On Justificatory Liberalism

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This paper considers a version of liberalism that gives the ideal of public justification pride of place in its account of political morality. Following Gerald Gaus, I shall refer to this version of liberalism as *justificatory liberalism*; and, in what follows, I shall be concerned, in the main, with the arguments he advances for the view. There are, to be sure, other versions of liberalism that elevate public justification to a central ideal. Most notably, Rawls, and his many followers, have defended a principle of political legitimacy that imposes various restrictions on what can qualify as a “public reason.” But if we wish to give the ideal of public justification a fair hearing, there are at least two reasons to focus on Gaus’ work rather than Rawls’. First, Gaus’ justificatory liberalism, unlike Rawls’ political liberalism, does not rest on the problematic distinction between political and comprehensive doctrines. Since many will reject the significance Rawls attributes to this distinction (and rightly so in my view), it is a virtue of Gaus’ defense of public justification that it remains free of this distraction. Second, Gaus has presented arguments directed at those who remain skeptical of the ideal of public justification.

While Rawls was, by all accounts, a master system builder, he never took much interest in persuading those who were unconvinced by his basic approach. By contrast, Gaus advances a number of arguments that critics of public justification need to take seriously.

In what follows I present some reasons to resist the claims of justificatory liberalism. If cogent, these reasons provide a measure of indirect support for versions of liberalism that downplay the significance of public justification for politics. I shall not have too much to say about these alternative versions of liberalism here, but I will argue
affirmatively that justification in politics is rooted in the first-person standpoint and that this fact (if it is a fact) has important implications for political morality.

My argument unfolds as follows. Section I presents a streamlined version of Gaus’ case for justificatory liberalism. It passes over many interesting complexities and subtle details and seeks to identify some of the central planks in his defense of the view. The streamlined argument is here referred to as the basic argument. Sections II and III then challenge some of the key claims in the basic argument. Sections IV and V conclude the discussion by presenting an account of first-person justification and an argument for its primacy with respect to justification in politics.

I. The Basic Argument

Justificatory liberalism sets down general conditions for the justified exercise of coercive political power. These conditions are derived from a commitment to public justification. The ideal of public justification, however, can be understood in different ways. Justificatory liberalism takes distinctive shape by the way that it specifies or characterizes this ideal.

Far more than others who have been attracted to public justification in politics, Gaus emphasizes its epistemological nature. Indeed, it is a surprising fact that most proponents of the ideal of public justification have had very little to say in general about the nature of epistemic justification. And what they have had to say has tended to be unpromising. Rawls, for example, draws a distinction between justification and proof. The former proceeds from shared premises, whereas the latter need not. Rawls goes on to assert that principles of justice require justification, which implies that an argument for
them must proceed from shared premises. But a moment’s reflection suggests that this assertion cannot be right. It must be possible to justify a principle to a person by appealing to premises that the person does not currently accept and may never be brought to accept, but that he should or ought to accept. Even if justification is relative to a subject’s belief set, the relevant epistemic base is not what the person actually believes, but what he would believe if he were responsible.\(^7\) This simple point shows that an account of justification, in politics and elsewhere, must take epistemic standards seriously.

It is a great merit of Gaus’ justificatory liberalism that it self-consciously attempts to work out a plausible account of epistemic justification to undergird the strong claims made on behalf of the ideal of public justification for politics. In working out the account of epistemic justification, Gaus pursues an interesting argumentative strategy. Rather than starting with contested moral claims, the theorist of public justification begins with claims about the nature of moral justification and then proceeds to show how these claims support some political positions over others.\(^8\) The strategy, in short, is to make progress in thinking about political morality by starting with general considerations about the nature of justification and moral reasoning – general considerations that in principle can be accepted by those with different political and moral convictions.

Still, as Gaus allows, a defense of justificatory liberalism will need to rest on some fundamental substantive commitments. Justificatory liberalism is, after all, an account of liberalism. With this in mind, Gaus advances what he terms the “fundamental liberal principle.”
(FLP): “Freedom to live one’s own life as one chooses is the benchmark or presumption; departures from that condition – where you demand that another live her life according to your judgments – require additional justification.”

As Gaus points out, in one formulation or another, this principle has been affirmed by a number of important liberal political thinkers. It expresses the idea that freedom from interference is the basic liberal commitment.

(FLP) is stronger than a principle that states merely that interference with another requires justification. For it is possible to accept the following two claims.

(i) Interference with another requires justification.

(ii) Failure to interfere with another – when one could have done so – in order to promote or protect some good equally stands in need of justification.

Accepting both (i) and (ii) would amount to accepting the thought that the demand for justification is symmetric with respect to interference and forbearance. This thought obviously is in tension with the idea expressed by (FLP); to wit, that interference with another requires special or additional justification in a way that merely failing to interfere does not.

As I will explain more fully below, (FLP) plays a pivotal role in Gaus’ argument for justificatory liberalism. It shifts the justificatory burden on to the would-be interferer. The initial presumption is against interference. Interference is unjustified, unless an adequate justification for doing so can be given.

What then constitutes an adequate justification? At a minimum, an adequate justification must invoke moral reasons. Interference with another requires moral justification, not merely an appeal to what furthers one’s own interests. And moral
reasons are impartial reasons. As Gaus puts it, “a moral reason is not simply a reason from your point of view, but from some shared or impartial point of view.”¹³ This characterization of impartiality, suitably developed, can capture both agent-relative and agent-neutral moral reasons.¹⁴ For even if I have a moral reason to promote x and you do not, it can still be true that, if you were in my situation (which might include having my commitments and projects) then you too would have a reason to promote x; and this can be fully explained by appeal to a shared or impartial point of view.

To be sure, much here depends on how the shared or impartial view is characterized. To add content to the requirement that moral reasons must be impartial reasons, Gaus advances a second principle – “the public reason principle.”

(PRP): A reason R is a moral, impartial, reason justifying x only if all fully rational moral agents coerced by x-ing would acknowledge R, when presented with it, as a justification for x-ing.¹⁵

(PRP) has more content than it may appear initially to have. As Gaus construes the principle, it rules out a view that he terms “strong externalism.” The strong externalist holds that it is possible for a person to have a reason to do something, even if there is no sound deliberative route that can take him from his current set of reasons and beliefs to the recognition that he has the reason in question.¹⁶

Now, as will emerge, I myself have considerable sympathy for a strongly externalist view on moral reasons. But for now I want to spell out the implications of (PRP) on the internalist reading that Gaus gives it.¹⁷ Affirming internalism about moral reasons allows for a split between personal and public justification.¹⁸ Upholding this split is crucial to the defense of public justification. As Nagel explained in his important early
paper on the topic, the requirement of public justification rests “not on skepticism but a kind of epistemological restraint: the distinction between what is needed to justify belief and what is needed to justify the employment of political power.” Gaus agrees. He argues at length that the requirements of personal justification and public justification need not coincide.

These remarks bring into view a complication that I need to address briefly. If one holds that public justification requires impartial/shared reasons, and if one holds that moral reasons necessarily are impartial/shared reasons, then one must hold that it is not possible for a person to be personally justified, but not publicly justified, in holding a moral view with respect to some issue. But that surely is too strong a conclusion. (PRP) speaks to the justification of coercive interference. It does not rule out the possibility that a person could be personally justified, but not publicly justified, in holding a moral view. Consider an example. Suppose the moral issue in question is voluntary euthanasia. Then consider the following claims:

(i) Jill is justified personally in holding that voluntary euthanasia is always wrong.

(ii) There is no cogent public justification for the claim that voluntary euthanasia is always wrong.

(iii) It is wrong/illegitimate for Jill to coerce (or support government efforts to coerce) persons to prevent them from participating in acts of voluntary euthanasia.

