone in a society was committed to opposing use of methamphetamine on flourishing grounds and, derivatively, to supporting its prohibition. Quong (2005, p. 310, cf. 2010, p. 150ff) claims that such laws would remain unjustified because laws must remain neutral with regard to conceptions of the good, and seemingly any values outside the liberal values. For Quong (2005, p. 310), justification through actual agreement cannot vindicate without subjecting the results to "to any independent standard of justification."³⁷ The aim of his account, then, is not to justify *to* people with their own views (including moderately idealized versions of them), but to justify in terms of the correct reasons, reasons that provide a standard independent of everyone's views. So for Quong, the correct reasons can justify even against universal dissent, and no other reasons justify even with actual consensus. Insofar as the public reason project is a distinctive project at all, such sectarianism must be avoided.³⁸

Thinking back to our initial problem, critics charge that public reason objectionably lets misguided, ignorant and wicked people undermine the legitimacy of good laws. Those critics call for abandoning public reason's interpersonal form of justification for impersonal justification, or justification according to the reasons that there are independent of subjects' views. Though Quong claims to defend a public reason account, he abandons interpersonal justification for the impersonalism of critics. As he says, on his view, saying that principles could be endorsed really means "that those principles can be validly constructed from a normative ideal" he specifies (Quong 2010, p. 144). The general lesson is that requirements of liberal values, or "reasonableness," address dissenters at the cost of introducing impersonal justification, and abandoning the justification definitive of the public reason project.

³⁶ Quong (2013, sec. III) claims we "have the authority to coerce people like Carl because we can justify our decisions by appeal to fundamental values or ideals that everyone (including Carl) ought to endorse and whose implications they ought to accord deliberative priority. If Carl cannot see the force of these reasons, that is not a defect in our justifications, but rather a defect in Carl." Bohman and Richardson (2009, pp. 257–260) similarly argue that normative constraints dispossess agreement. Readers may wish to compare my argument to Quong's own "spare-wheel objection" to the "external conception" of political liberalism (2010, pp. 146–147).

³⁷ Quong (2013, sec. II) endorses justification through "substantive" claims. Note that on Gaus's account it is only consent of the moderately idealized agent, and not actual consent, that is justificatory.

³⁸ Contrast with Quong (2012, p. 58). Though Estlund (2008, pp. 48–49) also appeals to a restricted, possible public, he defends acceptability to this "qualified" public as a necessary, but not sufficient, condition for legitimacy. The acceptance (or moderately idealized acceptance) of actual "disqualified" citizens may also be required. Cf. discussion of membership in the public in Gaus and Van Schoelandt (forthcoming).

4 Relocating public reason

The problem of the dastardly dissenter shows that interpersonal justification cannot be strictly required for permissible coercion. In light of this objection, let us consider the prospects for reforming public reason liberalism. The most obvious response to our problem is to deny that interpersonal justification is necessary for justifying political coercion, though interpersonal justification may be one of a plurality of justifying considerations for coercive laws. While the fact that a law is not interpersonally justified would count against the law, it might still be justified by the weight of other considerations.³⁹ The practical importance of public reason would depend upon its relative weight and how it may influence more marginal cases. Alternatively, one could think that successful public justification is never necessary, though publicly pursuing such justification promotes respect, social trust or other values.⁴⁰ Public reason, on this account, does not determine which laws ought to be implemented and enforced, but instead guides public discourse.

It is clear that both the pluralist and the pure pursuit variations “rescue” public reason only by downgrading its importance. On these accounts, public reasons is relevant to justifying political coercion, determining when political coercion is permissible, but is never necessary. They are hybrid views relying on appeals to impersonal as well as interpersonal justification. Nevertheless, they do provide ways to appeal to public reason when justifying coercion while avoiding the devastating implications of dastardly illiberal dissenters. In thinking through their view, public reason theorists should first reflect on the type of goods that cannot be secured without public justification. We now know that public reason is not necessary for coercion to be permissible, and we are unlikely to find public justification necessary for any other permission. I propose, then, that we investigate whether there are goods for which public reason is a constitutively necessary element.

