

Justification to All: Liberalism, Legitimacy, and Theology

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Abstract

This thesis concerns the reason-giving aspect of legitimacy. What reasons must be used to justify coercive laws, if citizens are to be respected as morally free and equal, in the face of their many moral, religious, and philosophical disagreements?

Many theorists endorse 'political liberalism', according to which laws must be justified to all citizens by reasons that they can accept. This claim has been interpreted in two conflicting ways. The dominant view, which I call 'public reason liberalism', holds that laws must be justified by appeal to a set of values that all citizens can share, despite their many disagreements. In the first part of the thesis, I argue that this view should be rejected in favour of 'justificatory liberalism', which holds that laws must be conclusively justified to each citizen on the basis of all of their reasons. I also respond to the challenge of the 'right reasons view', which rejects the claim that laws need to be justified to citizens by reasons they can accept.

Several prominent objections to political liberalism claim that it is incompatible with committed religious belief. In the second part of the thesis I investigate whether this is the case with regard to Christianity, by engaging with Christian theology. I argue that many of the common objections to political liberalism fail, but so do certain arguments that aim to show that Christians ought to endorse public reason liberalism on the basis of their religious beliefs. Nonetheless, Christians can accept political liberalism, and justificatory liberalism in particular. The requirements of justificatory liberalism and individuals' Christian beliefs will sometimes conflict, however. Justificatory liberals should accept that individuals can sometimes justifiably prioritise the latter over the former.

My overall argument is that justificatory liberalism offers the best account of the reason-giving aspect of legitimacy, and that this is partly shown by its compatibility with Christian theology.

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Introduction: Liberalism, Legitimacy, and Theology

Liberals believe that all citizens should be respected as morally free and equal. All persons have an equal basic moral status, which must be honoured within our life together in society. This immediately raises the question of what the terms of this common life should be, especially when those terms are coercively enforced through law. What conditions does the legal coercion of free and equal citizens need to fulfil in order to be morally permissible?

One important aspect of this general question is the issue of what *reasons* and *values* should be used to justify (coercive¹) laws. This issue is also particularly difficult, due to the pluralistic nature of contemporary societies. Free and equal citizens disagree on many philosophical, moral, and religious matters. They endorse different religious worldviews and understandings of what makes for a good or worthwhile life.² Yet coercive legislation applies to all citizens, forcing everyone to act, or not act, in particular ways. What reasons or values should be used to justify those laws, in order to respect citizens' status as free and equal? In particular, how do citizens' own beliefs and values relate to the reasons used to justify laws? And what implications does this have for the deliberation and reason-giving of citizens and officials?

These questions are the focus of this thesis. They concern the *legitimacy* of laws, and specifically the reason-giving aspect of legitimacy. They are questions about the way in which state coercion must be justified if it is to be consistent with citizens' freedom and equality, and thus morally permissible.³ They are therefore vital questions for our understanding of politics. If we are to make moral judgments about states, laws, and political regimes, then we must know when state

¹ There is debate as to whether all, or only most, laws are coercive. I will not discuss this here; my focus throughout is on coercive laws, whether or not that includes all laws.

² I will refer to these beliefs as citizens' 'worldviews', 'conceptions of the good', or 'comprehensive doctrines'. These terms are not identical, but the differences between them generally do not matter for my purposes, so I will generally use them interchangeably.

³ I use the term 'legitimacy' in this minimal sense throughout. Legitimacy concerns the moral permissibility of state coercion. It does not necessarily entail political obligation.

coercion is morally permissible or impermissible.

1. Three Liberal Views of Legitimacy

According to the most prominent contemporary liberal theory, a necessary condition for legitimacy is that laws be justified to all (reasonable) citizens by reasons that they can accept. This is the Public Justification Principle (PJP). The state's exercise of coercive political power can only be legitimate if it is acceptable to all citizens, and this requires that all have reason to endorse enacted laws. All 'political liberal' theories endorse this claim.

While many political philosophers accept PJP, there is a lot of disagreement about precisely what it entails. The idea that laws must be justified to all by reasons that they can accept can be understood in several different ways. Most political liberals endorse some version of what I call 'public reason liberalism'.⁴ According to this view, laws must be justified by appeal to 'public reasons', which are reasons that all (reasonable) citizens can accept, or appreciate as having normative force. In other words, there is some special class of reasons that are acceptable to all, and these reasons must be used to justify laws. Laws that cannot be justified by public reasons are illegitimate, so cannot be permissibly enacted. Notably, 'strictly religious reasons'⁵ – reasons that are grounded in a religious doctrine and only have normative force for those who accept that doctrine – are considered non-public by all public reason liberals.

Most public reason liberals believe that an implication of this view is that citizens should present public reasons in their own political advocacy. Since laws must be plausibly supported by public reasons in order to be legitimate, citizens should only advocate laws for which they can offer such

⁴ Three prominent examples are John Rawls, Stephen Macedo, and Jonathan Quong. See Rawls, John, *Political Liberalism*, expanded edition (New York: Columbia University Press, 2005); Macedo, Stephen, 'In Defence of Liberal Public Reason: Are Slavery and Abortion Hard Cases?', *American Journal of Jurisprudence* 42 (1997): 1-29; Quong, Jonathan, *Liberalism Without Perfection* (Oxford: Oxford University Press, 2011).

⁵ I take this term from Talisse, Robert B., 'Religion, Respect and Eberle's Agapic Pacifist', *Philosophy and Social Criticism* 38:3 (2012): 213-325, p. 314.

reasons, so should refrain from supporting laws for which they only have non-public reasons. Citizens should therefore not support laws for which their only reasons are religious.

Not all interpretations of PJP fall into the public reason liberal camp. Many theorists write of 'political liberalism' as one school of thought, and contrast it with comprehensive, or perfectionist, liberalism.⁶ Within the category of political liberalism, we should distinguish between public reason liberalism and 'justificatory liberalism', however.⁷ Justificatory liberals share public reason liberals' concern with justifying laws to citizens, so that citizens do not face coercion that they lack reason to accept, but their interpretation of PJP differs in two respects.

First, justificatory liberals believe that public reason liberalism fails to ensure that laws are justified to all citizens, since it allows citizens to be coerced in cases where they have decisive reason to reject laws. Public reason liberals believe that PJP is fulfilled as long as there is *some* public reason argument for a law, even if some citizens consider that argument insufficient to justify the law, or outweighed by countervailing considerations. According to justificatory liberals, the enactment of such a law would not respect those citizens as free and equal, since they would face coercion that is not *conclusively* justified to them. PJP is not fulfilled in this case. The central claim of justificatory liberalism is that laws must be conclusively justified to every citizen; every citizen must have sufficient reason to accept them.

Second, justificatory liberals hold that laws can be justified to citizens on the basis of all of their beliefs and values. All reasons that citizens (can) accept can be used to justify laws. A law can be conclusively justified to all citizens by reasons that they accept, fulfilling PJP, without being

⁶ For example, Nussbaum, Martha C., 'Perfectionist Liberalism and Political Liberalism', *Philosophy & Public Affairs* 39:1 (2011): 3-45.

⁷ Justificatory liberalism is endorsed by Gerald Gaus and Kevin Vallier. See Gaus, Gerald, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (Cambridge: Cambridge University Press, 2011); Vallier, Kevin, *Liberal Politics and Public Faith: Beyond Separation* (Oxford: Routledge, 2014).

justified to all citizens by the same reasons. Justificatory liberals thus make no distinction between ‘public’ and ‘non-public’ reasons, and permit ‘convergence justifications’, where different citizens have laws justified to them by different reasons, including reasons grounded in their particular worldview. While laws that are only justified by one religion or comprehensive doctrine cannot be permissibly enacted, laws that are supported by a range of such doctrines, such that they are conclusively justified to all citizens, can be.

Justificatory liberalism also has less restrictive implications for citizen conduct. Since there is no specific set of reasons that must be appealed to to justify laws, citizens are under no obligation to present such reasons. Citizens can also permissibly support laws for which their only reasons are comprehensive – such as religious reasons – since those laws might be justified to other citizens by their own unshared reasons.⁸

In the first Part of this thesis I argue that justificatory liberalism provides the best answer to our original questions about the justifying reasons required to legitimise laws. I distinguish justificatory liberalism from public reason liberalism, and argue that the former offers a better understanding of the implications of citizens’ freedom and equality for the justification of coercive legislation. We should endorse the justificatory liberal interpretation of PJP.⁹

Some liberal theorists reject political liberalism, however. All liberals believe that exercises of political power must be in some sense justified to citizens, but some believe this requirement to be fulfilled when laws are justified by *sound* reasons and arguments.¹⁰ The laws that should be

⁸ I further discuss justificatory liberalism’s implications for citizens’ conduct in Chapter 5.

⁹ ‘Hybrid views’ between public reason and justificatory liberalism are also possible. For example, one might believe that laws must be conclusively justified to all citizens using public reasons. No theorist endorses such a view, as far as I am aware. While my categories of justificatory liberalism and public reason liberalism are not exhaustive of all possible political liberal views, I focus on them because they are the most plausible views, and the ones endorsed within the literature.

¹⁰ For example, see Arneson, Richard J., ‘Democracy is Not Intrinsically Just’, in Dowding, Keith, Robert E.

enacted are those justified by the best reasons and arguments available. This itself respects citizens as free and equal, since the morally best laws are passed, and such laws will by definition take everyone's interests into account in a fair way. I call this the 'right reasons view'. Liberal right reasons view theorists believe that sound reasons justify basic liberal rights and freedoms. But they reject the claim that laws must be justified to all citizens by reasons that they can accept, in the way political liberals believe. The right reasons view therefore provides an important challenge to justificatory liberalism, which I discuss (and reject) in Chapter 4.¹¹

2. Engaging with Christian Theology

Political liberals claim that their view represents the best response to reasonable disagreement about religious and philosophical questions, showing how citizens in a pluralistic society can live together under legitimate and stable laws. It would be a damaging blow to those theories if many ostensibly reasonable religious citizens could not accept them, because they were incompatible with their religious convictions. This would cast major doubt upon political liberalism's claim to show how we can live together under law as free and equal citizens, despite our many disagreements. Such doubt would certainly be cast if political liberalism proves to be incompatible with Christianity, which remains the largest religion in Western liberal societies, and has been so historically and culturally influential.

Yet many theorists have argued that political liberalism is indeed incompatible with committed religious belief. Political liberalism has come under sustained attack from philosophers sympathetic with religion. Many argue that it places unacceptable restrictions on the public conduct of religious citizens, which are incompatible with their acting on their religious

Goodin, and Carole Pateman (eds.), *Justice and Democracy: Essays for Brian Barry* (Cambridge: Cambridge University Press, 2004): 40-58.

¹¹ Clearly the three views of legitimacy I have outlined are not exhaustive. For example, one might hold that justifying reasons are irrelevant to legitimacy. All that matters is that laws are enacted via a fair procedure. I lack space to discuss this view.

commitments.¹² Christianity is often the focus here. It also seems plausible to think that many religious citizens endorse a right reasons view of legitimacy, and so believe that laws justified by the true morality should be enacted, even if some citizens reject them. Christians believe that God has revealed the truth about how we should live, and might well hold that the law should conform to His will, even if some do not recognise this truth. This suggests that political liberalism could indeed be incompatible with Christianity.

In order to determine whether this is true, and to assess the common religious objections to political liberalism, we must turn to Christian moral and political theology. Political theology is a well-established branch of Christian theology, in which theologians discuss very similar issues to those that political philosophers consider, but based on their theological understanding.¹³ This makes it an ideal conversation partner for political philosophers interested in the problem of legitimacy in pluralistic societies, especially since political liberalism's emphasis on justifying laws to all citizens seems to make citizens' religious views relevant to legitimacy. Few political theorists have engaged with Christian political theology, despite the potential for fruitful dialogue. I seek to correct this in the second Part of this thesis.

Of course, the answer to whether political liberalism is compatible with Christian faith might be different for public reason liberalism and justificatory liberalism, and for different specifications of these views. For example, versions of public reason liberalism that are more inclusive of religious reasoning in public are likely to be more acceptable to Christian citizens. Further, there is a great

¹² The most prominent example is Wolterstorff, Nicholas, 'The Role of Religion in Decision and Discussion of Political Issues', in Audi, Robert, and Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (London: Rowman & Littlefield, 1997): 67-120. For a recent discussion see Chaplin, Jonathan, 'Law, Religion and Public Reasoning', *Oxford Journal of Law and Religion* 1:2 (2012): 319-337.

¹³ Throughout this thesis I use the term 'political theology' to refer to the work of Christian theologians who discuss politics from within their theological framework. I do not have in mind 'Schmittian' political theology, which seeks to unveil the ways in which theological concepts underlie modern political theory and permeate secular politics.

deal of diversity within Christianity. Some theological traditions might be more congenial to political liberalism than others.

The aim of Part II of the thesis is therefore to establish what we might call a 'realm of compatibility' – a range of theories that appear consistent with common Christian theological positions. Since I defend justificatory liberalism in Part I, a key concern here will be whether it is within this realm. I will argue that it is, and that this reinforces my earlier arguments in favour of justificatory liberalism.

3. Thesis Overview

This thesis is therefore divided into two distinct Parts. Part I (Chapters 1-4) examines the question of the reason-giving aspect of legitimacy, from the perspective of political philosophy. Part II (Chapters 5-9) considers the compatibility of the political liberal answer to that question with Christian theology.

Chapters 1-3 focus on the debate between public reason liberalism and justificatory liberalism. The distinction between these views has rarely been noted, and Chapter 1 therefore focuses on exploring a central point of disagreement between them – whether laws need to be conclusively justified to all citizens. I also begin my defence of justificatory liberalism, by showing that many arguments that have been offered in favour of public reason liberalism in fact support justificatory liberalism. Chapter 2 then explains justificatory liberalism's interpretation of PJP in more detail, especially its understanding of 'conclusive justification', and responds to several important objections that public reason liberals would make to it. I delve deeper into the difference between these two views in Chapter 3, by considering the issue of 'reasonableness'. I argue that public reason liberalism must rely on an objectionably thick, or substantive, conception of reasonableness. This actually makes it relevantly similar to the right reasons view.