According to (PRP), (iii) follows from (ii). But the claim that moral reasons necessarily are impartial/shared reasons and the claim that personal justification – that is not also
public justification – rests on reasons that are not impartial/shared makes trouble for (i). How could Jill be personally justified in holding a moral view if she only has a personal, but not public, justification for the view? We could say that Jill has non-moral reasons for holding that voluntary euthanasia is always wrong; but this would be perverse and it would not capture how Jill herself sees the matter.\(^{21}\) Alternatively, and I think much more plausibly, the proponent of (PRP) should allow that Jill can have moral reasons for her view, but that if her reasons do not pass the test of impartiality set down by (PRP), then it would be wrong for her to enforce coercively her view on others. This way of putting the matter requires us to distinguish moral reasons \textit{per se} from moral reasons that justify coercion. Moral reasons \textit{per se} need not be impartial reasons in the sense that they would be acknowledged by all fully rational moral agents.\(^{22}\) (I shall come back to this distinction when I consider (PRP) in more detail below.)

The point to emphasize now is that (FLP) and (PRP) work together to yield a constraint on the legitimate exercise of coercive political power. For governments characteristically, if not necessarily, rely on coercion to ensure that their injunctions and policies are complied with by those subject to them. How strong then is the constraint? Gaus argues that it is a good deal stronger than most proponents of public justification have realized. To begin with, (PRP) applies to \textit{all} instances of governmental coercion. The important contrast for justificatory liberalism is not between types of governmental activity, say, activity that aims to promote conceptions of the good and activity that aims to secure justice, but rather between instances of governmental coercion, irrespective of subject matter, that can be publicly justified and those that cannot.\(^{23}\) Secondly, (PRP) sets down a demanding test. To satisfy it an instance of governmental coercion must not
be open to rational objection by anyone who is subject to the coercion. Nor, given (FLP),
can the proponent of governmental coercion turn the tables and argue that the case for *not*
going forward with an exercise of coercion is open to rational objection. This move is
not available, since it is only coercion, not the failure to intervene when one could have
done so, that is subject to the special justificatory demand. Finally, as Gaus makes plain,
a proposed governmental policy can be open to rational objection even when it further
values that all subjects recognize as important.\(^{24}\) Consider government imposed seatbelt
requirements. Everyone may agree that considerations of safety favor the requirements,
but some may rank the convenience of driving without seatbelts as more important than
the safety benefits that come from wearing them.\(^{25}\) If so, these people could rationally
object to the requirements. The fact, if it is a fact, that fully rational people would rank
different values differently as they apply to governmental policies – even in seemingly
easy cases like that of seatbelt restrictions – shows that (PRP) imposes a very strong
constraint on legitimate governmental activities.

So strong, in fact, that it is natural to wonder whether any governmental activity
could be legitimate on this principle. This brings us to a third principle that is central to
justificatory liberalism. With respect to some issues, all fully rational parties may agree
that some governmental solution is superior to no solution at all. They may disagree
about which solution is best, but this disagreement is contained by their deeper agreement
that some solution is better than none. To take account of these issues, Gaus advances
what I shall term the “Adjudicative Principle.”

(AP): When two or more proposals for a given political issue cannot be publicly
justified in the sense that no proposal can be shown to be conclusively justified
over the others and all fully rational persons would favor that some proposal be enforced rather than no proposal be enforced and there is a publicly justified decision procedure for selecting the proposal that should be adopted, then proposals that are selected by this procedure are publicly justified and it is legitimate for the government to enforce them.26

The publicly justified procedure mentioned here is, in effect, an umpire that adjudicates the disagreement between proponents of the different proposals. An example illustrates the idea. Suppose there are three proposed property schemes for capital assets in a given political society – exclusive common ownership, partial common ownership and partial private ownership, and exclusive private ownership. If no proposed scheme can be publicly justified over the others, but all fully rational persons would agree that some scheme is better than the Hobbesian condition of no settled property at all, then recourse must be had to some decision procedure to select a scheme to be enforced. Now assume that some type of democratic procedure is publicly justified for resolving this type of disagreement. Then, if the democratic procedure were to select the exclusive private ownership scheme over the others, then it would be legitimate for the state to enforce this scheme.

In Gaus’ hands, (AP) enables justificatory liberalism to avoid collapsing into anarchism. For Gaus argues that the existence of the state as well as the enforcement of property rights are matters that can be justified by appeal to the principle. Gaus’ discussion of adjudication in the face of inconclusively justified political proposals is interesting and important. Later I shall consider whether some of his insights can be captured by accounts of political morality that downplay the importance of public justification.
This completes my summary of the basic argument for justificatory liberalism. The three principles – (FLP), (PRP) and (AP) – provide a strong defense of limited government. The requirement of public justification rules out much of what many contemporary states do. It rules out, Gaus claims, paternalistic and perfectionist political measures, for example. It also avoids privileging some specific account of distributive justice, such as Rawls’ difference principle or Nozick’s historical entitlement principles, and instead holds that specific property rights and holdings are only justified via the adjudicative principle, if justified at all.

II. The Symmetry Thesis

In this section, I challenge the special presumption against interference that is expressed by (FLP). Recall that (FLP) functions to shift the justificatory burden on to the would-be interferer. Interference is unjustified, unless adequate justification for doing so can be given. In Gaus’ words:

The [Fundamental] Liberal Principle proclaims a presumption in favor of liberty. It places the onus of moral justification on one party rather than another; liberty is the moral status quo, in the sense that it requires no justification while limitations of it do.

Against this principle, I want to suggest that there is no special presumption against interference as such. Interfering acts, as well as failures to intervene, equally stand in need of justification. Call this the *symmetry thesis*. I first defend the plausibility of the symmetry thesis, thereby calling into question the idea that the justificatory burden falls on the would-be interferer. I then offer a diagnosis for why (FLP) appears to be more plausible than it actually is.
The notion of interference can be understood in different ways. Following Gaus, I shall construe interference in terms of coercive interventions. So the symmetry thesis holds that, as a general matter, coercive interventions and failures to coercively intervene when one could have done so equally stand in need of justification. Applied to the state, the symmetry thesis holds that coercive law and policy and the failure to enact coercive law and policy, when it is possible to do so, equally stand in need of justification. Thus the symmetry thesis denies that liberty, understood as the absence of coercive intervention, is the moral status quo.

A certain caution is needed here. Justification is relative to context. We don’t expect someone to justify his conduct on a matter of no concern to anyone. Let us use the term “voluntary conduct” to refer to both voluntary actions and voluntary decisions to refrain from actions. We then can say that voluntary conduct as such does not require justification. It calls for justification only when there is some good or value that is at stake or perceived to be at stake with respect to the conduct. Let us refer to voluntary conduct as salient if it meets this condition. The symmetry thesis holds that salient voluntary conduct, whether it involves a coercive intervention or a failure to undertake a coercive intervention when it is possible to do so, equally stand in need of justification.

These remarks show that the symmetry thesis should not be rejected on the grounds that it is too demanding. There are countless failures to intervene occurring all the time. It would be irksome, to put it mildly, if I had to justify every failure to coercively act that I could have done at any given moment. But the symmetry thesis does not require us, or the state, to justify every possible failure to act. It merely claims that
every failure to act, just as every act, is subject, in principle, to a justificatory demand. Whether this demand would be appropriate depends on context.

The symmetry thesis is supported by very plausible considerations about the nature of morality, to wit that morality is pervasive. In principle, any voluntary action or voluntary decision to refrain from acting can be subject to moral assessment. Take the most trivial action. Suppose I am ironing my socks in my apartment. Depending on context, this action may require justification. For example, if someone desperately needs my help next door and I continue to iron my socks, then my action plausibly requires justification. So, in principle, any type of voluntary human conduct, whether that of private individuals or individuals serving as state officials, can require moral justification. Whether it does will depend on, in a given context, whether it is an instance of salient voluntary conduct.