Rawls (1957/1999, p. 59, 1971/1999, p. 209) holds that mutually acceptable principles make possible “true community between persons in their common practices; otherwise their relations will appear to them as founded to some degree on force and circumstance.”⁴¹ This is certainly not a claim that it would be *impermissible* to have true community in a society based on any other principles. Instead, true community is not possible outside of interpersonally justified institutions. True community represents an ideal of consensually relating to each other, and those relations require, as a constitutive element, that the terms of the social practice be acceptable to the member. While it is possible, and may well be

³⁹ We can understand Raz (1998, p. 51) to be proposing a view like this, for he considers it a cost to force people to act against their consciences; presumably it is easier to justify laws not requiring such contra-conscientious force. Related views are defended by Enoch (2013) and Wall (2013, pp. 488, 498n13). That their staunchest critics propose this pluralism should lead public reason theorists to think, in the words of Admiral Ackbar, “It’s a trap!”

⁴⁰ Such a position is defended by Eberle (2002, pp. 189–191). Note that Eberle’s requirement still regards interpersonal justification, unlike Galston’s (1991, p. 109) view that “we show respect when we offer [dissenters], as explanations, what we take to be our true and best reasons for acting as we do.”

⁴¹ Cf. Paul Weithman’s (2010, p. 44) discussion distinguishing “inherent” from “imposed” stability.

permissible, to force Carl to comply with our commands, we then found our relations with him on force. In such a practice, Carl is alienated from and subjugated by us, not in community with us.⁴²

What sort of community requires public reason?⁴³ The driving insight of the public reason tradition connects recognizing others' status as free and equal and the requirement of interpersonal justification: that status implies the requirement. We have already investigated and rejected the traditional view that recognizing another as free and equal gives her a standing that requires that any coercion against her be justified to her. We have seen that public reason cannot supply a necessary condition for permissible coercion. But there is a more fundamental matter at stake. In recognizing another as free and equal, we recognize her as a co-member of the moral community. She is someone not only who can issue moral demands to us and to whom we can address moral demands, but also someone we can hold morally responsible for moral failures. It is inconsistent with this general standing to address to her moral commands that she cannot reason her way to endorsing—one is then claiming an authority to command the will of a free and equal other. In contrast, we respect the subjects of the moral demands as free and equal when we only issue demands that they could be expected to endorse from their own perspective. Doing so would hold them only to their own commitments, rather than having to ground the authority of the command on our superiority, including our superior insight into impersonal reasons. In this way, interpersonal justification is essential for our free and equal status and grounds these practices of social authority and responsibility.⁴⁴ Thus understood, public reason liberalism presents a structure of social morality in which questions of coercion arise, but coercion is not the direct or primary object of interpersonal justification.⁴⁵ The motivating concerns and justificatory apparatus of public reasons are inappropriate as the sole consideration in justifying political coercion, but are inescapable to the demands and patterns of responsibility in a moral community.

⁴² Leland (2014) and Lister (2013, chap. 5) defend accounts of public reason based on community differing from my own not only in their conceptions of community, but also in that they each understand public reason in terms of restrictions on the reasons for policies.

⁴³ Some conceptions of community must be rejected as incompatible with social diversity (Benn 1988, chap. 12; Rawls 2005, p. 37ff, and Van Schoelandt 2014). For an interesting discussion relevant to liberal community, see Bosanquet (2001)—I thank Loren Lomasky for directing me to this underappreciated thinker.

⁴⁴ Gaus's account directly regards the authority of moral demands (2011, p. 19).