While Chapters 1-3 object to public reason liberalism and argue for the superiority of justificatory liberalism, they do not directly defend the understanding of the implications of citizens' freedom and equality that is at the heart of justificatory liberalism. I undertake that task in Chapter 4, where I also consider the challenge posed by the right reasons view, by examining several objections that right reasons view theorists have made to justificatory liberalism. I argue that these objections can be defused, again showing justificatory liberalism to be a philosophically superior account of the reason-giving aspect of legitimacy.

Chapter 5 begins my examination of Christian political theology. I offer further explanation of the motivation for engaging with theology, and why I have chosen to focus on Christian theology in particular. The reasons for this include the fact that Christianity remains the world's largest religion, the historic and continued importance of Christianity within Western liberal democracies, and the availability of a large and well-developed literature, as well as my own knowledge and interest. I then briefly examine some of the well-known objections to political liberalism that have been made on behalf of religious citizens. I argue that while several of them are misguided, they do point to the possibility of 'conflicts of loyalty'. These are cases where Christians believe they have strong reason to seek the enforcement of moral principles that can only be justified by religious reasons, so loyalty to Christianity conflicts with loyalty to political liberalism.

Talk of conflicts of loyalty assumes that Christian citizens can have at least *some* loyalty to political liberalism. This would not be the case if Christianity was fundamentally incompatible with political liberal understandings of political authority, the nature of morality, or the freedom and equality of citizens. In Chapter 6 I argue that this is not the case for justificatory liberalism. Apparent deep tensions between this view and Christian belief can be shown to be illusory.

Some theorists have argued that Christian theology actually gives decisive reason to *accept* public

reason liberalism. This would be problematic for my argument, since it means that Christians should accept a view of legitimacy that I have rejected. I consider two arguments to this effect in Chapters 7 and 8, and argue that they fail.

In the remainder of Chapter 8 I consider theological arguments for liberalism, in order to determine whether they can be used to defend political liberalism, and indeed justificatory liberalism, in particular. I argue that while these arguments do not provide conclusive support for justificatory liberalism, they do point to important theological considerations in its favour. This suggests that justificatory liberalism is indeed in the 'realm of compatibility' between Christian theology and theories of legitimacy.

Chapter 9 directly considers the question of conflicts of loyalty. I argue that justificatory liberals must accept that there might be cases where Christians have overriding reasons to violate the requirements of justificatory liberalism. We can be hopeful, however, that these are rare instances. Further, this does not undermine the general appeal of justificatory liberalism, on both philosophical and theological grounds.

Defending the claim that justificatory liberalism is philosophically and theologically appealing is the central task of this thesis. While political liberalism has faced persuasive objections, many of these only apply to public reason liberalism, and many of the concerns expressed within them are shared by, and accommodated within, justificatory liberalism. Respect for citizens as free and equal means that laws must be justified to every citizen in order to be legitimate, but this should be understood as requiring conclusive justification to each citizen based on all of their reasons, not justification by 'public reasons'. Justificatory liberalism is a philosophically persuasive account of the reason-giving aspect of legitimacy, as Part I of this thesis shows. Part II shows that it is also compatible with Christian theology, and can better deal with the problem of conflicts of loyalty

than can public reason liberalism. I do not claim that justificatory liberalism is the account of legitimacy that is most supported by Christian theology, or that all Christians ought to accept it on the basis of their Christian faith.¹⁴ However, it is an account that Christians can accept without contradicting their religious doctrines, and this gives further weight to the claim that it is a suitable theory for pluralistic societies like ours.

¹⁴ Those stronger claims would require more argument, and more theological depth, than I can undertake here. The compatibility claim is sufficient for my purposes.

Part I: Justifying Justificatory Liberalism

Chapter 1: Two Types of Political Liberalism

1. Political Liberalism

I take political liberalism to centrally be a doctrine concerning the legitimacy of laws – the permissibility of the coercive exercise of state power. It states that a necessary condition for the legitimacy of (coercive) laws is that they are justified to every (reasonable¹) citizen by reasons that they can accept.² This is the Public Justification Principle, or PJP.³ Political power is the shared power of free and equal citizens. The exercise of this shared power is legitimate only if all can consider it justified. Otherwise, some citizens face brute coercion, which amounts to a denial of their equality with their compatriots. Laws that are not publicly justified force all citizens to abide by the standards and beliefs of some, using shared power for private ends – ends that some do not endorse. This is impermissible among free and equal citizens. As Jonathan Quong writes, political liberalism’s “foundational commitment is to the moral claim that persons (or citizens) are free and equal, and thus the exercise of political power is legitimate only when it can be publicly justified.”⁴ John Rawls states this in his ‘liberal principle of legitimacy’: “Our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in light of principles

¹ I discuss this condition in Chapter 3.

² All political liberals believe this is a necessary, not sufficient, condition for legitimacy. Another obvious necessary condition is democratic authorisation. Legitimate laws have both a procedural and substantive justification, as emphasised by Sterba, James P., ‘Reconciling Public Reason and Religious Values’, *Social Theory and Practice* 25:1 (1999): 1-28. For the sake of brevity, I sometimes speak of laws ‘being legitimate’ when PJP is fulfilled. This should always be taken to mean that such laws have met this one necessary condition for legitimacy, so are legitimate if other necessary conditions are also met.

³ My statement of PJP is a less formal, and more ecumenical, version of the principle stated by Gaus, Gerald and Kevin Vallier, ‘The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry and Political Institutions’, *Philosophy & Social Criticism* 35:1-2 (2009): 51-76, p. 53: “L is a justified coercive law only if each and every member of the public P has conclusive reason(s) R to accept L as a requirement.”

⁴ Quong, *Liberalism Without Perfection*, pp. 2-3.

and ideals acceptable to them as reasonable and rational.”⁵

One way of motivating political liberalism is by appeal to the fact that it is in general morally wrong to coerce people without offering them an adequate justification for that coercion. As John Chandler puts it, “respecting citizens as free and equal rational beings entails accepting that coercing them requires justifying the necessity of this to them.”⁶ Coercion infringes on an individual’s autonomy and liberty, forcing them to act in a particular way. It therefore is presumptively wrong. In order to outweigh this presumption, reasons must be offered, which show the coercion to be justified. I wrong you if I push you onto the ground without offering you a justification. In order to legitimise my action, to make it morally permissible, I must offer you reasons for it – for example, that I was pushing you out of the way of an oncoming car. Further, according to political liberals, not just any kind of justifying reasons will do. The reasons offered must be in some way acceptable to the coerced individual. If I push you onto the ground and then seek to justify this by appealing to a reason that is unintelligible to you, or that is based upon a comprehensive doctrine or worldview that you reject, then I fail to overcome the presumption against coercion. I display inadequate respect for you as a moral equal, by claiming that I am permitted to coerce you based on my own reasons even when you do not recognise those reasons as having any normative force. Seeking to justify my pushing you by telling you that fairies told me to do it, when you do not believe in fairies, is equivalent to offering you no reason at all. If

⁵ Rawls, *Political Liberalism*, p. 217. Rawls restricts the scope of this principle to constitutional essentials and matters of basic justice. Quong, *Liberalism Without Perfection*, pp. 273-287, argues against this restriction of scope. Rawls’s principle of legitimacy is closely related to his ‘criterion of reciprocity’: “our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions.” *Political Liberalism*, p. xlv.

⁶ Chandler, John, ‘Religious Reasons and Public Policy’, *Pacific Philosophy Quarterly* 91 (2010): 137-152, p. 140. Other examples of political liberalism being presented this way include Audi, Robert, ‘Liberal Democracy and the Place of Religion in Politics’, in Audi, Robert, and Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (London: Rowman & Littlefield, 1997): 1-66; Gaus and Vallier, ‘Roles of Religious Conviction’; Eberle, Christopher J., *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002). For criticism, see Wall, Steven, ‘On Justificatory Liberalism’, *Politics, Philosophy & Economics* 9:2 (2010): 123-149; Bird, Colin, ‘Coercion and Public Justification’, *Politics, Philosophy & Economics* 13:3 (2014): 189-214; Wolterstorff, Nicholas, ‘The Paradoxical Role of Coercion in the Theory of Political Liberalism’, *Journal of Law, Philosophy and Culture* 1:1 (2007): 135-158.

I am to respect you as a moral equal, and justify my interference with your liberty, then I must offer reasons that are *acceptable* to you. The core idea is “that people should not be compelled on the basis of reasons that are not persuasive for them.”⁷

There are many different interpretations of the idea that reasons that justify coercion must be ‘acceptable’ or ‘persuasive’ to the coerced – of what it means for reasons to be ones that individuals ‘can accept’. In this chapter I distinguish two types of political liberalism, based on two interpretations of PJP. A variety of more precise theories fit into each of these two broad camps, but I believe the difference between these two views to be significant. In fact, this difference in interpretation of PJP reflects a deeper difference in normative foundations.⁸ The two camps also have different implications for public reasoning; they place different obligations upon citizens with regard to the reasons that they must offer one another within public deliberation.⁹

2. The Right Reasons View

First, it is worth briefly outlining an interpretation of PJP that all political liberals reject. According to the ‘right reasons view’, reasons for coercion are ones that all citizens ‘can accept’ when they are reasons or arguments that are true, sound, or fully justified. Respecting citizens as free and equal means respecting them as rational agents. Laws are justified to citizens, and thus legitimate, when they would be accepted by fully informed and fully rational individuals. Agents who made no cognitive errors and deliberated perfectly, with complete empirical and normative information, would agree on a conception of justice and rights. Imposing this true morality on citizens respects their moral agency. Thus, Richard Arneson claims that “respect for agency in persons requires treating them according to the moral principles that fully rational persons would

⁷ Greenawalt, Kent, ‘Natural Law and Public Reasons’, *Villanova Law Review* 47:3 (2002): 531-552, p. 535.

⁸ This begins to become clear in this chapter, and is further explored in Chapters 2 and 3.

⁹ This is significant, given the criticism that political liberalism has received as an account of citizens’ deliberative obligations.

choose, the principles best supported by moral reasons.”¹⁰ Further, if you know what those principles are and you “have the power to implement this correct assessment, you should do so, despite the fact that your assessment will not attract the unanimous consent of those affected.”¹¹

Political liberals reject this view because it fails to take proper account of the fact of reasonable pluralism. Individuals’ best reasoning leads them to different conclusions about moral, philosophical, and metaphysical questions, due to what Rawls calls the ‘burdens of judgment’. These include the complexity of evidence, the fact that people can disagree about the relative weight of conflicting considerations, the vagueness of our concepts, and the fact that the way individuals assess evidence and weigh values is shaped by their total life experiences.¹² As Robert Talisse explains, “deep disagreement over fundamental moral, religious and philosophical commitments is not necessarily due to ignorance, foolishness, or wickedness; rather, responsible and intelligent persons doing their epistemic best may nonetheless disagree deeply about fundamental matters.”¹³ Citizens reasonably disagree as to what the ‘true morality’ is, and can therefore reasonably reject impositions justified by appeal to it. Any claim that a particular view can be imposed on everyone because it is the one that is ‘best supported by moral reasons’ can be rejected by others, who have reasonably reached a different conclusion. Reasons offered based on the ‘true morality’ can thus be ones that are not acceptable to people. PJP is not fulfilled by the right reasons view.¹⁴

3. Two Types of Political Liberalism

According to the first political liberal interpretation of PJP, there is a class of reasons that are

¹⁰ Arneson, ‘Democracy is Not Intrinsically Just’, p. 52.

¹¹ Ibid., p. 54. See also Raz, ‘Disagreement in Politics’, *The American Journal of Jurisprudence* 43:1 (1998): 25-52.

¹² Rawls, *Political Liberalism*, pp. 56-57.

¹³ Talisse, ‘Religion, Respect’, p. 315.

¹⁴ I am not claiming to have offered a decisive rebuttal of this view here. I discuss the right reasons view, and the challenge it presents to political liberalism, in much greater detail in Chapter 4.

acceptable to all citizens, and thus of the right kind to justify laws. These are known as ‘public reasons’. All public reasons have some ‘good-making property’¹⁵ that enables all citizens to endorse them. For example, they are reasons that are somehow *accessible* to every citizen, or *shareable* by every citizen, whatever their comprehensive doctrine. “They are reasons that all citizens acknowledge as having normative force.”¹⁶ The central claim of this version of political liberalism is that, in order to be legitimate, laws must be (plausibly) justified by one or more public reasons – by an argument that only uses public reasons. Laws are illegitimate when no such argument can be offered in support of them. As Talisse states, “the exercise of the coercive force of the state is improper when it cannot be justified by the right kind of reason.”¹⁷ I will sometimes refer to this as the ‘right kind of reasons view’, but usually call it ‘public reason liberalism’.

Most advocates of this view believe that citizens are obligated to offer one another public reasons in their public political deliberations.¹⁸ This is the ‘public-reason-giving requirement’.¹⁹ Nathaniel Klemp and Stephen Macedo write that “when seeking to pass a law that will be binding on all, public officials and citizens should offer one another supporting reasons and evidence whose force can be appreciated by all reasonable fellow citizens.”²⁰ Micah Schwartzman concurs: “when citizens engage in political advocacy, they have a moral duty to justify their decisions according to

¹⁵ I take this term from Weithman, Paul J., ‘John Rawls’s Idea of Public Reason: Two Questions’, *Journal of Law, Philosophy and Culture* 1:1 (2007): 47-67, p. 49.

¹⁶ Vallier, Kevin, ‘Liberalism, Religion and Integrity’, *Australian Journal of Philosophy* 90:1 (2012): 149-165, p. 152.

¹⁷ Talisse, ‘Religion, Respect’, p. 314. Talisse adds that “strictly religious reasons are reasons of the wrong kind.” All public reason liberals agree.