Now it is open to the proponent of (FLP) to reply that he too can accept that, in principle, any type of voluntary human conduct can require moral justification. The presumption against coercive interference that he affirms is just an initial presumption. It can be defeated. To illustrate: suppose some version of a good samaritan duty can be publicly justified. If so, then my refusal to help my neighbor next door and to continue ironing my socks might well shift the justificatory burden on to me. It then might be permissible to coercively interfere with my liberty, even if I was minding my own business. This possibility leaves the asymmetry expressed by (FLP) fully in place. For notice that if the good Samaritan duty cannot be publicly justified, then the default position is liberty from interference.
These remarks allow us to see more clearly what is at issue between the proponent of (FLP) and the proponent of the symmetry thesis. Both accept that it is possible for omissions (that is, failures to act to protect or promote some good or value when one could have done so) as well as coercive interventions to be unjustified. But the proponent of (FLP) insists that, unlike coercive interventions, omissions do not give rise to a justificatory demand – unless a prior justificatory burden has been discharged. That is what it means to hold that liberty is the moral status quo. But if one accepts that morality is pervasive it is far from obvious why liberty should enjoy this privileged position. If morality is pervasive, then the proponent of (FLP) owes us an explanation for why coercive interventions raise a special justificatory demand.

It is not evident what such an explanation would be. Here is one possibility. It might be true that all voluntary human conduct is in principle subject to moral assessment and that actively bringing about a bad outcome is, other things equal, morally worse than merely allowing it to happen. Applied to the state, it might be true that it is worse for the state to bring about a bad outcome than it would be for the state merely to allow it to happen. Thus, or so one might claim, the doing/allowing distinction undergirds the asymmetry expressed by (FLP). However, this is not a promising explanation for a couple of reasons. First, while it is true that the doing/allowing distinction can explain why there is a difference between justifying a coercive intervention and justifying a corresponding omission, this difference does not line up with the asymmetry expressed by (FLP). That is to say, it can be true both that liberty is not the moral status quo and that omissions are easier to justify than active interventions. Second, an appeal to the doing/allowing distinction is much less compelling when we move from the context of
assessing personal conduct to the context of assessing the conduct of state officials. The state sustains a set of institutional arrangements and practices. In virtue of doing so, with respect to a wide range of issues, it plausibly is as responsible for what it does as for what it allows to happen.32 Discussing economic policies in particular, Nagel has put the point well: “Noninterference requires justification as much as interference does: Every arrangement has to be justified by comparison with every other real possibility . . .”33 So even if the doing/allowing distinction could ground a general asymmetry between coercive interventions and omissions at the level of personal conduct, it is doubtful that it can do so at the level of state action.

Despite these points, suspicion will persist that I am missing something important. A reader might respond that while he is prepared to accept the idea that morality is pervasive, he still thinks the symmetry thesis is mistaken. He might agree that, in principle, any instance of voluntary human conduct can be subject to a justificatory demand. Nonetheless, he may claim that coercive interventions are always salient. They always present a justificatory demand, whereas failures to coercively intervene only sometimes present a justificatory demand. This is an important asymmetry, one that is captured by (FLP).

But what reason is there to think that coercive interventions always stand in need of justification? In some contexts, no justification may be called for. Here is an example. I come across a man assaulting another man. I coercively intervene to stop the assault. No justificatory demand is raised, since – let us assume – even the assaulter is fully aware that he is acting wrongly. In reply, it might be said that the coercion of another is always prima facie morally wrong, whereas the failure to coerce another (in
order to protect or promote some good) is not always *prima facie* morally wrong. The assaulter in my example is owed a justification for my coercive intervention, even if no one, including himself, demands it. But this claim just pushes our earlier question back a step. Why should we think that coercion is always *prima facie* morally wrong?34

Some writers have held that coercion is a moralized notion.35 They think that part of what it means to say that an act is coercive is to say that it is *prima facie* wrong. On this understanding, I did not coerce the assaulter when I forcibly intervened. The moralized notion of coercion guarantees that coercive acts always are *prima facie* morally wrong. But it does nothing to undermine the symmetry thesis. We could after all invent a term, F, for failures to coercively intervene that are by definition *prima facie* morally wrong. We then could hold that symmetry obtains between coercive interventions and Fs as well as between noncoercive forcible interventions and failures to coercively intervene that are not *prima facie* morally wrong. No asymmetry here.36

Suppose, then, that coercion is not a moralized notion. When I forcibly interfered with the assaulter, I coerced him. It now looks implausible to hold that coercion is always *prima facie* morally wrong. What we should say rather is that sometimes coercive interventions are *prima facie* morally wrong, but they are not *prima facie* morally wrong as such. The same holds true, however, of failures to coercively intervene. Suppose, to take a familiar example, I see a man about to cross a bridge with rotten planks. I have every reason to think that he is unaware that the bridge is unsafe and I don’t have time to inform him about this crucial information. I can either coercively intercept him or decide not to. If I decide not to coercively intervene, then I plausibly have done something that is *prima facie* morally wrong.37
I have found no good reason to reject the symmetry thesis. Since the thesis is supported by the plausible claim that morality is pervasive (and assuming that I have not overlooked something important), we should accept it. As a consequence, we should reject (FLP). This has important implications for politics. Those who would oppose a coercive state policy designed to secure or promote some good or value can be asked to justify their opposition to the policy. Their justificatory burden in opposing the policy is on the same footing as that assumed by proponents of the policy. Neither side has an advantage.

I now offer a diagnosis for the appeal of (FLP). This principle looks attractive if one is committed to the idea that persons have a wide domain of autonomy. That is, it will look attractive if one believes, as many people do, that each person has a wide range of options open to him that are neither morally forbidden nor required. With this background commitment in place, it is natural to view coercive interventions as especially inimical to autonomy and failures to coercively intervene as rarely, if ever, inimical to it. Thus, one might be lead to conclude that coercive interventions require justification in a way that failures to coercively intervene do not.

But while a commitment to autonomy can explain the appeal of (FLP), it does not vindicate the principle. For, in reality, (FLP) is a clumsy way to express a commitment to autonomy. For even if one believes that persons have a wide range of permissible options, one should think that some options are not within this range. Some coercive interventions will not compromise autonomy. If I coerce you to prevent you from assaulting another, then while I have plausibly restricted your freedom, I have not plausibly set back your autonomy. Correspondingly, and consistent with a commitment
to autonomy, one may believe that some coercive interventions are necessary to secure the social conditions for autonomous agency. The state’s failure to undertake coercive measures to secure these conditions then could be viewed as inimical to autonomy. These important points are obscured by (FLP), which posits an asymmetry as such between coercive interventions and failures to coercively intervene.

If (FLP) is rejected, then where does this leave justificatory liberalism? To answer this question, we need to consider the nature of public justification in more detail. This will be undertaken in the next section. For now, I offer a preliminary answer.

Suppose two citizens, X and Y, disagree on the merits of coercive state policy Z. Suppose now that citizen X cannot publicly justify his support of policy Z and citizen Y cannot publicly justify his resistance to policy Z. The two citizens are in, what I shall term, a justificatory conflict. Now if (FLP) were accepted, then the justificatory burden would fall on citizen X and since, by hypothesis, he cannot publicly justify his position, the correct resolution of the conflict is for the state not to enforce the policy. But if (FLP) is rejected, then neither citizen X nor citizen Y bears a greater justificatory burden than the other. Here it is not at all clear what the correct resolution of the conflict should be. To resolve the issue, we will need a better understanding of justificatory conflicts and how they might arise.