⁴⁵ This is one place that my account importantly diverges from that of Gaus. Though he agrees that interpersonal justification is necessary for authoritative moral demands, Gaus (2011, sec. 17.3) also maintains that a general principle requiring the public justification of coercive acts and laws can itself be publicly justified within communities composed of what he calls "self-directing" moral persons. I hold that, instead, we have patchworks of entrenched particular rights and norms restricting interference without justification defined in terms other than those of interpersonal justification. Of course, our coercively backed laws are often moralized, requiring interpersonal justification to vindicate their implicit claims to authority. Such justification is not directly required for non-moralized laws. Though Vallier otherwise treats all coercive laws as requiring interpersonal justification, he accepts that this is properly only so for laws claiming moral authority (2014, p. 41 note 61). I thank an anonymous reviewer for pressing me for clarification.

We hold our fellow members of the moral community responsible through moral emotions like indignation and resentment.⁴⁶ Examining these emotions illuminates further the necessity of public reason. In an insightful passage, Adam Smith considers what we should think about someone who, like Carl, murders out of a sincere, but misguided, sense of religious obligation. According to Smith, “the defense of society requires” legal punishment, no matter the perspective of the culprit. We should, however, punish such crimes “with reluctance, when they evidently proceed from false notions of religious duty.”⁴⁷ Beyond, and in significant ways independent of, questions of coercion are questions about how we should *feel* about, and relate to, the culprit. This is not a matter of legal responsibility, but a distinct and separable matter of moral responsibility, which is associated with our moral emotions.⁴⁸ Smith’s position is that, recognizing the misguided views in this case, we should feel reluctance and regret in relying on force, and must withhold the indignation appropriate toward other criminals. The other’s perspective is essential in determining the kind of stance we should take to her, and the kinds of responsibility we should attribute to her.⁴⁹

Emotions have associated cognitive content representing the object of the emotion a certain way.⁵⁰ Fear, for instance, represents the feared object as dangerous. Strawson (2003, pp. 75–76) and others argue that “moral reactive attitudes,” like resentment and indignation, are responses to the perceived quality of an agent’s will in terms of due regard for others.⁵¹ Concern for the quality of will creates many exculpating conditions, including that the agent is exempt from moral demands because of an incapacity, or the agent’s circumstances give her an excuse. So, when Abraham is indignant at Elvira for some perceived offense, his indignation should subside if he learns that she acted in the midst of a psychotic episode, she was non-culpably ignorant of the consequences of her action, or an emergency

⁴⁶ On social-moral practice as a system of demands with inter-personal accountability through the reactive attitudes, see Darwall (2006, pt. I), Gaus (2011, chaps. 11–12), and Shoemaker (2014). Though Southwood (2010, p. 87) does not commit to the necessity of the moral reactive attitudes, he does hold that community is at least partially constituted by social authority based in internalized norms.

⁴⁷ Smith (2009, p. 176).

⁴⁸ Shoemaker (2011b) defends separating the conditions for criminal responsibility from moral responsibility. Wall (2010, p. 144) separates issues of coercion, criticism, and blame, and insightfully indicates that seeing that relevant impersonal justifications are inaccessible to an agent “should temper both our judgment of the person and how we respond to him.”

⁴⁹ Forms of responsibility are importantly distinguished by Watson (1996), and Shoemaker (2014, 2011a, 2013).

⁵⁰ See Gaus (1990, chap. 2), Hurley and Macnamara (2011), Nussbaum (2001, chap. 1), Rawls (1999, sec. 73, 1963/1999, p. 107), Smith (2009, sec. I.i.3.5–10), Solomon (1973). The cognitive content of emotions may be a non-belief-based way of “seeing as,” as when in the grip of a phobia you do not *believe* that the bunny is dangerous, but you see it as dangerous nonetheless (Calhoun 2003).