¹⁸ A prominent exception is Habermas, Jürgen, ‘Religion in the Public Square’, *European Journal of Philosophy* 14:1 (2006): 1-25. See also North, Richard, ‘Public Reason, Religious Restraint and Respect’, *Philosophia* 40:2 (2012): 179-193; Laborde, Cécile, ‘Justificatory Secularism’, in D’Costa, Gavin, Malcolm Evans, Tariq Modood, and Julian Rivers (eds.), *Religion in a Liberal State* (Cambridge: Cambridge University Press, 2013): 164-186.

¹⁹ I take this term from Stears, Marc, and Mathew Humphrey, ‘Public Reason and Political Action: Justifying Citizen Behaviour in Actually-Existing Democracies’, *The Review of Politics* 74:2 (2012): 285-306, p. 287.

²⁰ Klemp, Nathaniel, and Stephen Macedo, ‘The Christian Right, Public Reason, and American Democracy’, in Brint, Stephen G., and Jean R. Schroedel (eds.), *Evangelicals and Democracy in America, Vol. II: Religion and Politics* (NY: Russell Sage, 2009): 209-245, p. 212.

public reasons that others can reasonably accept.”²¹ Rawls’s ‘duty of civility’ is an example of this.²² Most public reason liberals also believe that citizens should not support laws for which they lack public reasons. If the only reasons a citizen has for supporting a law are non-public, such as reasons grounded in her comprehensive doctrine, then she should refrain from publicly advocating or voting for that law. Citizens are under a duty of restraint.²³

A basic version of public reason liberalism is Robert Audi’s view.²⁴ He argues that laws must be justified by secular reasons, in order that all can recognise that they have adequate grounds. A secular reason is one that has justificatory force independent of any religious proposition, so does not depend for its truth on any theological considerations or pronouncements by religious authorities. Secular reasons can be accepted by all citizens, and thus are public reasons. All citizens can recognise their force, whatever their particular worldview. Religious reasons, in contrast, are not acceptable to all, so laws must not be justified by appeal to them. In a pluralistic society,²⁵ each religion is rejected by some citizens, who cannot be persuaded of a law’s merits by appeal to that religion. Coercive laws must be justified by arguments that all can find persuasive. Religious arguments fail this test, while secular ones pass it. The requirement that laws be justified by secular reasons imposes an obligation upon citizens, the ‘principle of secular rationale’. It states that “one has a prima facie obligation not to advocate or support any law or public policy that restricts human conduct, unless one has, and is willing to offer, adequate

²¹ Schwartzman, Micah, ‘The Sincerity of Public Reason’, *The Journal of Political Philosophy* 19:4 (2011): 375-398, p. 375.

²² Rawls, *Political Liberalism*, pp. 444-445.

²³ Eberle, *Religious Conviction*, pp. 68-71.

²⁴ Audi, ‘Liberal Democracy’, especially pp. 24-28; Audi, Robert, *Democratic Authority and the Separation of Church and State* (New York: Oxford University Press, 2011), pp. 59-76. There is some controversy as to whether Audi is actually a public reason liberal. Vallier argues that he is not, since his view is not rooted in PJP. Audi defends very similar principles to public reason liberals, however, and justifies them at least in part by appeal to the need for coercion to be justified to the coerced. In any case, a public reason liberal view can easily be developed based on Audi’s views, whether or not he should count as one, as Vallier also argues. See Vallier, *Liberal Politics*, p. 55.

²⁵ Which all free societies are, given the fact of reasonable pluralism. Rawls, *Political Liberalism*, p. 36.

secular reason for that advocacy or support.”²⁶ Since laws must be justified by secular reasons, citizens should only support laws that can be justified by such reasons. Such laws are justified by reasons that all citizens can accept, fulfilling PJP.

According to the second political liberal interpretation of PJP, which I call ‘justificatory liberalism’, public reason liberalism is objectionable, because it does not in fact guarantee that laws are justified to every citizen. It requires that reasons that are persuasive to every citizen are used to justify laws, but does not guarantee that every citizen has *sufficient* reason to accept those laws. Laws can be enacted that some citizens have decisive reason to reject. According to justificatory liberalism, such laws violate PJP. An example will help illustrate this. This example focuses on Audi’s view, but parallel examples can be given for all variants of public reason liberalism.²⁷

Alf, Betty and Charlotte are debating the merits of a law, L_1 . Alf is a Christian, and believes that L_1 is in accordance with the God-given morality explained in the Bible. He supports L_1 on this basis, arguing that the Bible reveals the best way for humans to live, and thus it is appropriate for laws to embody Scripture’s morality.²⁸ Alf clearly violates Audi’s principle of secular rationale here.²⁹ The reason he offers for L_1 is religious, and dependent for its veracity on the truth of Christianity.

²⁶ Audi, ‘Liberal Democracy’, p. 25. See also Audi, *Democratic Authority*, pp. 65-66. In ‘Liberal Democracy’ Audi also defends the ‘principle of secular motivation’, which I ignore here. For criticism, see Weithman, Paul J., *Religion and the Obligations of Citizenship* (Cambridge, Cambridge University Press, 2002), pp. 152-160. Audi seems to have abandoned this principle in *Democratic Authority*.

²⁷ A word on my terminology. Some theorists have used ‘justificatory liberalism’ to refer to all theories that hold that laws must be publicly justified. For example, Eberle, *Religious Conviction*. Others have used ‘public reason liberalism’ in this way. For example, Wolterstorff, Nicholas, *Understanding Liberal Democracy: Essays in Political Philosophy*, ed. Terence Cuneo (Oxford: Oxford University Press, 2012); Gaus, Gerald, ‘Public Reason Liberalism’, in Wall, Steven (ed.), *The Cambridge Companion to Liberalism* (Cambridge: Cambridge University Press, forthcoming). In order to distinguish the two versions of political liberalism, I use these terms differently. I choose to use ‘public reason liberalism’ to refer to the first variant of political liberalism because this view has the implication that there is a special class of ‘public reasons’. I use ‘justificatory liberalism’ to refer to the second variant, because this is the term coined by Gerald Gaus, its main advocate. See Gaus, Gerald, *Justificatory Liberalism* (New York: Oxford University Press, 1996).

²⁸ Alf thus appeals to a ‘right reasons view’ of legitimacy.

²⁹ Alf also violates the equivalent principles endorsed by other public reason liberals. As Eberle, *Religious Conviction*, p. 73, notes, “a religious ground is a *paradigmatic* example of a nonpublic, or *personal*, justification.”

It is not a reason that can be persuasive for atheists Betty and Charlotte, so is an inappropriate ground for coercive laws. A law enacted on this basis would be illegitimate. However, Betty also supports L_1 , on grounds of public safety. She believes that L_1 will reduce crime and lead to fewer injuries to her fellow citizens. Betty's argument here is secular, and she thus fulfils the principle of secular rationale.³⁰ Alf and Charlotte can recognise the importance of public safety, so can be persuaded by arguments that appeal to it. If L_1 was enacted with Betty's reason as its justification then on Audi's view it would be a legitimate law, since it is supported by a secular reason that Betty considers a sufficient justification for L_1 . As it happens, however, Charlotte considers Betty's argument to be inadequate to justify L_1 . While she recognises the importance of public safety, she believes that the restriction on individual liberty entailed by L_1 is too great to be justified by its safety benefits. The public-safety-based reasons in favour of L_1 are outweighed by the liberty-based reasons against it. L_1 has the support of a secular argument, but from Charlotte's perspective that argument is insufficient to justify it. She has decisive reason to reject the law. Yet on Audi's view, Charlotte's objection does not delegitimise L_1 . L_1 is supported by a secular argument, and one that Betty believes is adequate to justify it. L_1 can thus be legitimately enacted, despite Charlotte's rejection of it.

Justificatory liberals dispute this final claim, on the grounds that L_1 is not justified to Charlotte. The argument that Betty offers for L_1 is insufficient to justify it to Charlotte, given the balance of values that Charlotte endorses. While it is true that she accepts the value of public safety, according to her belief-value set³¹ this value is completely outweighed in the case of L_1 , due to the extent of L_1 's restrictions on liberty. The fact that *some reason* that Charlotte can accept supports L_1 , so she has *some reason* to endorse L_1 , is insufficient to show that L_1 is in fact *justified to Charlotte*. Indeed, L_1 is no more justified to Charlotte by Betty's appeal to public safety than by

³⁰ Again, all public reason liberals would include public safety among public reasons.

³¹ As I discuss in Chapter 2 (pp. 44-47), a citizen's belief-value set includes all the beliefs and values she endorses, based on her evaluative standards and various empirical beliefs.

Alf's appeal to Scripture. Certainly, Charlotte could be persuaded by the former argument in a way that she could not be by the latter, since she endorses the value appealed to in the former but not the latter. But that fact alone does not mean that the appeal to public safety justifies the law to her. By her lights, this value is insufficiently weighty and insufficiently promoted by L_1 for it to justify that law. According to Charlotte's belief-value set, L_1 is an unjustified law, and thus it is not justified to her, so is illegitimate. Legitimate laws must be *conclusively* justified to every citizen – justified by *sufficient* reasons – in order to fulfil PJP. In Vallier's words, "it is only when coercion is justified by conclusive reasons that we can say that each citizen is committed to the coercion proposed."³²

A public reason liberal might reply that there is an important difference between Charlotte's disagreement with Betty and her disagreement with Alf.³³ Charlotte disagrees with Alf over whether a certain value – enforcing the morality of the Bible – is a value at all. She completely rejects this as something that is worth promoting. In effect, Alf offers Charlotte *no* reason in favour of L_1 , since she considers his reason to have no normative force. Betty, on the other hand, *has* offered Charlotte a reason in favour of L_1 . Charlotte accepts that public safety is important, a value worth promoting. Her disagreement with Betty is merely over the *weight* that value should be given, as compared to other values, such as liberty. This is a qualitatively different kind of disagreement, and that is why it is permissible for L_1 to be enforced on the basis of public safety but not on the basis of Scriptural morality. Public safety is a justification every citizen can accept, thus making L_1 a legitimate, publicly justified, law.

Justificatory liberals can acknowledge that there is a difference here. Disagreeing over the

³² Vallier, 'Liberalism, Religion', p. 151. Gaus concurs: "Unless the reason is conclusive a Member of [the] P[ublic], given her evaluative standards, does not have an all-things-considered reason to endorse the coercion, so it is not justified." Gaus, Gerald, 'On Two Critics of Justificatory Liberalism: A Response to Wall and Lister', *Politics, Philosophy & Economics* 9:2 (2010): 177-212, p. 195.

³³ This difference is central to Quong's distinction between foundational and justificatory disagreements, discussed below.

existence of a value is different to disagreeing over the weight of a value. What justificatory liberals deny, however, is that this difference is sufficient to make laws legitimate in one case and not in the other. In both cases L_1 is unjustified by Charlotte's lights, so is not publicly justified. According to her belief-value set L_1 should not be enacted, so the coercion of her that it entails is not justified to her. If our concern as political liberals is with justifying coercion to the coerced, such that its restriction of their liberty is justified to them, then simply appealing to *some* value or reason that the individual accepts is insufficient. Individuals must have conclusive reasons in favour of the law, such that, according to their own belief-value set, the situation where they are coerced by it is better than one where they are not. In other words, citizens must not have decisive reasons to reject the law. If they do, then the coercion is not justified to them. Gerald Gaus states this very clearly: "Consulting her own standards, each must hold that the law, in comparison to a condition of liberty, brings more benefits than costs." The law is not justified to her "if a condition of liberty – no law at all – would be better given her evaluative standards."³⁴

Chapter 2 includes a detailed explanation of my understanding of 'conclusive justification', but two features are worth highlighting here. First, justificatory liberalism need not take citizens' beliefs about their own reasons as given. Citizens can form beliefs based on bad reasoning or inadequate empirical information. Justificatory liberalism is concerned with justification on the basis of citizens' own evaluative standards – their own rational commitments. Citizens can be rationally committed to beliefs that they currently reject. Their belief-value sets should therefore be 'moderately idealised' in order to determine what laws are justified to them. My references to what citizens 'believe' thus refer to their beliefs under moderate idealisation. Second, a law can be conclusively justified to a citizen without her believing it to be the best possible law, or one that achieves ideal justice. It is conclusively justified if she prefers it to not having any law on this issue, so lacks decisive reason to reject it. Laws that a citizen believes are sub-optimal can

³⁴ Gaus, Gerald, 'Coercion, Ownership, and the Redistributive State: Justificatory Liberalism's Classical Tilt', *Social Philosophy and Policy* 27:1 (2010): 233-275, p. 249.

nonetheless be conclusively justified to her.

In contrast to public reason liberalism, justificatory liberalism does not distinguish between public and non-public reasons. There is no special class of reasons sharing a good-making property that makes them appropriate for justifying laws. Instead, laws must be justified to every citizen on the basis of their own reasons; their complete belief-value set must provide them with sufficient reasons in favour of the law. Citizens can therefore 'converge' on laws.³⁵ Whereas on the right kind of reasons view all must share the same (public) reason(s) for laws, justificatory liberalism allows laws to be justified to different citizens by different reasons, including comprehensive ones. Utilitarians could believe that a law increases utility, Christians that it is in accord with the Bible, and Scanlonians that it satisfies the constraints of contractualism. A law is publicly justified when every citizen has sufficient reason to support it, even if there are no justificatory reasons that all citizens share. One of the central differences between justificatory and public reason liberalism is that the former permits convergence justifications, while the latter does not.