III. Rationality and Reasons

The possibility of a genuine justificatory conflict can be denied. According to (PRP), moral reasons are impartial reasons and impartial reasons are reasons that can be shared by all fully rational agents. Since in a justificatory conflict two or more citizens cannot publicly justify their incompatible positions, it is natural to conclude that some or
all of them are unjustified in what they are proposing. There is no real justificatory conflict here. Some citizens are simply advancing unjustifiable claims.

Let me try to make the discussion here a little more concrete. Suppose the policy in dispute concerns a drug policy that criminalizes a particularly dangerous drug, such as heroin, for example. Some citizens believe that the state is morally required to enact the drug policy, while others believe that the enactment of the drug policy would be morally impermissible. If both sides are advancing impartial moral reasons in support of their view, then, according to the notion of impartiality we are working with, both sides are advancing reasons that all fully rational moral agents affected by the policy would acknowledge, when presented with them, as justifying the view they support. But it is not clear how this is possible.

Earlier I noted that we can distinguish moral reasons per se from moral reasons that justify coercion. We could say then that our citizens disagree because they have different moral reasons for their views, but that they do not have the kind of moral reasons sufficient to justify coercion. No one, that is, has impartial/shared reasons for his position. Since the drug policy requires coercion and failing to enact it does not, then this would dissolve the justificatory conflict in favor of those citizens who oppose the drug policy. But in light of the preceding rejection of (FLP), this is not a satisfactory resolution. We cannot assume that the failure to enact the drug policy does not itself stand in need of justification.

Perhaps we should explain justificatory conflicts in terms of conflicting beliefs concerning what the relevant impartial/shared moral reasons are, and what their weight is. Applied to the drug policy we are considering, some citizens believe that there are
conclusive moral reasons that satisfy (PRP) that tell in favor of the policy and some
citizens believe that there are no such reasons that tell in favor of the policy. Now let us
assume further that both sides are epistemically rational in holding these beliefs. Here we
do have what looks to be a genuine justificatory conflict.

But could there really be a conflict of this kind? Is it possible for me (with full
epistemic warrant) to believe that you have a moral reason to do something — like support
a coercive drug policy — that you (with full epistemic warrant) believe that you do not
have? The answer depends on how we understand the conditions set down by (PRP).
Recall that (PRP) holds that a reason R is a moral, impartial, reason justifying x only if all
fully rational moral agents coerced by x-ing would acknowledge R, when presented with
it, as a justification for x-ing. Naturally, everything here turns on how we construe the
words “fully rational.”

To hone in on this matter, it will be helpful to compare (PRP) with another
principle that might seem to be quite close to it. This principle holds that reason
judgments about morality are universal.38 I will call it the Universality Principle.

(UP): If there is a moral reason for agent A to do x in circumstances C, and if
agent B is in circumstances no different in all relevant respects from C, then there
is a moral reason for B to do x.

On this principle, in order for two agents to be in circumstances that are “no different in
all relevant respects” they must confront the same set of options, but they do not have to
share the same beliefs and desires. Thus, agent A might very much desire to do x in
circumstances C while agent B has no such desire.
(UP) is extremely plausible. Like (PRP), it expresses the thought that moral reasons are impartial. A consequence of (UP) is that if one judges that there is a moral reason to do something in a certain set of circumstances, then one is committed to judging that there is a moral reason for all others, who are similarly situated, to do so as well. So, for example, it follows that if a citizen believes that there is a moral reason for him to support the legal enactment of a coercive drug policy for his society, then he must also believe that there is a moral reason for his fellow citizens to do so as well.

Must he also believe, as (PRP) states, that “fully rational” versions of his fellow citizens would acknowledge that they have this moral reason? It depends. The appeal to “full rationality” obviously gestures toward idealization. But what kind of idealization is implied? Let me distinguish three grades.

(i) Acquisition of all relevant factual information
(ii) Propensity to make correct inferences; or, more generally, to reason in a flawless way
(iii) Awareness and appreciation of the full range of evaluative considerations that apply to the situation at hand

(PRP), as Gaus construes it, highlights the first two grades of idealization. A person is fully rational if she “takes into account all the relevant available evidence, takes care when evaluating it, is not subject to various distortions of deliberation or action (e.g., she is not under the influence of drugs or compulsions), and so on.”

Now, in my view, if one accepts (UP), then one should reject this construal of (PRP). Here’s why. Suppose that I judge that there is a moral reason for me to support the coercive drug policy for my society, and that I know that you are in circumstances no different in all relevant respects from my own. Then, according to (UP), I should judge
that there is a moral reason for you to support the policy. Since there is a moral reason for you to support the policy, it is true (in one sense\textsuperscript{42}) that a fully rational version of yourself would acknowledge this reason. However, I might discover that you have all relevant factual information on the matter and that you are reasoning in a flawless way. I now must either retract my judgment that there is a moral reason for me to support the policy or judge that you are failing to appreciate the force of some relevant consideration that bears on the matter. The relevant consideration here is not factual information, but rather something that tells in favor of the policy. It is a consideration that falls under (iii). But suppose now that I continue to think that there is moral reason to support the policy. After all, let us assume, it is not as if you have given me any reason to think that I am mistaken. I have merely discovered that you are not ignorant of the facts and that you are not making certain mistakes. Since I judge then that a fully rational version of yourself would accept that there is a moral reason to support the policy, I must reject the construal of (PRP) that limits idealization to grades (i) and (ii).\textsuperscript{43}

Let us refer to the construal of (PRP) that embraces all three grades of idealization as the externalist construal. It is externalist since it assumes that a person can fail to recognize or appreciate the force of a consideration that bears on an issue of moral concern without making any mistake of reasoning or lacking any relevant factual information. I have just argued that acceptance of (UP) puts pressure on one to accept this construal over the one defended by Gaus. The very concern with impartiality that motivates support for (PRP) pulls us beyond Gaus’ construal of the principle and toward an externalist one.
This is not, I hasten to add, a decisive line of argument. There are familiar metaethical worries about externalism with regard to moral reasons in particular and practical reasons in general. Many people seem to want to deny the existence of normative facts. This is not the place for me to enter this terrain. My suspicion, however, is that it is not these worries that motivate Gaus’ position. In defense of his own internalist view of moral reasons, he writes:

To make genuine moral demands on others, and not browbeat them or simply insist that they do or believe what you want, you must show that, somehow their system yields reasons to embrace your demand. Morality, then, requires that we reason publicly, from the standpoint of others.

It is browbeating that Gaus sees as fundamentally incompatible with the moral life, particularly when the browbeating is backed up by coercive threats. Externalist views of moral reasons seem to open the door to browbeating. But notice that internalist views can lead to browbeating as well. I might believe that you have a moral reason to do something, and I might believe that you would recognize that you do if you did not make a mistake in reasoning, but if I cannot demonstrate to you that you have made such a mistake, then to insist that you nonetheless have a moral reason to do so is, even if true, to engage in browbeating. This is why Gaus insists that to publicly justify a state policy requires more than coming to believe with justification that others, given their system of beliefs and reasons, are committed to supporting the policy. One must publicly demonstrate to them that they are so committed.

The issue of browbeating others raises important concerns. In the next section, I will explain how a view that rejects the claim that morality requires us to reason from a
shared standpoint can respond to these concerns. For now, I offer a brief recap of the argument so far.

We have seen that justificatory liberalism shifts the burden of justification on to the would-be (coercive) interferer. It then sets demanding standards for successfully discharging this burden by affirming an internalist construal of the public reason principle and by rejecting browbeating as incompatible with morality. The result is a strong presumption against all coercive state interventions. In defending the symmetry thesis, I have given reason to reject the general presumption against state interference. And in affirming (UP) I have given some reason to reject the internalist construal of (PRP). By so doing, I have, in effect, rejected the demanding standards for political justification that it supports. The result is a view that holds that one can successfully justify support for a coercive state policy if one shows that the balance of reasons, as one sees them, favors the policy. Political justification does not require in addition that one publicly demonstrate that all others who are affected by the policy are themselves committed to supporting it, given their background system of beliefs and reasons.