⁵¹ McKenna (2011, p. 59) holds that the quality of an agent’s will consists in her regard for other moral agents, as well as a broader range of moral reasons. Shoemaker (2014, 2013) persuasively argues that we should in fact understand the variety of responsibility responses to regard different qualities of will. Acceptance of a quality of will thesis conflicts with Rawls’s (1999, pp. 421–422, 1963/1999, pp. 105–106) understanding of the moral emotions as responses to compliance with or violation of moral principles.

necessitated her action. Any of these conditions could undercut the appearance that Elvira acted maliciously. Now when Abraham acknowledges that he is appealing to a rule that is not interpersonally justified to Elvira—that is, which he holds that she cannot reason herself into accepting—he has reason to excuse her from certain reactive attitudes. Elvira is not showing objectionable disregard for him when she disobeys the rule, for she cannot (even when moderately idealized) reason her way to endorsing it. That being so, she cannot see how obeying the rule is required by a due concern for Abraham, particularly in light of other values she believes to be at stake. I take this to be Smith’s point about the misguided religious murderer who, in doing his best to fulfill what he conscientiously thought was his religious obligation, showed no ill will. The murderer’s misguided view earns our pity and excuses him from indignation, though our own safety requires that we restrain him.⁵²

Given these presuppositions embedded within the reactive attitudes, we cannot rationally sustain them unless our demands are interpersonally justified. Here, again, public reason constitutes part of a good, rather than serving as a condition on the permissibility of a behavior. We can, of course, abandon this way of relating to some people, taking up what Strawson (2003, p. 82ff) called the “objective view” of people like Carl. We can see Carl as a patient, or a potential strategic partner and opponent, but not someone we can relate to in moralized terms. Sometimes we must relate to people strategically or through force, but public reason makes possible the mutual recognition of co-members in a moral community.

It may seem that in declaring some outside the moral community we declare an open season to destroy them as dangerous tigers (Benn 1988, p. 102; Locke 1681, para. 11, 16). Fortunately, we have justified norms among ourselves restricting treatment of outsiders. Even literal tigers are protected by norms against certain kinds of abuse. These norms regulating treatment of tigers are not justified to, or obligating for, tigers themselves. Nor do the tigers have standing to hold us to the norms. These are our norms, regarding tigers, to which we can hold each other.⁵³ More extensive norms regulate treatment of fellow humans. We, for instance, should respect the outsider’s right to free speech and not use her for medical experiments, even though she is not in a position to demand it of us. The liberal tradition presents wide-ranging reasons for extending the protection of liberal rights in this way, and the robustness of these rights leaves me confident that significant restrictions on harsh treatment are publicly justified.⁵⁴ We are also restricted, as

⁵² A number of theorists conceive the moral emotions specifically as nascent forms of communication. On such accounts, indignation is inappropriate when directed at those relevantly incapable of uptake or understanding. I believe these accounts too can be shown to have an important place for public reason as explicating one of the conditions for the capability to take up the message in an instance of indignation. For impressive discussion of the communication account, see Coleen Macnamara (2013), as well as McKenna (1998, p. 127, 2011, chap. 4), Shoemaker (2007), and Watson (1987, pp. 264–267).

⁵³ Cf. Darwall (2006, p. 28) and Gaus (1990, pp. 369, 374).

⁵⁴ Rawls (1999, sec. 35) argues that though the intolerant do not have standing to demand to be tolerated, we owe it to our constitution (and I believe ultimately each other) to tolerate even the intolerant. Benn (1988, p. 102) argues that “the category of psychopath is very uncertainly defined,” so “the status of moral persons is better safeguarded” by extending rights protection to psychopaths. Peter Vanderschraaf (2011) relatedly argues for extending protections to people unable to productively cooperate. Kavka

individuals or members of smaller groups, by our own private morality and other ideals (Strawson 1961), and by stable conventions for peaceful coexistence (Moehler 2014).

At this point, some people are likely to dismiss public reason as unimportant, thinking they can forgo social-moral authority and simply rule through the barrel of a gun. To do so, however, would come with very high costs. The objective view surrenders not only the possibility of moral community, but also relations infused with morality. Without the support of the moral emotions there cannot be such central human relations as friendship, love, or mutual trust (Gaus 1990, pp. 290–292; Rawls 1999, pp. 427–428, 1963/1999, pp. 109–112; Shabo 2012; Shoemaker 2014, chap. 3; Strawson 2003, p. 75). For this reason, Rawls (1999, p. 427) argues that abandoning the moral emotions would disfigure ourselves. Of course, no matter how basic these relations are, we do not need to extend the possibility of friendship to everyone. But the importance of these relations pushes us to form and maintain a mutually justified moral practice with many people.