A further implication of this is that justificatory liberalism imposes weaker obligations upon citizens with regard to their public reasoning.³⁶ There is no set of public reasons that must be invoked to justify laws, so citizens are under no obligation to provide such reasons in their own advocacy. All reasons can be part of the network of reasons that justify a law to every citizen, so citizens are also not under a duty of restraint.³⁷ Citizens are free to support (prospective) laws and policies on the basis of any reasons they choose, as long as laws that are enacted are conclusively justified to every citizen.³⁸ Justificatory liberalism and public reason liberalism thus have very

³⁵ Gaus and Vallier, 'Roles of Religious Conviction'; Vallier, Kevin, 'Consensus and Convergence in Public Reason', *Public Affairs Quarterly* 25:4 (2011): 261-279.

³⁶ Gaus and Vallier, 'Roles of Religious Conviction'; Gaus, Gerald, 'The Place of Religious Belief in Public Reason Liberalism', in Dimovia-Cookson, Maria, and P.M.R. Stirk (eds.), *Multiculturalism and Moral Conflict* (London: Routledge, 2009): 19-37.

³⁷ Chapter 5 defends a minimal duty of proposal-restraint.

³⁸ The justificatory liberal thus does not necessarily object to either Alf or Betty's *conduct*, but merely to the

different implications for public deliberation. I discuss this in greater detail in Chapter 5.

4. Rawlsian Public Reason Liberalism

Following the typology I have outlined, Rawls's political liberalism is a sophisticated version of public reason liberalism. Rawls rejects Audi's claim that laws are legitimate as long as they are justified by secular reasons, arguing that reasons can be secular and yet sectarian. Reasons that arise from secular comprehensive doctrines, such as utilitarianism, are just as inappropriate grounds for laws as religious reasons, since they are equally unacceptable and unpersuasive to those who reject the relevant doctrine. The fact of reasonable pluralism – that under free institutions individuals reasonably come to accept a plurality of conflicting conceptions of the good – applies to all comprehensive moral and philosophical doctrines, not merely religious ones.³⁹

Public reasons must be grounded in values that all can accept, whatever their (reasonable) comprehensive doctrine. Rawls argues that such values can be found implicit within the public political culture of liberal democracies, specifically in the fundamental idea of society as a fair system of cooperation among free and equal citizens. All reasonable citizens accept this fundamental idea, and thus share a set of political values that arise from it. These values can be reasonably interpreted and ordered in different ways, giving rise to a family of reasonable liberal political conceptions of justice. All of these conceptions share three central features: a list of basic rights and liberties, an assignment of special priority to these rights and liberties, and measures for ensuring that all citizens have adequate all-purpose means to make effective use of these freedoms.⁴⁰ Political conceptions must also be 'freestanding', meaning that they can "be

enactment of L_1 , given that L_1 is not justified to Charlotte.

³⁹ Rawls, *Political Liberalism*, pp. 36-37, 452.

⁴⁰ *Ibid.*, p. 450.

presented independently from comprehensive doctrines of any kind.”⁴¹ Arguments and reasons grounded in a political conception of justice do not rely upon any comprehensive doctrine for their justification, but only on shared political values, and can therefore be accepted by all citizens, whatever their worldview. The content of public reason is thus given by the family of reasonable political conceptions.⁴² Any law that can be supported on the basis of such a conception can be legitimate, since Rawls’s liberal principle of legitimacy is fulfilled. Further, every citizen should endorse a reasonable political conception and base their political advocacy on it, arguing for (and against) laws by appeal to the interpretation and ordering of political values within that conception, and thus offering public reasons.⁴³

The justificatory liberal complaint against Rawls’s view parallels that against Audi.⁴⁴ While Rawls ensures that laws are justified by appeal to values and reasons that every (reasonable⁴⁵) citizen can accept, he does not guarantee that laws are actually justified to every citizen. Deborah supports law L_2 on the basis of her reasonable political conception of justice, J_d . Evan rejects J_d , however. He can recognise that J_d ’s interpretation and weighting of political values is reasonable, but believes it is also mistaken. For example, he believes that J_d assigns too much weight to freedom of association as compared to equality. Evan’s own political conception, J_e , weighs these values differently, and for this reason Evan rejects L_2 , and considers it worse than having no such law. For Rawls, L_2 can be legitimately enacted, since it is supported by at least one reasonable political conception (J_d). This is objectionable, however. L_2 is not justified to Evan, so is not justified to every citizen and should not be enacted.

This objection is slightly different to the well-known ‘integrity objection’ to Rawls’s view,

⁴¹ Ibid., p. 453.

⁴² Ibid., p. 450.

⁴³ Ibid., pp. 453-455.

⁴⁴ See Gaus, ‘On Two Critics’, pp. 195-196.

⁴⁵ As Chapter 3 shows, another central justificatory liberal objection to Rawls’s view concerns his definition of reasonableness.

according to which citizens can have *non-public* reasons that they consider more important than their public reasons.⁴⁶ Many religious citizens consider their religious obligations overriding, such that they cannot bracket them off when deliberating about laws.⁴⁷ Asking such citizens to only give weight to public reasons is an unacceptable infringement of their integrity. Justificatory liberals are sympathetic to this objection, since they consider all of a citizen's values relevant to determining whether a law is justified to her. But they also object to Rawls's view even when citizens lack non-public reasons relevant to laws, such as in Evan's case. Evan's comprehensive doctrine is silent on L_2 , so he considers L_2 's merits on the basis of public reasons alone. It is on that basis that he considers L_2 unjustified, due to its inegalitarian nature. Even if one follows Rawls in focusing only on public political values, his view allows laws to be enacted that are not justified to every citizen.

5. Comparing the Theories

Kent Greenawalt offers an excellent summary of public reason liberalism:

"The animating spirit is that people should not be coerced about important matters on the basis of reasons they cannot be expected to accept. Coercive laws, and perhaps other laws and policies, should be grounded on reasons that all citizens can accept. This does not mean that all citizens need agree with a law; people have different senses about the weight of arguments, they evaluate facts differently, and their judgments are clouded by self-interest and bias. But each citizen should be able to understand that the reasons that underlie a constitutional provision or a law make sense from that citizen's point of view. Some opaque citizens may not recognize that the reasons are good ones, but they should do so."⁴⁸

Greenawalt highlights the exact feature of public reason liberalism that justificatory liberals object to: it does not ensure that laws are actually justified to every citizen, all things considered, but

⁴⁶ The classic statement of this objection is Wolterstorff, 'Role of Religion', p. 105. For contrasting discussions, see Jensen, Mark, 'The Integralist Objection to Political Liberalism', *Social Theory and Practice* 31:2 (2005): 157-171; Boettcher, James W., 'Respect, Recognition and Public Reason', *Social Theory and Practice* 33:2 (2007): 223-249; Vallier, 'Liberalism, Religion'.

⁴⁷ Eberle, *Religious Conviction*, pp. 144-145.

⁴⁸ Greenawalt, Kent, 'What Are Public Reasons?', *Journal of Law, Philosophy and Culture* 1:1 (2007): 79-105, pp. 81-82.

merely that all can recognise *some* reason(s) in favour of each law.

Public reason liberalism and justificatory liberalism offer contrasting interpretations of PJP – of the idea that laws must be justified to every citizen by reasons that they can accept. For public reason liberals, this means that laws must be justified by appeal to public reasons, which are a class of reasons that are in some sense ‘acceptable to every citizen’. Laws can be legitimate so long as such reasons are offered as their justification, even if some citizens consider those reasons to be outweighed, either by other public reasons or by their comprehensive reasons. Those citizens have still been offered an argument for the law that they can appreciate the normative force of, and therefore the law is justified to them.⁴⁹ For justificatory liberals, this is insufficient to legitimate laws, precisely because it does not guarantee that laws are justified to every citizen. PJP is not fulfilled merely by there being *some* reasons all citizens accept that count in favour of the law. If political liberalism is based on the idea that we must justify coercion to individuals in order to respect them as morally free and equal, then laws must be *conclusively* justified to each individual, rather than merely supported by reasons that every citizen accepts as real reasons. Justificatory liberalism therefore holds a stronger view of the presumption against coercion that arises from individuals’ moral freedom and equality. Even moral duties and obligations of justice cannot be coercively enforced unless the coerced individuals can recognise this enforcement as justified, based on their own evaluative standards.

It is important to note that justificatory liberalism does not imply that objective moral duties do

⁴⁹ One might think that the public reason liberal could stop short of saying this means that the law *is justified to* these citizens, and simply claim that the offering of public reasons is necessary (and sufficient) for showing them adequate respect. As I argue below, this would make the account fatally susceptible to the objection that good-willed deliberative engagement is sufficient for this kind of respect, even if generally accessible reasons for the law are not found. This is one of the central arguments in Eberle, *Religious Conviction*, especially pp. 84-151. An emphasis on *justification to citizens* being required by respect is needed to show what is wrong with Eberle’s view, and this leads to the justificatory liberal ‘conclusiveness objection’.

not exist, or that all obligations are self-created and self-imposed.⁵⁰ It is consistent with the idea that individuals are under many natural moral duties. Its claim is that individuals cannot be *coerced* into complying with those duties unless this coercion is justified to them by their own (moderately idealised) belief-value set. Individuals ought to fulfil their moral duties, so ought to act in certain ways rather than others. We can seek to persuade people of this, and encourage people to satisfy the demands that morality places upon them. But we cannot *force* people to fulfil those demands unless this coercion is conclusively justified to them.

Justificatory liberalism thus involves what Gaus calls a ‘practical internalism’ about coercion-justifying reasons.⁵¹ Laws must be justified to citizens by *their own* evaluative standards. This internalism is ‘practical’ rather than ‘metaphysical’ because justificatory liberalism does not deny that externalist reasons and moral obligations exist. Instead, it denies that their mere existence endows them with the ability to justify coercive interferences with an individual. Coercion that cannot be justified to individuals by sufficient internalist reasons is morally impermissible, an illegitimate intrusion on their liberty.

Jeremy Waldron notes that one might read Rawls’s view as being based on this kind of internalist view of justification, but that it would be a mistake to do so. An internalist view “would prove way more than Rawls wants to argue for,”⁵² and thus lead to a very different theory to the Rawlsian one. Indeed, it would lead to justificatory liberalism.

According to Waldron, the constraints on public reason in Rawls’s account are “a matter of civility and reciprocity,”⁵³ of engaging with others in a mutually respectful way. This requires that

⁵⁰ This is further explored in Chapters 4 and 6.

⁵¹ Gaus, ‘On Two Critics’, p. 184.

⁵² Waldron, Jeremy, ‘Public Reason and “Justification” in the Courtroom’, *Journal of Law, Philosophy and Culture* 1:1 (2007): 107-134, p. 111.

⁵³ *Ibid.*, p. 112.

contributions to public debate be arguments that others can grasp and engage with, considerations that they can understand and recognise the force of. This precludes appeal to reasons grounded in comprehensive doctrines, the force of which can only be appreciated by those who accept the relevant worldview. Those who reject that worldview cannot engage with or be persuaded by such reasons. If a view based on comprehensive reasons wins out then it will not be because others have been persuaded, but merely because those accepting the relevant doctrine have sufficient numbers or political power. Such outcomes are unacceptable, because they violate the idea of politics as the exercise of the collective power of all citizens, as free and equal. Those offering comprehensively-grounded reasons are acting uncivilly. Citizens should offer reasons in public deliberation that everyone can grasp and appreciate the force of, reasons that they can reasonably expect everyone to endorse. This gives us a right kind of reasons view.⁵⁴

Rawls's account implicitly appeals to a distinction that Quong makes, between justificatory and foundational disagreements.⁵⁵ If a law is justified by non-public reasons, reasons grounded in a particular comprehensive doctrine, then those who reject that doctrine have a 'foundational disagreement' with the law's advocates. This means that they do not "share any premises which can serve as a mutually acceptable standard of justification,"⁵⁶ so lack any common standard by which their dispute can be adjudicated. Those who reject the law recognise no reasons in favour of it, and cannot enter into real deliberation about its merits, since "there is no common currency within which the debate can be carried out."⁵⁷ Their being coerced by it fails to respect them as free and equal, since it does not respect their freedom to reasonably reject the comprehensive

⁵⁴ This explanation is supported by Rawls, John, 'Commonweal Interview with John Rawls', in Freeman, Samuel (ed.), *Collected Papers* (Cambridge, MA.: Harvard University Press, 1999): 616-622. "What's important is that people give the kinds of reasons that can be understood and appraised apart from their particular comprehensive doctrines. So the idea of public reason isn't about the right answers to all these questions, but about the kinds of reasons that they ought to be answered by." (p. 619.)

⁵⁵ Quong, *Liberalism Without Perfection*, pp. 204-212. For critical discussion see Fowler, Timothy, and Zofia Stemplowska, 'The Asymmetry Objection Rides Again: On The Nature and Significance of Justificatory Disagreement', *Journal of Applied Philosophy* (forthcoming).

⁵⁶ Quong, *Liberalism Without Perfection*, p. 193.

⁵⁷ *Ibid.*, p. 212.

doctrine that the law is based on. Things are very different, Quong argues, when laws are justified by public reasons. In this case all of the values and reasons “used in the debate will at least be mutually acceptable,” even though citizens will disagree on the “exact weight or ranking of those values or principles.”⁵⁸ This is a ‘justificatory disagreement’, since citizens “share premises that serve as a mutually acceptable standard of justification,” though they “nevertheless disagree about certain substantive conclusions.”⁵⁹ All citizens can recognise that laws are justified by appeal to a plausible balance of values that they believe have justificatory weight. Some citizens interpret or weigh those values differently, so do not support the particular law in question. But their freedom and equality is still respected, since their disagreement with those who advocate the law is merely justificatory, not foundational.

There is clearly an internalist tinge to this account. Reasons are seen as graspable by an individual only if they in some way resonate with her existing beliefs. We cannot reasonably expect her to endorse reasons grounded in worldviews that she finds completely alien. But Rawls does not then say that the central problem here is that such reasons do not achieve internalist justification. Instead, he says the problem is that they are reasons she cannot engage with and appreciate the normative force of. Moral freedom and equality does not mean that laws must meet the strong standard of conclusive internalist justification to every citizen. Instead, it means that all citizens must be able to recognise the normative force of the reasons offered in favour of laws.