IV. The First-Person Standpoint

Return now to the problem of justificatory conflicts. If political justification does not require public justification – in the sense specified by (PRP) – then two citizens may both have a first-person political justification for incompatible positions. Citizen X favors the enactment and enforcement of coercive policy Z, whereas citizen Y is opposed to the policy. What then should be done?

With sufficient time for debate and deliberation, both citizens may think that they could persuade the other of the merits of their position. But this is unlikely, for time is
limited and it is possible that some citizens for various reasons may have great difficulty (or be incapable of) appreciating the force of some of the relevant considerations. Alternatively, some citizens may be making mistakes in reasoning, but it may be just be too difficult to track down and demonstrate all the relevant mistakes. Now suppose citizen X is fortunate enough to have sufficient political support for his view. He and others can pass the policy via the established political decision making procedures in place in their society. Should they go ahead and do so?

Not necessarily. For the fact that some of their fellow citizens disagree with them and the fact that they cannot demonstrate that all citizens are rationally committed to accept the policy, given their beliefs and desires, may be facts that are relevant to deciding what should be done. I don’t have in mind here stability considerations. I am assuming that citizen X and his supporters have already taken these considerations into account in recommending that the state enact policy Z. I have in mind considerations that bear on the relations that should obtain between citizens in a well-ordered society. Rawls occasionally speaks of “civic friendship” and “reciprocity” to refer to these considerations. 49

My view is that Rawls and others exaggerate the significance of these considerations. But the point I wish to press now is that citizen X will need to take them into account from his own standpoint. It is a substantive question of political morality how much weight should be given to these considerations, and this question will need to be answered from the first-person standpoint. Citizen X, in other words, should not try to reason from the standpoint of others, but reason from his own standpoint, even when he...
is considering how much significance to attach to the fact that he cannot persuade others of the justness of his cause.

Now Gaus, as we shall see, believes that this way of approaching the matter is misguided. But before turning to his reasons for rejecting this approach, it will be helpful to mention a line of resistance that is not promising, but attracts plenty of adherents. It is sometimes alleged that moral reasons are ‘constructed’ out of an appropriate intersubjective procedure. Crudely, no one can have warranted moral beliefs from the first-person standpoint because morality is constituted by intersubjective agreement under appropriate conditions.\(^{50}\) This view – call it metaethical constructivism – falls prey to a version of the Euthyphro Problem.\(^{51}\) Either the requirements of the intersubjective procedure are characterized in moral terms or they are not. If they are, then the procedure does not constitute moral truth, but relies on it. If they are not, then there is little reason to have confidence in the outcome of the procedure. That is, there is no guarantee that the outcome of the procedure will align with sensible views about moral demands. And if it does not align with sensible views about moral demands, then it has no good claim to our attention.

I believe that this objection is fatal to metaethical constructivism, but it is not my aim to establish this here. Instead, I mention this version of constructivism in order to put it to one side and to distinguish it from Rawls’ view, which bears a superficial resemblance to it. According to Rawls’ political constructivism, it is important for citizens in a democratic society to reason from an appropriately constructed shared point of view. The reason for this is not that political truths are constituted by what citizens would agree to when reasoning from this point of view,\(^{52}\) but rather that political
legitimacy requires that citizens reason from this point of view – at least when certain fundamental political questions are on the table. But if we ask why political legitimacy requires that citizens reason from this artificial point of view, then Rawls’ answer must rest on a substantive moral judgment about the importance of doing so. Thus, to make sense of Rawls’ position, we need to view him as holding that each citizen has a compelling (normally overriding) moral reason to adopt the artificial or constructed standpoint when thinking about fundamental political issues. And, as far as I can see, the only way to make sense of this is to view Rawls as attributing great weight or importance to the moral considerations I earlier referred to as “civic friendship” and “reciprocity.”

Properly understood, Rawlsian political constructivism reaches the position that citizens should reason from a shared public perspective by appealing to moral reasons that address each citizen’s first-person perspective. That is why Rawls claims that the “values of the political are very great values and hence not easily overridden.” But now suppose that we reject the importance that Rawls attaches to these values. Civic friendship and reciprocity are values that matter, but they do not enjoy the privileged status that Rawls assigns them. Then we would have reason to follow Rawls in thinking about justice from a shared public perspective, but only provisionally. We would adopt the public perspective to determine what reciprocity would require of us in our circumstances. But we would then need to assess the costs of reciprocity measured in terms of other values that we cared about; and we would need to make this assessment from the first-person standpoint.
Unlike Rawls, Gaus is not committed to the (implausible) view that considerations of reciprocity enjoy privileged overriding status in the pantheon of political values. He appeals instead to the requirements of the moral point of view.

Morality requires taking up a point of view that addresses reasons to all. So, the fact that other reasoners fail to accept your reasons impugns the impartiality of those reasons; you are asserting the specialness of your reasoning over fully rational others on issues that involve their lives. What exactly is the nature of these requirements of morality? I have already pointed out that to make sense of Gaus’ claims about impartiality we need to distinguish moral reasons per se from moral reasons sufficient to justify the coercion of others. For, to recall the case of Jill in section I, a person can have a justified belief that some practice such as euthanasia is morally wrong. The fact that other reasoners do not share this belief does not show that it is not a proper moral belief. It is only the introduction of coercion that brings with it the requirement that moral reasons satisfy a demand of impartiality, such as that specified in a principle like (PRP).

Suppose now that Jill encounters someone who believes that voluntary euthanasia can be permissible, call him Jack. And assume that a fully rational version of Jack – on the internalist construal of full rationality – would continue to believe that voluntary euthanasia was permissible. If Jill insists that Jack is mistaken (as she must for it is her view that voluntary euthanasia is morally wrong), then she will be assuming that her reasoning is better than his on this matter. And since, as we have assumed, she cannot rationally persuade him of the correctness of her view, when she insists that she is nonetheless correct she will be browbeating him. Browbeating another can be a waste of
time, but it need not be a particularly bad offense. Indeed, as Jill could point out, it is important to speak truly about moral issues, even when some are not willing or able to appreciate the truth.

Now it is possible that Jill may come to doubt that she is correct. As a result of her interaction with Jack, she might come to think that the reasons she was appealing to in order to ground her judgment that voluntary euthanasia was morally wrong are less compelling than she previously thought. She might change her mind on the issue or she might hold her view with less confidence. But suppose that this does not happen. Does Jill have any reason to revise her view about euthanasia simply because another person cannot rationally accept it? I do not see how it could. And if Jill believes that the immorality of euthanasia justifies coercive intervention, then the fact that Jack cannot rationally accept this either also should not matter.

Could it be said in response that Jill does not have an adequate grasp of moral concepts? The justification of coercion, as a matter of conceptual necessity, requires that the justifying reasons be ones that all fully rational persons (on the internalist construal of full rationality) would accept. This would be a pretty implausible claim. Those who believe that there can be external moral reasons sufficient to justify coercion are not making a conceptual mistake. The issue, rather, is one that arises within substantive political morality. If this is right, then the do-not-coerce-others-unless-you-can-give-them-a-justification-that-they-can-rationally-accept claim is one that requires substantive defense. It is not one that follows from the formal requirements of the moral point of view.
None of this establishes that no substantive defense of the claim could be forthcoming. But a substantive defense will appeal to reasons that must be assessed from the first-person standpoint. The concession that a substantive defense is needed of the claim that the justification of coercion requires appeal to reasons that are impartial – on a particular understanding of what impartiality demands – itself concedes the primacy of the first-person standpoint. And this is the main point I have been trying to establish in this section.