There is another reason to not be satisfied with mere coercion and relations within the objective view. Peaceful cooperation and prosperity depend upon moral relations and resultant trust. Consider even cooperation within markets, often thought to be domains of amoral strategic interaction. Well-functioning markets involve extensive exchanges among strangers possible only where honesty, trust, reliability and fair dealing are ubiquitous and supported by the moral emotions (Rose 2011, chap. 2; Schwab and Ostrom 2008; Stringham 2011). Though cooperation among purely strategic individuals develops in some circumstances, such cooperation is constrained and fragile (Bowles and Gintis 2011, chap. 5; Gaus 2011, chap. II.6).⁵⁵ Strategic cooperation faces not only losses from opportunistic behavior and the costs of monitoring and enforcement, but the complete absence of certain opportunism-vulnerable investments and cooperative activities. Without mutual trust, resources and entrepreneurial energy flow away from productive, and into unproductive or even destructive, uses (Baumol 1990; Boettke and Coyne 2003; Hobbes 1994, chap. XIII.9). Prosperity can be secured only by an extended moral community, and not through mere force.

Even an effective coercive institution requires far reaching social authority. As Gauthier (1969, p. 168; cf. Schwab and Ostrom 2008, p. 223) writes, cooperation of enforcers “cannot rest entirely on the fear of some further power. At some point, barring a Kafkaesque regress without limit, some degree of voluntary co-operation on the part of some persons is the condition of the continued working of all social and political bodies.”⁵⁶ Effective coercive systems depend upon cooperation and trust supported by moral relations at least among the coercing agents. The individual

Footnote 54 continued

(1986, p. 242), Lomasky (1987, p. 40), and Morris (1991, pp. 89–90), each defend derivative rights for some through social relations to primary rights holders. Cf. Korsgaard (2004), Gaus (1990, p. 371, 1996, p. 166), Kukathas (2003, chap. 4), and Quong (2010, sec. 10.1–2).

⁵⁵ Though see the impressive studies by Leeson (2007, 2009) and Skarbek (2010, 2011, 2014) of governance and emergent order among some of the individuals least known for moral virtue.

⁵⁶ Cf. Brennan et al. (2010, p. 9).

initially happy to simply coerce without social-moral authority soon finds that she cannot be truly effective in her coercive plans without that authority. We may not need to have everyone within our moral community, but our own ends are often best served within an expansive and inclusive moral community.

There are two ways to develop community where it is lacking. Holding our practice fixed, we can always attempt to win the hearts and minds of dissenters, encouraging them to change their perspectives and convert into community members. If, however, the practice depends on many deeply contentious matters, such as following a particular religion or sectarian political ideology, then the conversion strategy is hopeless. As Rawls (2005, pp. 36–37) argued, pluralism about religious, philosophic and moral issues is the natural result of the free exercise of reason. Converting people to share a single doctrine would thus itself require the oppressive use of force that is itself antithetical to true community. The only hope for expansive community in any modern society is to shape the social order so that diverse members have reason to endorse it from their separate perspectives.⁵⁷ It is the place of public reason to illuminate the possibilities for social morality in a diverse and bounded world.

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⁵⁷ Rawls (1987/1999, p. 431) writes that, “there is no practicable alternative superior to the stable political unity secured by an overlapping consensus on a reasonable political conception of justice.” Lomasky (1987, pp. 81–82) argues that the broad acceptability of the moral community requires limiting the demands placed on individuals, and particularly entrenching individual liberties. If Lomasky is right, then inclusive communities will have what Gaus (2010) calls a “classical liberal tilt.”

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