This way of distinguishing public reason liberalism and justificatory liberalism can be seen in a very similar distinction drawn by Andrew Lister. He contrasts political liberal views that see the demand for laws to be justified to every citizen by reasons that they can accept as “a constraint on coercive state action directly” with views that see it “as a constraint on the reasons for political

⁵⁸ Ibid., p. 207.

⁵⁹ Ibid., p. 204.

decisions.”⁶⁰ On the former view, PJP means that laws must be conclusively justified to every citizen. On the latter view, PJP means that only reasons acceptable to all can be used in public justification; non-public reasons are excluded from consideration. The former applies a ‘unanimous acceptability requirement’ to laws themselves, whereas the latter applies it to the reasons used to justify those laws.⁶¹ Lister also notes, as I did above, that this distinction is “closely related to the distinction between consensus and convergence models of public justification.”⁶²

Lister therefore sees public reason liberalism as focused not on directly constraining coercive state action, such that it is only legitimate when every citizen considers it to be justified, but on constraining the reasons for political decisions, the reasons used to justify coercive state action, such that all citizens can recognise them as good ones. This means that all citizens can stand on common ground, and cooperate with one another on that basis.⁶³

6. From Public Reason Liberalism to Justificatory Liberalism

In response to Rawls, Quong, and Lister, justificatory liberals would again press the claim that public reason liberalism does not truly respect citizens’ moral freedom and equality. Citizens who are forced to live under laws that they consider unjustified, based on their own evaluative standards, are not truly treated as moral equals. The mere fact that an individual recognises that there is *some* reason in favour of law, or even some plausible balance of public reasons, does not mean that that law is justified to her. She might well have overriding reasons to reject the law, and consider its imposition deeply objectionable. It is implausible to claim that such a law

⁶⁰ Lister, Andrew, *Public Reason and Political Community* (London: Bloomsbury Academic, 2013), p. 83.

⁶¹ *Ibid.*, p. 15.

⁶² *Ibid.*, p. 17.

⁶³ Lister argues that public reason liberalism is necessary in order for our relationships with one another to be ones of ‘civic friendship’. *Ibid.*, pp. 105-133.

respects her as a free and equal person.⁶⁴

Further, many of the arguments offered in defence of public reason liberalism in fact lend support to justificatory liberalism, as I will show in this section. I alluded above to the fact that one plausible response to the integrity objection to public reason liberalism is to move to justificatory liberalism, a claim that Kevin Vallier has defended in some detail.⁶⁵ The same is true with regard to one of Waldron's objections to Rawls's view.⁶⁶

Waldron argues that the Rawlsian civility-based argument, sketched above, radically "underestimates people's ability to grapple with unfamiliar views that start out with no foothold in their own mentality or motivational set."⁶⁷ It is not true that dialogue and deliberation is impossible without a common conceptual scheme or shared set of values and presuppositions.⁶⁸ Individuals can understand, and learn from, arguments that are grounded in worldviews very different to their own. Waldron would thus deny that the distinction between justificatory and foundational disagreements has the significance that Quong claims. While there is some difference between cases where individuals do and do not share ultimate principles they can appeal to as a shared basis of justification, this does not have the implications that Quong believes. Even when people have foundational disagreements, different fundamental premises, they can still engage with one another's arguments, and perhaps even be persuaded by others' views.⁶⁹ The constraints that Rawls imposes on public reasoning are thus unnecessary.

⁶⁴ I defend this claim in more detail in Chapters 2 and 4.

⁶⁵ Vallier, 'Liberalism, Religion'; Vallier, *Liberal Politics*. The seriousness of the integrity objection is a main motivation for Vallier's work.

⁶⁶ Waldron, Jeremy, *Law and Disagreement* (Oxford: Clarendon Press, 1999), pp. 149-163, offers a different objection – a version of what is known as the 'asymmetry objection', which centres on the fact that reasonable pluralism applies to questions of justice as much as to questions of the good. Justificatory liberalism also avoids this objection.

⁶⁷ Waldron, 'Public Reason', p. 112.

⁶⁸ Rawls would surely agree. His advocacy of 'reasoning from conjecture' seems to be premised on this fact. For discussion, see Schwartzman, Micah, 'The Ethics of Reasoning from Conjecture', *Journal of Moral Philosophy* 9:4 (2012): 521-544.

⁶⁹ To be clear, I am not claiming that Quong cannot respond to this objection. My claim is simply that

This highlights an ambiguity in a phrase I have been using: citizens being able to ‘appreciate’⁷⁰ the force of a reason. In one sense, I can appreciate the force of a reason even when I do not accept it myself, or think that it gives *me* reason for action. I can appreciate the reason’s force within another person’s worldview or belief-value set. For example, if a Muslim says he has reason to pray five times a day because the Koran instructs him to do so, then I find this completely intelligible. I can understand how the Koran’s instruction gives him a reason to act in this way, given his beliefs about the Koran’s authority. In this sense, I appreciate the force of the reason; the reason is intelligible to me. This force only applies to *him*, however. I do not think that this reason has force for *me*, or gives me a reason for action, since I personally do not affirm the Koran’s authority. I recognise that if the Koran is in fact the word of God then it does give me reasons for action. But since I do not believe that it is, I do not consider it to give me reasons.⁷¹ I do not ‘appreciate the force’ of reasons grounded in the Koran in the sense of feeling that force myself.

It is this stronger sense of ‘appreciating the force of a reason’ that public reason liberals draw on. Humans might well be “enormously curious about each other’s ideas and reasons,”⁷² as Waldron claims, and thus resourceful in listening to others and seeking to make their reasons intelligible, in order to appreciate their force in the weaker sense. But this does not mean that one can *endorse* those reasons, and so appreciate their force in the stronger sense of *feeling* that force and believing that they provide one with reasons for action. Legitimacy, for Rawls, requires that this stronger condition is fulfilled for all reasonable citizens with respect to the reasons that are

reflecting on Waldron’s argument should lead us in a justificatory liberal direction, as I argue below. Quong would respond to Waldron by appealing to his ‘internal conception’ of political liberalism, which his distinction is grounded in. See Quong, *Liberalism Without Perfection*, pp. 137-160. This conception is criticised in Vallier, Kevin, ‘On Jonathan Quong’s Sectarian Political Liberalism’, *Criminal Law and Philosophy* (forthcoming).

⁷⁰ Or ‘recognise’, or ‘acknowledge’.

⁷¹ Of course, if the Koran is the word of God then I still have externalist reasons to act on its instructions. But I cannot personally feel their force, since I lack internalist reasons.

⁷² Waldron, ‘Public Reason’, p. 112.

offered to justify laws. This is what grounds his constraints on citizens' conduct. Even if Waldron is right that we can respectfully *deliberate* on the basis of intelligible but unshared reasons, respectful *coercion* must be justified using reasons all citizens can *endorse*.

This response to Waldron explicitly appeals to internalist understandings of what it is for a citizen to have, or be able to endorse, a reason. This means that it should actually lead one to accept justificatory liberalism. Why should we be concerned with ensuring that the reasons that are offered in support of laws are not merely *intelligible* to all citizens, so all can appreciate their force in the weaker sense, but are reasons that all can personally *feel* the force of, so *endorse*? The obvious answer is that the former is insufficient to actually *justify* laws to all citizens. All citizens might be able to understand a justification that appeals to the Koran, but many would consider this inadequate to justify laws *to them*.

If our concern is with laws being *justified* to all citizens in this sense, however, then public reason liberalism itself seems insufficient, as I have already argued. It ensures that all citizens can feel the force of, and so endorse, the reasons used to justify laws, but it does not ensure that those reasons are actually sufficient to justify the laws to every citizen. Some might consider the reasons that purportedly justify the law utterly inadequate to do so, or completely outweighed by countervailing considerations – even countervailing considerations that every citizen can also endorse (i.e. other public reasons). Public reason liberals say that the right kind of reasons for justifying laws must go beyond merely being intelligible to every citizen, but then stop short of saying that the reasons must conclusively justify the law to every citizen. But it is unclear what is the value of one being able to appreciate the force of the reasons used to justify laws, if those reasons fall short of actually, i.e. conclusively, justifying those laws to one.

Interestingly, Waldron is often quoted in explanations of political liberalism, despite rejecting the

view. This is due to his 1987 article 'Theoretical Foundations of Liberalism', where he argued that social institutions and arrangements must be justifiable to every individual in order to be legitimate. "Liberals", he wrote, "demand that the social order should in principle be capable of explaining itself at the tribunal of each person's understanding."⁷³ More recently, Waldron has noted that this could be read in an internalist way, such that it supports political liberalism. This is not how he intended it, however. His account of justification to an individual is very different: "*D* is justified to *X* only if the justification touches on, takes seriously, and treats properly, *X* and *X*'s interests (among all the other persons and interests it considers)." Thus, "the idea is to make sure that everyone is taken into account in public justification; that there are none whose interests are simply passed over or neglected."⁷⁴ Justification to an individual, on this account, has very little to do with reasons and arguments being offered that are convincing to her, connect with her other beliefs, or lead her to accept that a law is justified. Instead, it is about the individual being adequately taken into account by the reasons given in support of the law. She is shown respect by the fact that her interests are not ignored.⁷⁵ Waldron rightly notes that this understanding of justification will "not yield anything like Rawls's doctrine of public reason."⁷⁶ One might justify a law by saying that it is necessary for the salvation of everyone's souls, including *X*'s. This argument takes *X* into account, includes *X*'s interests along with everyone else's, and thus satisfies Waldron's criterion. The law can be permissibly enacted on this basis, even though *X*, an atheist, does not endorse the argument or recognise it as having any normative force. It does not correspond with anything he already believes.

The public reason liberal objection to Waldron's view would obviously be that it does not show adequate respect for citizens as free and equal, and ignores the fact of reasonable pluralism,

⁷³ Waldron, Jeremy, 'Theoretical Foundations of Liberalism', *The Philosophical Quarterly* 37:147 (1987): 127-150, p. 149.

⁷⁴ Waldron, 'Public Reason', p. 111, fn. 25.

⁷⁵ It is not clear to me how this fulfils the 1987 'demand' quoted above. That demand seems to have a distinctly internalist flavour. Perhaps the phrase 'in principle' is crucial.

⁷⁶ *Ibid.*, p. 111, fn. 25.

which means that every comprehensive doctrine is reasonably rejectable. Respect for citizens requires more than merely offering reasons for laws that take their interests into account. It requires that those reasons are ones that they can themselves endorse. Again, however, this response to Waldron should push us to a justificatory liberal view, rather than merely a right kind of reasons view. If we are appealing to the moral agency of free and equal citizens then we must ensure that laws are actually, conclusively, justified to those citizens, rather than that they can merely appreciate the force of the justifications.

One way to resist this is to shift focus onto respectful engagement and deliberation between citizens, their display of civility toward one another through their public interaction, rather than focusing on the idea of justification to every citizen.⁷⁷ A concern merely with respectful deliberation does not seem sufficient to justify public reason liberalism, however, due to Waldron's plausible arguments concerning the possibility of cross-cultural mutual understanding. Critics like Jeffrey Stout and Nicholas Wolterstorff are surely right that citizens can show sufficient deliberative respect by explaining all of their own reasons, grappling with all the reasons others' present, and seeking to find points of 'ad hoc agreement' between their different worldviews.⁷⁸ Only a concern with laws being *justified to* every citizen shows why this is not enough when we are dealing with the exercise of coercive state power. This concern, however, should lead us beyond public reason liberalism, to justificatory liberalism.

I have argued that the most obvious public reason liberal responses to Waldron's views should move us toward justificatory liberalism. Several of the arguments that theorists have presented in

⁷⁷ See Macedo, Stephen, 'Why Public Reason? Citizens' Reasons and the Constitution of the Public Sphere', *SSRN e-library* (2010). http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1664085.

⁷⁸ Stout, Jeffrey, *Democracy and Tradition* (Oxford: Princeton University Press, 2004), pp. 63-91; Wolterstorff, 'Role of Religion', pp. 105-111. See also Eberle, *Religious Conviction*, pp. 84-151. I argue that Lister's 'civic friendship' justification for public reason liberalism fails, for this reason, in my 'Does Political Community Require Public Reason? On Lister's Defence of Political Liberalism', *Politics, Philosophy & Economics* (forthcoming).

support of public reason liberalism are also better seen as supporting justificatory liberalism. I will illustrate this with two arguments in a recent article by Talisse.⁷⁹ The first is a respect-based argument that Talisse uses to justify public reason liberalism. He notes that enacting laws is equivalent to placing moral obligations upon people, since it makes acting contrary to the law blameworthy. Therefore,

“like moral blame in general, blame for violating a law is morally appropriate only when we can say that those who break the law have an *internal reason* to acknowledge the law. To take others to be morally required to acknowledge obligations that they have no reason to acknowledge is not to treat them as moral agents, but,... to *browbeat* them... and to browbeat fellow moral agents is to disrespect them.”⁸⁰

For Talisse, it is disrespectful to claim that one’s moral equals are under moral obligations that they cannot themselves recognise reasons for, from within their own belief-value set. This disrespects others’ moral agency. Imposing *laws* on one’s compatriots that they lack internal reasons for is thus also disrespectful. It treats them as mere subjects of legislation, rather than equal sharers in political power. Laws that cannot be supported by public reasons impose on citizens “moral requirements that they need have no reason to acknowledge,”⁸¹ so are illegitimate. If a citizen considers all of the reasons used to justify a law as no reasons at all, or as lacking normative force, then it is disrespectful to nonetheless force her to comply with it.

It is unclear, however, why the argument should stop there. If it is disrespectful to impose a law upon citizens who recognise *no* reason(s) for it, then it appears equally disrespectful to impose the law on those who recognise *some* reason(s) for it but have overriding internalist reason(s) to reject it. As I argued above, if Alf disrespects Charlotte’s moral agency and equality by imposing L_1 upon her and appealing to the Bible’s commands, then Betty also disrespects Charlotte by imposing L_1 upon her when Betty’s appeal to public safety is completely outweighed within

⁷⁹ Talisse, ‘Religion, Respect’. Similar things could be said about Boettcher’s arguments in his ‘Respect, Recognition’, and Boettcher, James W., ‘The Moral Status of Public Reason’, *The Journal of Political Philosophy* 20:2 (2012): 156-177.