Doubts will persist about this first-person approach to political morality. Recall Gaus’ claim that to insist that you are right when other rational agents disagree is to insist on the specialness of your own reasoning. Jill knows that Jack disagrees with her, but she continues to think that she is right and he is mistaken. Is this objectionable? From Jill’s point of view, she must trust her own reasoning, for otherwise there would be no point to her engaging in rational deliberation.\textsuperscript{54} To this limited extent, she must believe that her own reasoning is special. Must Jill also be able to give an account of why she is a better judge of the matter than Jack? She could point to relevant considerations that she believes that he is failing to appreciate adequately and she could say that a good judge of the matter must appreciate them adequately. But this would not be a satisfying vindication of her authority to judge the matter.

Suppose now that Jill comes to the conclusion that she cannot provide a non-circular vindication of her ability to judge the matter correctly. She opposes euthanasia because, as she sees things, the balance of reasons favors this view. Should she then suspend judgment on the matter? She might accept the following debunking principle. If I affirm x and other rational agents deny x, and no one has a non-circular vindication of
his or her competence to judge the matter, then all parties should suspend judgment on x. This principle leads directly to an extreme form of skepticism.

To reject this kind of skepticism, we must reject the condition that generates it.\textsuperscript{55} We must reject the claim that warranted belief about some matter, moral or otherwise, requires that one be able to demonstrate in a non-circular way that those who disagree with one are deficient judges of the matter. Gaus, to be sure, does not recommend skepticism. He does not claim that warranted belief requires that one be able to demonstrate to all dissenters that they are mistaken. His claim is that the justification of coercion requires this kind of demonstration. But this claim is best understood as a substantive claim about the conditions that justify coercion. One who asserts this claim in the face of dissent from other rational agents without providing a non-circular vindication of his own authority to judge the issue rightly is insisting that his reasoning is special in the same fashion as our imagined Jill does when she insists that her view on euthanasia is correct.

Perhaps I am guilty of belaboring the obvious in this section. I have insisted that the first-person standpoint is fundamental to political morality. Any principle of restraint or any settlement reached from a shared standpoint must be grounded in reasons that speak to the first-person standpoint. This can look obvious, since no one literally can leave his own standpoint. But proponents of public justification in politics demand that we adopt a shared or common standpoint rather than rely on our own first person moral convictions. I have argued that this demand itself is not vindicated by an appeal to constructivism in political ethics or by the formal requirements of the moral point of
view. If the demand is to have a claim on us, it must itself be rooted in first-person moral commitments.

V. Adjudication

Justificatory liberalism is a response to the deep disagreement we encounter in large modern societies. It seeks to articulate principles that would enable people who hold very different views about how to live to coexist and cooperate peacefully and productively. It also recognizes that these disagreements are not likely to be overcome any time soon, if ever. The preceding rejection of the public reason principle and the defense of the primacy of the first-person standpoint did not identify any method for responding to disagreement in politics. I now put forward such a method; and, in doing so, I explain what I think is right and what is wrong with Gaus’ third principle – the principle of adjudication (AP).

Recall that (AP) sets down conditions for the public justification of laws and policies that are subject to rational disagreement. The first condition is that all fully rational persons who are subject to the law or policy must prefer that some proposal on the matter in question be enacted rather than no proposal. The second condition is that there exists some publicly justified procedure that can be relied on to determine which proposal should be implemented. In defending the symmetry thesis, I have already given reasons for rejecting the first condition. The option of enacting no proposal on the matter in question may be subject to a demand for justification, and so it may not enjoy any privileged status. But the second condition can be accepted even if one rejects the first condition. It highlights the need for adjudication in politics, a need which requires the presence of an authoritative umpire or umpiring mechanism to settle disagreements. And
Gaus is right to insist that some such mechanism must play a key role in political justification under modern conditions of pluralism.\textsuperscript{56}

It is not necessary to believe, however, that an appropriate adjudicative mechanism must itself be publicly justified. To be sure, for such a mechanism to function effectively, it must enjoy widespread support in the political society in which it functions. To use a term Gaus himself introduces, an adjudicative decision-making procedure for a society should be “robust” in relation to the major political divisions in that society.\textsuperscript{57} If it is not, then it will not be able to serve its adjudicative function. Robustness is, however, a matter of degree. And it is not plausible to think that only maximally robust procedures could serve effectively as adjudicative mechanisms. A procedure that could not be justified to some fully rational citizens in a society could still function effectively as an umpiring mechanism, provided it enjoyed sufficient support from a wide range of citizens. Thus there can be a divergence between robust justification and public justification and effective adjudicative mechanisms require only some measure of robust justification – exactly how large this measure needs to be will depend on the contingent circumstances of the political society in question.

Consider now a reformulated adjudicative principle.

\begin{quote}
(AP*): When two or more proposals for a given political issue are subject to disagreement – including disagreement as to whether there should be any law or policy enacted on the matter in dispute – citizens should settle their disagreement by appeal to a robustly justified decision procedure. This procedure will select the proposal that it is legitimate for the government to enforce.
\end{quote}

This principle presents its own puzzles. Why, for example, should anyone feel bound to accept an adjudicative decision that they believe is unjust or wrongheaded? Once again, I
think the answer to this question must be addressed from the first-person standpoint. One might reasonably conclude that, in the circumstances in which one finds oneself, there is no decision procedure that could be both robustly justified and acceptably just. Suppose, for example, that one is an American in 1787 and that one realizes that any constitutional settlement that has a prayer of winning robust support must compromise on the issue of slavery. Here one might conclude that no such settlement is acceptable and that one should reject the legitimacy of the decision-making procedures established by any constitution that is ratified.

This example reveals how high the stakes can get when one rejects adjudicative politics. One is drawn toward the politics of secession or rebellion.58 But if circumstances are not so bleak and one remains committed to a shared political life with one’s fellow citizens, then one will need to take adjudication seriously. To function effectively, I have claimed an adjudicative decision procedure must be robustly justified. But, for a given society at a given time, there may exist, at least in theory, many possible decision procedures that could satisfy this test. Normally, to be sure, the established procedures are the only ones that can function effectively. Still, normal politics occasionally gives rise to constitutional politics; and when this occurs citizens will have an opportunity to decide which possible adjudicative decision-making procedure is best for their society.

What considerations should guide them in this decision? Naturally, each citizen should assess possible adjudicative procedures in light of his or her own convictions about political morality. These convictions may include norms of procedural fairness as well as substantive commitments about good political outcomes. We, of course, should
expect citizens to disagree over which adjudicative procedure is best. Their disagreements over political morality will often translate into disagreements as to which adjudicative procedure should be adopted by their society. That is why constitutional politics almost always involves reaching some kind of settlement or compromise between different groups. In arriving at a settlement, all parties reach the conclusion that a particular set of adjudicative procedures is the best that they can get in the circumstances in which they find themselves. Having reached this conclusion, they then can accept the decisions that flow from these procedures as legitimate.\(^{59}\)

In this all too brief discussion of adjudicative politics I have tried to show how one can accept the good points behind Gaus’s defense of (AP) without embracing a public reason principle and without retreating from the first-person standpoint. Under conditions of pluralism, there is a pressing, practical need for citizens to establish decision-making procedures to resolve their disagreements. To function effectively these procedures, in all likelihood, will require broad-based support and hence robust justification; but they do not require public justification. In addition, each citizen, to the extent that he or she is practically reasonable, will assess the extent to which the decision-making procedures are justified from the standpoint of his or her own first-person moral commitments. Citizens need not defend the procedures from a public or shared point of view. It is true that adjudication will often require citizens to reason from an artificial standpoint.\(^{60}\) The operation of particular adjudicative procedures in a given society will establish its own precedents and its own forms of reasoning for making decisions. Adjudicative politics brings with it the need for technical experts on adjudication. But, at least for the fully reflective citizen, the practice of adjudication and the distinctive forms
of reasoning that come with it, are justified, if they are justified at all, because they serve sound values. And what counts as sound values is an issue that must be assessed from a first-person, and not necessarily a shared, standpoint.\textsuperscript{61}