⁸⁰ Talisse, ‘Religion, Respect’, p. 320. Emphasis in original.

⁸¹ *Ibid.*, p. 321.

Charlotte's belief-value set by countervailing liberty considerations. The mere fact that Betty appeals to *some* reason that Charlotte feels the force of, whereas Alf does not, does not make the imposition of L_1 upon Charlotte by Betty more respectful than its imposition by Alf. Talisse explicitly presents his argument as supporting a right kind of reasons view of public justification, but it naturally extends to justificatory liberalism.⁸²

Talisse's second argument is one he offers in response to Christopher Eberle, one of the most prominent and effective critics of political liberalism.⁸³ This concerns the relative 'strains of commitment'⁸⁴ that citizens face in a public reason liberal society compared to a society where citizens follow Eberle's 'ideal of conscientious engagement' (ICE).⁸⁵ The key difference between these views, for our purposes, is that ICE allows laws to be enacted that can only be supported by appeal to religious arguments, whereas public reason liberalism does not. Eberle argues that ICE has a great advantage when it comes to the strains of commitment, since citizens who believe they have a religious obligation to support laws for which they only have religious reasons are permitted to do so.⁸⁶ Under public reason liberalism, in contrast, such citizens "will suffer terrible conflicts of conscience,"⁸⁷ as Talisse himself admits, since they are not permitted to support such laws.

Talisse counters this argument by pointing out that religious citizens will also face conflicts of conscience under ICE, since laws could be passed which are justified solely by appeal to reasons

⁸² This is unsurprising, given that Talisse's approach of formulating a theory of legitimacy by analysing the conditions that legitimise moral demands is explicitly inspired by Gaus, who uses it to support justificatory liberalism. See Gaus, *Justificatory Liberalism*; Gaus, *Order of Public Reason*.

⁸³ Harbour, Michael David, 'Religious Toleration and Public Funding for Abortions: a Problem with Christopher Eberle's Standard of "Conscientious Engagement"', *Public Reason* 2:2 (2010): 76-83 presents a very similar response to Eberle. My argument here also applies to Harbour's view.

⁸⁴ That is, the extent to which principles have consequences that citizens cannot accept, or can only be adhered to with great difficulty. See Rawls, John, *A Theory of Justice*, revised edition (Cambridge, Mass.: Belknap Press of Harvard University Press, 1999), pp. 153-154.

⁸⁵ Eberle, *Religious Conviction*, pp. 84-108, develops and defends ICE.

⁸⁶ *Ibid.*, pp. 140-150; Eberle, Christopher J., 'Basic Human Worth and Restraint', *Philosophy & Social Criticism* 35:1-2 (2009): 151-181.

⁸⁷ Talisse, 'Religion, Respect', p. 322.

grounded in a different religion to their own. He gives the example of a Christian living in a polity where a law is enacted that can only be justified by Satanist arguments.⁸⁸ The Christian must consider herself morally obligated to comply with a law for which the only justifying reasons are grounded in a religion that she considers abhorrent. She will surely feel greatly disrespected by this, and yet according to Eberle those advocating the Satanist law have done all that is required to treat her with respect, assuming that they have fulfilled ICE. Talisse takes this to show that Eberle's account of what respect for others' freedom and equality requires is insufficient. We should instead accept the public reason liberal account.

This is a plausible argument, showing that both public reason liberalism and ICE could place religious citizens in situations where they suffer conflicts of conscience.⁸⁹ Whether public reason liberalism or ICE impose *greater* burdens of this sort, however, is rather hard to say. Chandler argues that the strains of commitment are certainly worse when one faces the imposition of laws for which one lacks any reasons than when one is morally obligated to refrain from supporting laws for which one only has religious reasons.⁹⁰ I am not so sure. For one thing, in highly pluralistic democratic societies, cases of laws being enacted for which the *only* justification is a religious argument one rejects might be rare, whereas cases of religious citizens facing deep conflicts of conscience due to the restraint requirement could be fairly common. Further, Chandler might well underestimate the extent of the latter burden, for individuals who believe that God requires them to support a law.

In any case, Talisse's conclusion as to the force of his own example appears mistaken. Talisse claims that (religious) citizens will face great conflicts of conscience if they live under laws that are solely justified by religious reasons they reject. But Eberle has argued, in response to a similar

⁸⁸ Talisse, 'Religion, Respect', pp. 318-319.

⁸⁹ This is not to deny that something similar can occur under justificatory liberalism, although more rarely. I discuss this in Chapters 5 and 9.

⁹⁰ Chandler, 'Religious Reasons', pp. 147-150.

role-reversal argument from Audi, that the resentment citizens feel in such cases is due not to the *reasons* offered in support of the law, but to their judgment of the *content* of the law. “It’s the coercive law itself that frustrates and infuriates me, not my compatriots’ reasons for supporting that law.”⁹¹ The citizens’ complaint will be that *they* oppose the law – they do not consider it to be justified. It will not be that those who supported the law did so on the basis of reasons they reasonably reject, especially given that the law’s supporters have fulfilled ICE, so have a high degree of (internalist) rational justification for their view that the law is morally appropriate, and have openly and respectfully deliberated with their compatriots about the law’s merits, seeking to find and offer reasons for the law that their fellow citizens find persuasive.⁹²

Let us imagine that the law supported by Satanists in Talisse’s example is also supported by secular citizens, appealing to secular (public) reasons that all Christians accept, but which they consider completely outweighed in this case, due to some countervailing Christian considerations. Christian citizens still believe the law to be deeply morally problematic. It is not clear to me that this amendment to Talisse’s example would lead them to feel much less of a conflict of conscience. The fact that the law can now be justified by reasons they appreciate the force of, rather than solely by reasons grounded in a religion they consider abhorrent, does not change the actual law or the fact that from within their own perspective that law is unjustified. It might be some comfort, but they are still being coerced by a law that they consider completely objectionable.⁹³

If this is right, then the work in Talisse’s example is not being done by the fact that the reasons that justify the law are Satanist reasons. The real work is being done by the fact that Christians

⁹¹ Eberle, *Religious Conviction*, pp. 138-139. Eberle is responding to the ‘dandelion worshippers’ example in Audi, ‘Liberal Democracy’, p. 28.

⁹² These are some of the obligations ICE imposes.

⁹³ Indeed, this law being unjustified to them, in the justificatory liberal sense, means that they consider this law worse than having no law at all in the relevant policy area.

have overriding reasons to consider the law *unjustified*. Christians can thus face the same burden, the same conflict of conscience, under public reason liberalism as that which Talisse identifies as occurring under ICE, since laws justified by public reasons can also be ones that Christians consider unjustified.⁹⁴

Justificatory liberalism offers a solution. The law in Talisse's example is illegitimate both when it is supported solely by Satanist reasons *and* when it also has the support of public reasons. Christian citizens have overriding reasons to consider the law unjustified, so it cannot be permissibly imposed upon them. The argument for this is precisely the same as the argument that Talisse offers in favour of public reason liberalism – the fact that such laws fail to respect these citizens as moral and political equals.

7. Conclusion

Political liberalism's central concern is the legitimacy of laws – the justification of coercive laws to those they coerce. Political liberals believe that laws must be justified to all citizens by reasons that they can accept. The most common interpretation of this claim is that offered by public reason liberals – the right kind of reasons view. I have argued that this view fails to fulfil the Public Justification Principle, so fails to guarantee the legitimacy of laws, from the perspective of another political liberal view – justificatory liberalism. Further, many of the arguments that are used to support public reason liberalism in fact justify justificatory liberalism.

Justificatory liberalism has itself been criticised by advocates of public reason liberalism, however. I defend justificatory liberalism from some such objections in Chapter 2. In the process, I explain the structure of justificatory liberalism in more detail, especially its conception of 'conclusive

⁹⁴ This is in addition to the kind of conflicts of conscience Eberle identifies as occurring under public reason liberalism.

justification'.

Chapter 2: In Defence of Justificatory Liberalism

In Chapter 1 I showed how justificatory liberalism and public reason liberalism differ with regard to whether laws must be *conclusively* justified to every citizen on the basis of their own belief-value sets, or whether there merely needs to be *some public reason(s)* for laws. These competing interpretations of PJP have significantly different implications, as we saw. Justificatory liberalism differs from public reason liberalism in permitting convergence justifications, having no special category of ‘public reasons’, and imposing much weaker reason-giving obligations upon citizens. In Chapter 3 I will discuss another significant difference between the two views: their conceptions of ‘reasonableness’. Ultimately, my claim is that we should endorse justificatory liberalism over public reason liberalism. While both theories view PJP as a necessary condition for legitimacy, their underlying rationales, interpretation of PJP, and implications for political life, differ greatly, and justificatory liberalism is the normatively superior theory.

Before embarking further into this argument, however, it is important to specify my justificatory liberal theory more clearly, and to respond to some important objections that public reason liberals have made. If those objections proved fatal, then justificatory liberalism would not get off the ground as an alternative version of political liberalism. The task of this chapter is to show that this is not the case, by explaining more precisely what it means to say that laws must be conclusively justified to all citizens on the basis of their own belief-value sets.

I should be clear that the view I develop in this chapter is *one version* of justificatory liberalism. While my view is similar to existing justificatory liberal views in the literature, it also has significant differences. All justificatory liberals endorse the need for conclusive justification and deny the need for shared reasons, and thus permit convergence justifications. These ideas can be given various interpretations and justifications, however. I am developing one such theory in this thesis.

This chapter will not offer a full defence of (my version of) justificatory liberalism.¹ I postpone that task until Chapter 4, when we have a clearer picture of what justificatory liberalism is and how it differs from public reason liberalism. For now, I simply note that the two fundamental ideas underlying the justificatory liberal interpretation of PJP are the moral freedom and equality of individuals and the fact of reasonable pluralism. Reasonable pluralism means that individuals reasonably reach conflicting conclusions on moral, philosophical, and religious matters. Moral freedom and equality, according to justificatory liberals, means that no-one can permissibly impose their own view of these matters on another, if that coercion is not conclusively justified to them, in the sense that I explain in this chapter. I expand on this argument, defend it from objections, and reject alternative justifications for justificatory liberalism, in Chapter 4.

An obvious worry is that very few laws will be publicly justified according to justificatory liberalism. Most laws will be ruled out as unacceptable by some citizen. We will thus end up with hardly any legitimate laws. If the justificatory liberal understanding of the demand that coercion be justified to the coerced inevitably leads to anarchism, or an ultra-minimal state, then this suggests that it is implausibly strong. This is the ‘anarchism objection’.²

It is important to be clear that by taking this objection seriously I am not suggesting that we have a fully-specified standard of acceptable and non-acceptable political regimes, independent of justificatory liberalism itself. After all, the whole purpose of justificatory liberalism is to tell us what laws and regimes are (and are not) legitimate. If we judged the theory solely based on its implications then this would imply that we had an independent standard of legitimacy already, so there would be no need for the theory. That is not what I am doing here.

¹ In particular, I do not consider the objection that justificatory liberalism’s deference to individuals’ belief-value sets is unwarranted. That is the focus of Chapter 4.

² I am using the term ‘anarchism’ in the narrow ordinary language sense, to refer to a state of affairs where there are no coercively imposed laws. The actual political ideology of anarchism is obviously more complex and varied than this.

Instead, my claim is that liberals have certain firm considered convictions about the acceptability of certain regimes, which cast doubt on theories of legitimacy that conflict with them.³ A theory that deems fascist regimes to be legitimate is implausibly weak, while one that inevitably leads to anarchism is implausibly strong.⁴ Since justificatory liberalism is a liberal theory, it should cohere with our strongest liberal considered convictions. Those convictions are not unquestionable, however, and they also are not so fully-specified that they remove the need for a theory of legitimacy. They merely provide one way to test such theories. In other words, the anarchism objection to justificatory liberalism is one part of reflective equilibrium.

We should also note that there is a distinction between the *anarchism* objection and the *anarchists* objection. The former claims that justificatory liberalism should be rejected because it leads to anarchism, since no laws will be conclusively justified to all citizens. The latter says that anarchists pose a particular problem for the theory. These objections are related but distinct, and thus demand different responses. Most of this chapter focuses on the former. In Sections 1-3 I show that the justificatory liberal understanding of PJP would not lead to anarchism, or to an ultra-minimal state. Further, as I argue in Section 4, justificatory liberals should endorse a proviso to PJP, according to which a minimal state is in fact *required* by justificatory liberalism, to protect citizens from unjustified private coercion. The anarchism objection is therefore mistaken. In light of this, I briefly consider the *anarchists* objection in Section 4.3, and argue that justificatory liberalism can plausibly respond to those who oppose all forms of state power.

The implications of justificatory liberalism centrally depend on how we understand the idea that coercion must be conclusively justified to the coerced on the basis of their own belief-value sets. I

³ A central argument of Shadd, Philip David, 'A Better Framework for Legitimacy: Learning from the Christian Reformed Tradition' (PhD Dissertation, Queen's University, 2013), is that political liberalism has implications that conflict with three central considered convictions.

⁴ Gaus talks about 'The Nightmare' for liberals being a situation where liberal principles, institutions and laws cannot be publicly justified. Gaus, 'Public Reason Liberalism', pp. 16, 19-20. Page references are from the version available at <http://gaus.biz/PublicReasonLiberalism.pdf>.

therefore turn to this idea first.