VI. Conclusion

Justificatory liberalism is an account of political morality with many attractions. I have not presented a complete critical discussion of the view. Many complexities and details have been passed over. Instead, I have focused on three principles – (FLP), (PRP) and (AP) – that are central to Gaus’ defense of the view. In discussing these principles, I have tried to give some reasons for thinking that they are less convincing than they may initially appear to be. Along the way, and in opposition to Gaus, I have committed myself to a number of controversial claims on the nature of political justification and moral reasoning. I claimed earlier that it is a great merit of justificatory liberalism that it takes seriously the epistemological nature of public justification. Unlike Rawls’ political liberalism, which self-consciously strives “to stay on the surface, philosophically speaking” so as to avoid engagement with deeper contested philosophical issues, Gaus’ justificatory liberalism openly rests on a controversial account of epistemic justification.\textsuperscript{62} It also rests on, as I have tried to bring out, a controversial view on the nature of moral reasons. I am more confident that Gaus is right to think that a satisfactory account of public justification for politics needs to engage with these deeper issues than I am in the correctness of the particular views on them that I have expressed here.
Appendix: Moral Reasons and Blame

One of the many interesting issues, suggested by Williams’ seminal paper on internal reasons, concerns the relationship between moral reasons and the appropriateness of blame. This issue bears on the question of how to construe a public reason principle, like the one defended by Gaus. To get a handle on the issue, consider the following propositions.

(i) If there is a moral reason for Jack to do x, then it is appropriate to blame Jack for failing to do x (assuming there were no countervailing considerations or excusing conditions in play).

(ii) For it to be appropriate to blame Jack for failing to do x it must be the case that Jack is capable of appreciating the force of the moral reason to do x.

Stipulate that an external moral reason for Jack to do x is a consideration that he cannot appreciate, even if he engages in sound deliberative reasoning from his current system of reasons and beliefs. Now consider a third proposition.

(iii) It is possible for Jack to have an external moral reason to do x.

If (iii) is true, then either (i) or (ii) – or both – must be false. But (ii) is very hard to deny. So we face a choice between rejecting (i) or (iii). Since (i) initially seems quite plausible, some will conclude that we must reject (iii). Call this the conceptual argument for moral internalism.
I am not sure whether Gaus would accept this argument. He claims that morality is a system of demands and that to make a genuine demand on another you must show that his system of reasons and beliefs yields reasons for him to accept your demand. But these claims can be read to presuppose that externalism about moral reasons is false rather than to establish, or provide a reason for thinking, that it is false. But whether or not Gaus himself would advance the conceptual argument for moral internalism, it might be thought that it supports an internalist construal of (PRP). That, however, would be a mistake. Friends of externalism about moral reasons can and should reject (i). It is less plausible than it first appears.

To see why, we need to distinguish the appropriateness of moral criticism from the appropriateness of holding another to be blameworthy. In the standard case, these two go together, but they need not in all cases. Consider, for example, a case in which an otherwise morally sensitive person is incapable of appreciating the force of a certain class of moral reasons. He has, we can say, a blind spot with respect to these considerations. The explanation for why he has the blind spot might appeal to facts about his past, such as his upbringing; but the important point about the case is that he is incapable of appreciating the force of the reasons in question. Here, or so the externalist about moral reasons can claim, the person is appropriately subject to moral criticism when he fails to respond as he should to these considerations. He is, after all, a responsible moral agent and he is failing to respond appropriately to the moral reasons that apply to him. But this claim does not commit one to thinking that it must be appropriate to blame the person for this failure. Indeed, in the circumstances, there might be no point to doing so. Cases like this one demonstrate a key externalist idea. People can be subject to limitations that
affect their ability to appreciate the force of the moral reasons that apply to them. These blind spots should not lead us to conclude that these people do not have the moral reasons that they fail to appreciate. Still, coming to see that a person literally cannot appreciate the force of a moral reason can and should temper both our judgment of the person and how we respond to him.

1 An earlier version of this paper was presented at the Workshop on Public Reason at the University of Arizona in the Fall of 2007. I thank Jerry Gaus for organizing the workshop, and I thank him and the other participants for their comments on the paper at the Workshop. I especially thank Bruce Bower who served as the commentator for my paper on this occasion.


4 As Gaus has explained, the Rawlsian distinction between “political” and “comprehensive” doctrines is both misleading and elusive. See Gaus, “On the Diversity of Comprehensive Liberalisms.”

5 For an excellent overview of the different characterizations of public justification in the recent philosophical literature see Fred D’Agostino, Free Public Reason (New York: Oxford University Press, 1996).


7 On this point see Gaus’ well-considered rejection of “populist theories of public justification.” Gaus, Justificatory Liberalism, pp. 130-136.

8 This enables Gaus to respond to the indeterminacy problem concerning public justification. There are multiple conceptions of public justification (which articulate competing and incompatible standards for justified political power). An appeal to a particular conception of public justification, accordingly, looks to be a covert appeal to contested political preferences. But if background considerations about the nature of justification and moral reasoning can be relied on to favor one conception over the others, then the problem can be overcome. See Gaus, Justificatory Liberalism, pp. 4-5.

9 Gaus, Justificatory Liberalism, p. 165. An alternative formulation of the principle, from Joel Feinberg, states that “Liberty should be the norm; coercion always requires some special justification.” Gaus occasionally refers to this principle simply as the “Liberal Principle.” See, for instance, Gaus, Social Philosophy, pp. 117-119.

10 These include, among others, Joel Feinberg, Harm to Others (New York: Oxford University Press, 1984) and Stanley Benn, A Theory of Freedom (Cambridge: Cambridge University Press, 1988).

11 Gaus, Justificatory Liberalism, p. 323 note 22.


15 Gaus, “Liberal Neutrality: A Radical and Compelling Principle,” p. 143. (Note I substitute x for the Greek letter used by Gaus.)
might be able to instances of failures to intervene that are as opposed to certain instances of coercion, with this kind of symbolic significance.

It is doubtful that in modern societies there exist social conventions that invest coercive acts as such, acts express disrespect to the coerced person. Symbolic meanings are conditioned by contingent social facts. In point of fact, the issue may be less clear cut than this suggests. See Gaus’ discussion of the conflicting empirical evidence on the extent to which seatbelt restrictions actually save lives. Gerald F. Gaus, “Why all welfare states (including laissez-faire ones) are Unreasonable?”, Social Philosophy and Policy 15 (1998).

A note on terminology is in order here. Gaus characterizes his preferred conception of justification as “weakly externalist.” It is externalist since it is committed to open, not closed, justification. That is, on Gaus’ view a person can have an unjustified belief even if the belief is justified by reference to his current beliefs, provided that if some new information were added to his current beliefs, the belief would not be justified. (See Gaus, Justificatory Liberalism, pp. 32-35). But Gaus also makes it plain that, on his view, justification must take its point of departure from a person’s current system of reasons and beliefs. Applied to reasons for action and not merely to reasons for belief, this view fits well with Williams’ influential account of internal reasons; viz that for a person to have a reason for action there must be a sound deliberative route from the person’s subjective motivational set to the consideration which purportedly provides the reason to act. That is why I describe Gaus’ view of moral reasons as internalist.

Actually, the split is possible even if one rejects internalism about reasons. But externalist views of moral reason, one might say, allow for a greater split.


We also could say that Jill has a personally justified, but false, belief that the wrongness of voluntary euthanasia can be publicly justified. But I am assuming that Jill has no such belief. She does not believe that her view could be publicly demonstrated in the specific sense of public demonstration specified by the public reason principle.

This way of putting the point fits the statement of (PRP), which explicitly mentions coercion. However, in Justificatory Liberalism, Gaus claims that “when making moral demands on others, personal justification is not sufficient; such demands must be publicly justified.” (p.12) This suggests that it is moral demands as such – and not only moral demands backed by coercion – that must be based on shared/impartial reasons.


In point of fact, the issue may be less clear cut than this suggests. See Gaus’ discussion of the conflicting empirical evidence on the extent to which seatbelt restrictions actually save lives. Gerald F. Gaus, “Why all welfare states (including laissez-faire ones) are Unreasonable?”, Social Philosophy and Policy 15 (1998).

Gaus terms proposals justified in this way “weakly publicly justified” as opposed to proposals that can be conclusively justified to all rational persons, which he terms “strongly publicly justified.”

Gaus emphasizes the radical implications of (PRP) for state policy in “Liberal Neutrality: A Radical and Compelling Principle.”

G. Gaus, Social Philosophy, p. 119.


Gaus himself defends a modest good Samaritan duty, a duty to be a “minimally decent Samaritan.” And he argues that such a duty can be publicly justified. See Social Philosophy, pp. 193-95.


Thomas Nagel, Equality and Partiality (New York: Oxford University Press, 1991), p. 100. Nagel makes it plain that the same point applies to a range of non-economic state policies as well. In general see his discussion of negative responsibility and state action. (Ibid., pp. 99-102, 166-67.)

It is sometimes claimed that coercion has a special significance due to its symbolic meaning. Coercive acts express disrespect to the coerced person. Symbolic meanings are conditioned by contingent social facts. It is doubtful that in modern societies there exist social conventions that invest coercive acts as such, as opposed to certain instances of coercion, with this kind of symbolic significance.

It is sometimes claimed that coercion has a special significance due to its symbolic meaning. Coercive acts express disrespect to the coerced person. Symbolic meanings are conditioned by contingent social facts. It is doubtful that in modern societies there exist social conventions that invest coercive acts as such, as opposed to certain instances of coercion, with this kind of symbolic significance.

Admittedly, this is a little too quick. On some possible moralized construals of coercion there may be no instances of failures to intervene that are prima facie morally wrong. Working with such a construal, one might be able to ground an asymmetry between coercive interventions and failures to intervene. To nail
down the point expressed in this paragraph, therefore, I would need to show that no such moralized account of coercion is compelling. This is not a task I can undertake here.

Assume here, if one likes, that the costs to me of intervening are very small or nonexistent.

Scanlon defends a version of the principle in What We Owe to Each Other (Cambridge, Mass.: Harvard University Press, 1998), pp. 363-73. Three caveats are in order: (1) Scanlon holds that reason judgments in general, not just those pertaining to morality, are universal. For present purposes, I limit the principle to apply to judgments of moral reasons. (2) Scanlon allows that some reason judgments have subjective conditions. (3) Scanlon does not think that what I here refer to as a principle is aptly characterized as a principle. It is, he suggests, better thought of as a formal consequence of making judgments about reasons.

Extremely plausible, but not unchallengeable. In discussing Peter Winch’s version of moral particularism, Raz presents an interesting argument that suggests that (UP) needs qualification. Suppose two people are in the same circumstances. And suppose that the relevant moral considerations, judged impersonally, underdetermine whether one should do x or y in these circumstances. Further suppose that one of the persons has a moral character that makes it true of him that he must do x and not y. If he were to do otherwise, we can assume, it would compromise his integrity. Here, Raz claims, the person has a moral reason to do x that the other person with a different moral character may not have. Thus, moral reasons do not universalize in all cases. See Joseph Raz, Engaging Reason (Oxford: Oxford University Press, 1999), pp. 239-45. Since adding the qualification suggested by Raz’s argument would not affect the points I wish to press in this section, I shall not explore this complication further.

Assuming, of course, that he judges that his fellow citizens are in circumstances sufficiently similar to his own to warrant the inference.


In the sense in which rationality is understood in terms of responsiveness to reason.

Alternatively, I might allow that full rationality is captured by the idealizations in (i) and (ii) and reject (PRP) in favor of a principle that refers to full reason-responsiveness as opposed to full rationality. But this is merely a terminological issue.

At times, Gaus appears to offer a conceptual argument in favor of internalism about moral reasons that links moral demands to the appropriateness of responses like blame or guilt. (Gaus, Justificatory Liberalism, pp. 122-23). See the appendix below for discussion of this issue.

Gaus, Justificatory Liberalism, p. 129.

Ibid., pp. 151-52.

Here it should be noted that Gaus’ internalist account of moral reasons plays a pivotal role in his rejection of the view, espoused by William Galston (and myself), that it is possible to justify a moral view to someone if one presents what one takes to be valid reasons for the view. As Gaus points out, this position makes sense on an externalist, but not an internalist, account of moral reasons. See Justificatory Liberalism, pp. 140-141.

It goes without saying that if one is wrong in one’s assessment of the balance of reasons, then one will not succeed in justifying the policy.

Scanlon likewise describes contractualist morality in terms of the value of the relations between persons that it establishes. “This relation, much less personal than friendship, might be called a relation of mutual recognition.” See T.M. Scanlon, What We Owe to Each Other, p. 162. (Scanlon’s account of contractualist morality includes, but is broader than, the requirements of political justice.)

The view, crudely formulated here, bears some resemblance to the position Habermas has defended in a series of publications. But I do not purport to represent his views.


Note: this is why Rawls downplays the original position argument, viewing it now as a mere illustrative device.


This claim, while substantially correct, may need to be qualified in various ways. I here pass over a number of difficult issues concerning the epistemic significance of disagreement. On this topic compare Thomas Kelly, “The Epistemic Significance of Disagreement,” in Oxford Studies in Epistemology I, edited
That is, in my judgment, Gaus is right to view the mechanism for settling political disagreements as primarily adjudicative rather than one that aims to mediate disputes. (See Gaus *Justificatory Liberalism*, pp. 271-74.) The point of the procedures is to reach a verdict as to what citizens collectively take to be in the public interest or for the common good of their society.


Or, less dramatically, the politics of Thoreau-like disengagement from political life.

Legitimate, but not necessarily just. It is true that over time citizens might come to value the adjudicative procedures for intrinsic reasons. (On this point, see Rawls’s interesting discussion of the transition from constitutional politics to an overlapping consensus.) I discuss the extent to which it is rational for citizens to do so in my “Democracy and Restraint,” *Law and Philosophy* 26 (2007).

Consider, for example, the “legal point of view.” This is artificial point of view, since it does not correspond with the first-person moral convictions of any citizen. This holds true on either legal positivist or natural law views.

This claim does not commit me to denying the obvious point that evaluative concepts are shared. The fact that they are shared explains why it is not surprising for people who reason first-personally to converge on many evaluative judgments. The claim also does not commit me to denying the epistemic value of rational discussion with others on evaluative issues.

In Gaus’ words “the epistemic theory on which the public justification of liberal principles rests is not itself publicly (conclusively) justified.” See Gaus, *Justificatory Liberalism*, p. 175.


This is, roughly, the position that Scanlon takes on the issue. See Scanlon, *What We Owe to Each Other*, pp. 277-90. See also the interesting discussion of the issue in John Skorupski, “Internal Reasons and the Scope of Blame,” in *Bernard Williams*, edited by Alan Thomas (Cambridge: Cambridge University Press, 2007).