1. Justification to All

1.1. Open Justification

Vallier defines an individual's belief-value set as "the set of all of her beliefs, desires, goals, and plans, i.e., everything she thinks and wants."⁵ This is too broad, however. Justificatory liberalism is a response to reasonable moral, religious, and philosophical pluralism. It is these evaluative, moral, standards that are thus relevant to the justification of laws.⁶ Gaus writes of "evaluative diversity about conceptions of the good, values, and so on – all of which I group under the label 'evaluative standards'."⁷

This does not exclude self-interest, or a proper concern with one's own well-being. But a singular focus on one's own good, single-minded self-interest, is ruled out. Pure egoists are not within the relevant constituency of justification. The fact that evaluative standards are moral judgments also means that they must be suitably impartial. One cannot endorse or reject a law based solely on the effect that it has on oneself, without suitable consideration of its wider implications and effects. This means that one cannot endorse a law that one knows undermines others' basic interests, or reject a law that one knows is necessary to protect others' basic interests.⁸ As Gaus puts it, "a person's proposal is in equilibrium if she asserts it even when she evaluates it from her occupancy of each of the roles and positions it identifies, and understands the duties and obligations involved in each."⁹ This does not mean that she must assess laws using others' evaluative standards. The question is still whether the law is justified *to her*, based on her own

⁵ Vallier, Kevin, 'Liberal Politics and Public Faith: A Philosophical Reconciliation' (PhD Dissertation, University of Arizona, 2011), p. 30.

⁶ Vallier himself later talks about 'individual ideals', which "help define the purpose of human life and how humans live best," as the source of citizens' reasons. Ibid., pp. 126-127.

⁷ Gaus, *Order of Public Reason*, p. 43.

⁸ This relates to Gaus's 'modest common good requirement'. Ibid., pp. 301-303.

⁹ Ibid. p. 301. Gaus calls this 'reversibility'.

evaluative standards. But assessing it using those standards means taking a wider view than merely considering its effects on her self-interest, here and now.

The invocation of the idea of 'evaluative standards' is not intended to smuggle in a great deal of controversial moral content. People can have evaluative standards that we consider deeply misguided, and laws must still be justified to them on the basis of those standards. The minimal requirement here is that individuals are 'good-willed moral agents', concerned with moral standards. It is this requirement that pure egoists, sociopaths, or those who ignore others' basic interests fail to meet. I discuss this further in Chapter 3.

Laws are justified to an individual on the basis of her evaluative standards.¹⁰ More specifically, they are justified by reasons within her belief-value set, which is generated by those evaluative standards and her various empirical beliefs. We cannot simply take an individual's belief-value set as given, however, and say that a proposition is justified to her if she believes it. She might have reasoned badly or lack easily attainable empirical information, or her belief-value set might contain plain contradictions which prevent her from endorsing the proposition in question. In other words, "individuals have rational commitments to beliefs and reasons that are not currently a part of their belief-value sets."¹¹ We therefore need the concept of 'open justification'. In Vallier's words, to openly justify a proposition "to John is to show that it can be properly inferred from John's present belief-value set conjoined with adequate information, reasoning ability and some degree of belief coherence."¹² A citizen's present belief-value set is 'moderately idealised', by attributing to her easily attainable empirical information and correcting obvious errors in her reasoning.¹³ Any proposition that this moderately idealised belief-value set gives her sufficient

¹⁰ All references to 'individuals' and 'citizens' in the rest of this chapter are to those who qualify as good-willed moral agents.

¹¹ Vallier, 'Liberal Politics', p. 110.

¹² Ibid., p. 110.

¹³ There is clearly ambiguity in the phrases 'easily attainable' empirical information and 'obvious errors' in

reason to accept is 'openly justified' to her.

Justificatory liberalism's endorsement of moderate idealisation clearly distinguishes it from an 'actual acceptance' view of legitimacy. But the changes that moderate idealisation makes to a citizen's belief-value set are also ones that are epistemically accessible to her. As Gaus argues, any new reasons imputed to her, or changes that make her belief-value set more coherent, are ones she would herself recognise if she engaged in a 'respectable amount' of rational deliberation, or of good reasoning. We can therefore say that these are reasons that she has.¹⁴ A citizen might not presently endorse a particular reason, but the fact that she would do so after a respectable amount of good reasoning means that we can properly impute that reason to her.

The classic example of this comes from Mill.¹⁵ A man is about to cross a bridge, which is in fact unsafe. With this extra information, the man would recognise that he has reason not to cross the bridge, since he does not want to fall into the river. He therefore has an accessible, internal, reason not to cross. "His ignorance prevents him from appreciating *his own* reasons."¹⁶ The moderately idealised version of the man would not attempt to cross the bridge.

The fact that a reason is justified to a citizen, on the basis of their own evaluative standards, is something that other citizens can recognise. As I noted in Chapter 1, I can recognise that a Muslim's belief in the veracity of the Koran gives her reasons, even if my differing evaluative

reasoning. Different specifications of these terms give different levels of idealisation. The precise specifications do not matter for my argument here. See the discussion in Vallier, 'Liberal Politics', pp. 252-284; Vallier, *Liberal Politics*, pp. 145-180.

¹⁴ Gaus, *Order of Public Reason*, pp. 232-257. Elsewhere, Gaus states that this involves justification to the 'admirably rational' version of the individual. Gaus, Gerald, 'A Reply to Christopher Eberle's *Religious Convictions in Liberal Politics*', Paper presented at American Political Science Association annual meeting (2006), pp. 7-9. Available at http://citation.allacademic.com/meta/p_mla_apa_research_citation/1/5/3/4/4/pages153441/p153441-1.php.

¹⁵ Mill, John Stuart, 'On Liberty', in his *On Liberty and Other Essays*, ed. John Gray (Oxford: Oxford University Press, 1998): 5-128, pp. 106-107.

¹⁶ Gaus, *Order of Public Reason*, p. 33.

standards mean those reasons are not openly justified to me. Her reasons are *intelligible* to me, as are the openly justified reasons of all other good-willed moral agents. Although the reasons that feature in public justification are therefore not (necessarily) shared, they are mutually intelligible. This is important, since it makes fruitful deliberation possible, and means that we can recognise that laws are justified to others.¹⁷

1.2. Conclusive Justification

According to justificatory liberalism, laws must be conclusively justified to every citizen on the basis of their moderately idealised belief-value sets. Citizens must have sufficient openly justified reasons to endorse the law. It is not yet clear what is involved in having ‘sufficient’ or ‘conclusive’ reason for a law, however. We might think that one has sufficient reason only if one considers the law to be the most justified, or most just, among the available options. On that interpretation, justificatory liberalism will indeed lead to anarchism. It is highly unlikely that every citizen will agree that any law is the best possible law on a particular issue, even after moderate idealisation.¹⁸ This is not the right way to understand conclusive justification, however.

Our aim is to ensure that the coercion involved in laws is justified to every citizen.¹⁹ Thus, what matters is that each citizen considers this coercion preferable to not being coerced. Each must have sufficient reason to believe that this law is better than not having a law on this issue; none may have decisive reasons to *reject* the law. Each proposed law can be ranked on the basis of a citizen’s (moderately idealised) belief-value set. She has sufficient reason to accept all laws that are ranked above not having a law at all, since she considers being coerced by them preferable to

¹⁷ For more detailed discussions of intelligibility, see *ibid.*, pp. 279-283; Vallier, *Liberal Politics*, pp. 106-108.

¹⁸ In Section 3 I discuss the question of what counts as a “particular issue”.

¹⁹ This is not to imply that legal coercion is ‘special’, such that coercion that does not occur through laws does not need to be openly justified. I discuss private coercion below, and affirm that it too must be openly justified. My focus at this point is simply on legal coercion.

not being coerced. Following Gaus, we can call these laws her 'eligible set'.²⁰ Laws within this set are openly justified to the citizen.²¹

The overlap of every citizens' eligible sets gives the 'socially eligible set'. Laws within this set are conclusively justified to every citizen; every citizen has sufficient reason to accept them. Each citizen, "drawing on her evaluative standards, has an all-things-considered reason to rank living under the law's coercion as better than having no coercive law at all on this matter."²² This means that they are publicly justified, and can be permissibly enacted.²³

As Gaus notes, we can further reduce this set by invoking the Pareto rule.²⁴ If all citizens prefer L_1 to L_2 then L_2 is Pareto dominated, and can be eliminated from the eligible set. Eliminating such laws leaves us with the 'socially optimal eligible set'.²⁵

This way of explaining the concept of the socially eligible set is rather formalistic. It suggests that citizens' (moderately idealised) belief-value sets, and so the reasons that they have, are simply taken as given, providing individual eligible sets, the overlap of which is the socially eligible set. The reality is more dynamic than this. Through deliberative engagement and persuasion, individuals become aware of the various evaluative considerations bearing on issues, and come to recognise reasons that they previously neglected. Their belief-value sets, and thus their eligible sets, are shaped through this interaction. Justificatory liberalism does not take citizens' belief-value sets as fixed. Instead, citizens' all-things-considered judgments about laws develop through

²⁰ Gaus, *Order of Public Reason*, pp. 321-322.

²¹ This is shorthand for a longer sentence, stating that laws within this set are conclusively justified to the citizen by reasons that are openly justified to her. For the sake of brevity, I will often speak of laws themselves being 'openly justified' to citizens.

²² Gaus, 'On Two Critics', p. 196.

²³ A similar concept can play a role in public reason liberalism. See Quong, *Liberalism Without Perfection*, p. 133.

²⁴ Gaus, *Order of Public Reason*, pp. 322-323.

²⁵ I will usually take the optimality condition as given, and simply refer to the 'socially eligible set'.

ongoing deliberative engagement. Laws can thus come to be publicly justified that previously were not.

Sometimes the mere fact that many other citizens consider a law better than nothing might mean that an individual also accepts it, despite previously considering it ineligible. One important consideration that all citizens take into account is the great value of achieving coordinated action through law. In Gaus's words, all will recognise that "a common system of moral and political rules is a tremendous good to all, for it is the very foundation of a cooperative and fruitful social life."²⁶ The fact that many others are willing to live under a certain law thus in itself provides me with reasons in favour of it, and might expand my eligible set.

Clearly there are limits to this. Citizens will regard some laws as so objectionable that settling on them would be worse than having no law at all, even if they are in the eligible sets of many other citizens. Such laws cannot be permissibly imposed, since they are not justified to these citizens. Respect for them as moral equals mean that they must not be coerced by such laws.²⁷

To reiterate, justificatory liberalism claims that in order for citizens to be respected as free and equal, laws must be conclusively justified to every citizen. Each citizen must prefer the law to having no law on this issue, on the basis of their moderately idealised belief-value set. When this condition is fulfilled, each citizen has sufficient reason to accept the law. When it is not fulfilled, the law's enactment would subject some to coercion that cannot be justified to them, since they would prefer to face no such coercion. Respect for moral equals requires that coercion of them be

²⁶ Gaus, 'Public Reason Liberalism', p. 20. This is not to deny that there will be anarchists among the population. See pp. 72-74, below.

²⁷ It might sometimes be possible to enact such laws while providing exemptions to dissenters, such that they are not coerced by them. For discussion, see Vallier, *Liberal Politics*, pp. 196-219; Vallier, Kevin, 'The Moral Basis of Religious Exemptions', working paper.

justified according to their own evaluative standards.²⁸ Enacted laws must be within the socially eligible set.

This understanding of justificatory liberalism allows a reformulation of the ‘conclusiveness objection’ discussed in Chapter 1. Public reason liberalism permits laws to be enacted that are outside some citizen(s) eligible set(s), and thus outside the socially eligible set. This is objectionable.

This understanding of conclusive justification also provides the resources for showing that justificatory liberalism does not have anarchistic implications. It would have such implications if the socially eligible set was always empty, so no laws were conclusively justified to every citizen. In many policy areas, this looks unlikely. Given the great goods that are achieved by social cooperation, a stable system of laws, and government action in numerous policy areas, we should expect that there will usually be several possible laws that all citizens consider better than having no law. All of the traditional arguments about the benefits of living under the rule of law apply here, and show that many laws can be publicly justified. As Waldron argues, the ‘circumstances of politics’ are such that while we disagree about what ought to be done, about what the best laws are, all can recognise the great good that a political order achieves, and feel the urgent need for collective decisions to be made.²⁹

Precisely what are the implications of justificatory liberalism, in terms of the range of laws that are publicly justified, is not something that can be determined in the abstract.³⁰ It depends on

²⁸ Again, I defend this claim further in Chapter 4.

²⁹ Waldron, *Law and Disagreement*, pp. 101-102. Again, this is not to deny that anarchists exist – see pp. 72-74, below. The success of my response to anarchism objection does rely on the fact that *few* people are anarchists, however.

³⁰ This is in contrast to public reason liberalism. All laws that can be justified by public reasons are ‘justified to all’, on that view.

what can be justified to the citizens within a polity, so on their beliefs and values.³¹ The general considerations I have pointed to, and the understanding of conclusive justification to a citizen used within justificatory liberalism, seem sufficient to show that the claim that justificatory liberalism will lead to anarchism, or even an ultra-minimal state, is mistaken.

2. The Role of Procedures

Often, there will be more than one law within the optimal socially eligible set on an issue. Each of these laws is conclusively justified to every citizen – all citizens prefer them to having no law on the issue – but from the social perspective the laws are inconclusively justified in comparison with one another. They all fulfil PJP, but citizens disagree on which is best. In order to enact a particular law we need a decision procedure that selects between these laws. What procedure should be used?

Some justificatory liberals have suggested that the procedure used must itself be conclusively justified to every citizen.³² This initially seems right, but it opens up the possibility of a regress. A range of procedures could select from among the socially eligible set – one individual or group deciding, unanimity being required, random selection, various kinds of democratic regime, and so on. Citizens will thus have an eligible set of procedures, giving us another socially eligible set – the set of procedures that all citizens consider better than not making any selection, so not having any law. Which of these procedures should be used? Given that citizens disagree on which procedure is best, it seems that we need a higher-order procedure, to select among this eligible

³¹ Gaus, *Order of Public Reason*, pp. 448-546, offers some arguments as to what laws will be publicly justified. Gaus argues that justificatory liberalism leads to a 'classical liberal' state, which is less expansive than many modern states. His arguments are contentious at several key points, however. He makes certain unwarranted assumptions and does not apply some of his own theoretical constructs consistently. This is the case with regard to property rights and taxation, for example. I lack space to demonstrate this here, but see Lister, Andrew, 'The Classical Tilt of Justificatory Liberalism', *European Journal of Political Theory* 12:3 (2013): 316-326; Baccarini, Evlio, 'Having a Reason and Distributive Justice in The Order of Public Reason', *European Journal of Analytic Philosophy* 9:1 (2013): 25-51, pp. 40-9; Enoch, David, 'The Disorder of Public Reason', *Ethics* 124:1 (2013): 141-176, pp. 154-155.

³² Vallier, 'Liberal Politics', p. 26.

set of procedures. This will undoubtedly give rise to another plural socially eligible set, however. Hence the regress.

Justificatory liberals can prevent this regress by saying that *democratic procedures* should be used to enact laws from within the socially eligible set. It need not matter that the procedure used is not *uniquely* socially justified. There are several considerations in favour of this claim.

First, no non-democratic procedures will be within the socially optimal eligible set of procedures. Free and equal citizens will not endorse a regime that does not give them a say in the exercise of political power, so no authoritarian or oligarchic regimes will be within individuals' eligible sets.³³ It is possible that random selection will be within the eligible sets of some citizens. Given the benefits of having laws, random selection from among the laws that fulfil PJP might be better than having no law. Some might consider this worse than nothing, however, given the likely irrationality of an overall system of laws chosen in this way. In any case, all citizens will rank democratic procedures as *better* than random selection, so the latter will be Pareto dominated. Unanimity, meanwhile, is not a practicable procedure for choosing from within the socially eligible set of laws – precisely because citizens disagree on these laws' relative merits. Requiring unanimity would mean that we have no laws at all.

Alongside these factors that count against each non-democratic option, citizens have positive reasons to endorse democracy. These include the fact that it gives them an equal say in politics and the empirical fact that democracies have a far better record when it comes to the protection of civil rights.³⁴ Clearly more would need to be said to fully develop these considerations, but I think we can safely assume that the eligible set of procedures will consist of a range of democratic

³³ Further, even if such regimes are in *some* citizens' eligible sets, they will be ruled out by others, so will not be in the socially eligible set.

³⁴ See Gaus, *Order of Public Reason*, pp. 451-454. I consider civil rights a little more below.

regimes. All citizens prefer a democratic regime to any non-democratic one, but there will be disagreement about which precise regime is best – about whether it should be parliamentary or presidential, unicameral or bicameral, have proportional representation, and so on.³⁵

Second, justificatory liberals have reasons internal to their own theory of legitimacy to endorse democracy as the right way to enact laws. Justificatory liberalism is based upon respect for citizens as free and equal. As has been frequently argued, respect for citizens' freedom and equality, especially in the face of reasonable pluralism, requires democratic procedures.³⁶ Justificatory liberals should thus consider democratic enactment a necessary condition for legitimacy, alongside PJP. This general point in favour of democracy also does not tell us which specific democratic regime a polity ought to have, however. Some form of democracy is necessary for citizens to be respected as free and equal, but this does not give decisive reasons in favour of any particular form of democratic regime.

Third, the considerations in favour of democracy give us reason to conclude that laws that are selected from within the socially eligible set of laws by some form of democratic regime, and one which is itself within the socially eligible set of procedures, are legitimate. All citizens prefer the enacted law to having no law, and all prefer this method of enactment to having no such method (and thus no law). Further, the procedure itself respects citizens as free and equal. This is sufficient for us to say that these coercive laws are justified to the coerced, both substantively and procedurally.

Fourth, justificatory liberals need not say any more about what kind of democratic regime a

³⁵ Ibid., p. 454.

³⁶ Two recent justifications for democracy on the basis of equality are found in Waldron, *Law and Disagreement*, pp. 88-188, and Christiano, Thomas, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford: Oxford University Press, 2008). See also Ganghof, Steffen, 'Does Public Reason Require Super-Majoritarian Democracy? Liberty, Equality, and History in the Justification of Political Institutions', *Politics, Philosophy & Economics* 12:2 (2013): 179-196.

society ought to have. This will depend on the beliefs of citizens within the polity, the country's social and political traditions, and many other historical and cultural factors. Both citizens and political theorists within individual societies will undoubtedly have much to say on these matters, and will debate the merits of their current system and proposed reforms to it. Justificatory liberalism, as a general theory of legitimacy, need not take a view on these specific debates.

It is important to reemphasise that democracy is rightly used only to enact laws that are within the socially eligible set.³⁷ In order to be legitimate, laws must fulfil PJP, as well as being selected by democratic procedures. Justificatory liberals reject pure proceduralism, according to which democratic provenance is a sufficient condition for legitimacy. The reason for this is familiar: imposing a law upon a citizen that she has conclusive reason to consider worse than having no such law fails to respect her as morally free and equal, so is impermissible.

The picture we now have is that the overlap of each citizen's eligible set of laws, formed by their post-deliberative belief-value set, defines the socially eligible set, and democratic procedures are used to select from within this set. Things might be slightly more complicated than this, however. A citizen might consider certain laws very bad on substantive grounds, such that they are worse than having no law, but be willing to accept those laws if they are democratically enacted, due to her strong beliefs about the value of democracy. Such laws appear to be outside her eligible set on substantive grounds, but within it once the use of democratic procedures is taken into account. There will be limits to this – she will undoubtedly view some laws as so bad that even democratic enactment does not redeem them. But some laws might have this ambiguous character. I think the right response here is to say that these laws are within her eligible set. The fact that she believes them to be better than nothing if they are democratically chosen means that they are justified to her. In other words, when we are considering what laws are conclusively

³⁷ This is where justificatory liberals disagree with Waldron and Christiano.

justified to a citizen, the fact that laws will be enacted using the democratic procedures in place within her polity should already be taken into account, so factored into her belief-value set. This does not stop PJP doing important work in limiting the set of legitimate laws, since citizens will still believe that some laws are worse than having no law, even when democratically selected.³⁸ Further, the fact that some citizens' eligible sets expand when the use of democratic procedures is factored in only makes a difference to the *socially* eligible set if these citizens were determining the edges of that set in the first place, by rejecting laws that all others considered acceptable. The complication discussed in this paragraph might rarely make any practical difference, therefore.

3. Individuating Issues

My explanation of justificatory liberalism thus far has rested on certain important assumptions. I have assumed a 'non-incremental' approach to the justification of coercion, and also that 'issues' or 'policy areas' can be identified and isolated in order to consider the justification of laws within them. Lister has challenged both of these assumptions.³⁹ His objections here are related; he argues that one promising way to individuate issues, which Gaus endorses, commits one to the 'incremental' approach to coercion's justification.⁴⁰ The argument for the former implies the latter. This would be a troubling result, since it reintroduces the concern that very few laws will fulfil PJP, as we will see.⁴¹

³⁸ Caleb Yong suggested to me that public reason liberals *do* believe that citizens must have sufficient, rather than merely some, reason to endorse laws in order for them to be legitimate, but that this sufficient reason comes from a combination of substantive public reasons and democratic procedural reasons. I agree that procedural reasons complement substantive reasons. Democracy picks out a unique member of the eligible set, and further might mean that one views a law as acceptable that one rejects on substantive grounds alone. But this is only the case if one's own belief-value set says so. A law that is democratically enacted and supported by public reason might still fall outside one's eligible set. One then lacks sufficient reason to endorse it, contra public reason liberalism.

³⁹ Lister, Andrew, 'Public Justification and the Limits of State Action', *Politics, Philosophy & Economics* 9:2 (2010): 151-175; Lister, *Public Reason*, pp. 81-103. Gaus, 'On Two Critics', pp. 195-206, replies to Lister.

⁴⁰ Lister, *Public Reason*, p. 91.

⁴¹ It also introduces the 'libertarian dictator objection', on which see Gaus, *Order of Public Reason*, pp. 501-503.

3.1. Incremental and Non-Incremental Approaches

Lister first distinguishes the incremental and non-incremental approaches to justifying coercion. The latter is the approach I have outlined: laws are publicly justified if every citizen has sufficient reason to prefer them to having no law on the issue. According to the incremental approach, each *increment* of coercion must be justified to every citizen. It is not enough for laws to be preferred by all citizens to having no law; laws must be preferred to every less coercive law. The marginal benefit of a law must exceed its marginal cost, when compared to a less coercive law. The non-incremental approach, on the other hand, merely requires the total benefit of a law to exceed its total cost.

An example will illustrate the difference. Emma and Simon are considering two laws, L_1 and L_2 . L_2 is more coercive than L_1 . Both citizens consider both laws preferable to having no law, but Emma prefers L_1 to L_2 , while Simon prefers L_2 to L_1 . On the non-incremental approach, both laws are in the socially eligible set. On the incremental approach, however, only L_1 is in the socially eligible set. The extra coercion L_2 imposes cannot be justified to Emma, since she prefers L_1 . From her perspective, L_2 contains ‘excess coercion’, coercion that is not justified to her.

Lister argues that the incremental approach is a more natural interpretation of justificatory liberalism, since it ensures that *all* coercion is justified to the coerced. Every increment of coercion is justified to every citizen. This approach clearly views far fewer laws as publicly justified. Indeed, the socially optimal eligible set on most issues is a singleton. If we imagine a range of proposed laws on an issue, with increasing degrees of coerciveness, then the only publicly justified laws are those that every citizen prefers to every less coercive law, and the only Pareto optimal publicly justified law is the most coercive of those publicly justified laws. The socially optimal eligible set will only contain more than one law when these laws are equally coercive. As Lister writes, “conclusive public justification is required for each increment of coercion, permitting democratic

choice only between equally coercive policies unanimously reasonably preferred to less coercive policies.”⁴²

We can safely reject the incremental approach, because, as Gaus states, L_1 and L_2 “are conclusively justified in exactly the same sense even if L_2 involves more coercion.”⁴³ Emma and Simon both consider both laws preferable to having no law, so the coercion involved in both is conclusively justified to them in that sense. Neither law is preferred by both citizens to the other, so neither has the advantage here.⁴⁴ The fact that Emma views L_2 as involving too much coercion does not give L_2 a justificatory advantage. After all, Simon views L_1 as involving *too little* coercion, since he believes that L_2 ’s extra coercion enables it to achieve greater benefits. Emma believes that L_2 is not optimal; but it is still eligible, since it is a law that she prefers to not having a law, so she has sufficient reason to accept it. L_2 ’s overall benefits outweigh its costs, from Emma’s perspective, and thus it is justified to her. L_1 and L_2 “possess precisely the same degree of public justification.”⁴⁵

It might be true that if a law is more coercive then many citizens will believe it needs a stronger justification, so more coercive laws are usually harder to publicly justify.⁴⁶ But this does not mean that the marginal cost of coercion, compared to a slightly less coercive law, needs to exceed its marginal benefit. Further, sometimes a more coercive law will be preferred to a less coercive one, because the extra coercion is necessary to achieve some good. The less coercive law might not even be in the socially eligible set, since it fails to secure the goods that citizens desire. The aim is not to minimise coercion, but to ensure that enacted laws are publicly justified.

⁴² Lister, ‘Public Justification’, p. 159.

⁴³ Gaus, ‘On Two Critics’, p. 201.

⁴⁴ Neither law is conclusively justified in the ‘simple sense’. Ibid., pp. 197, 201.

⁴⁵ Ibid., p. 205.

⁴⁶ Gaus and Lister both seem to assume that this is *always* the case, but this assumption does not seem warranted.

Indeed, a great advantage of the non-incremental approach is that we need not have a view on which laws are in fact more or less coercive. Citizens will disagree over this, but this does not matter, since the costs of coercion are factored into the belief-value sets of each citizen. That coercion is justified to them as long as they consider the law in question superior to having no law on this issue.

The key point is that “when engaging in collective justification about a common framework, we have reason to endorse common rules even when they do not align with our convictions about what is optimal,”⁴⁷ as long as their total benefits exceed their costs. In the search for laws that can serve as the basis for our social cooperation, we have sufficient reason to accept any law that we believe to be better than having no law in this policy area.

3.2. Aggregation

The previous two paragraphs referred to ‘issues’ and ‘policy areas’. Lister’s second question concerns how we individuate these. If the socially eligible set contains all laws that are preferred by every citizen to having no law on an ‘issue’, as the non-incremental approach claims, then how do we identify these ‘issues’? This is a crucial question, because the way we individuate issues will have a large effect on what can be publicly justified. At one extreme, we could make the ‘Hobbesian comparison’ of the rule of an absolute dictator to a state of nature. If Hobbes is right about what the state of nature is like, then it seems clear that every citizen would have sufficient reason to prefer the dictatorship.⁴⁸ We would surely not want to say that such a state is publicly justified, however. At the opposite extreme, we might consider every clause of every piece of legislation as a separate issue, and thus as publicly justified only if every citizen prefers to have it than not have it. This would clearly lead to much less being publicly justified.

⁴⁷ Gaus, *Order of Public Reason*, pp. 502-503.

⁴⁸ At least assuming that the dictator is not incredibly cruel and bloodthirsty.

Lister gives the example of laws restricting smoking.⁴⁹ Suppose the government is considering whether to ban smoking in various public places – in hospitals, on public transport, in bars and pubs, and on public streets. We might consider these as four separate issues; each prohibition is publicly justified only if every citizen has sufficient reason to prefer it to not having it. In this case, it might be the case that the laws prohibiting smoking in hospitals and on public transport are publicly justified, while those applying to pubs and public streets are not. Alternatively, we might bundle these restrictions together and consider them as one issue – ‘laws restricting smoking in public places’. We would then compare a situation of having all of these laws to one of having none of them. In this case, the importance of the ban on smoking in hospitals might well mean that the whole bundle is publicly justified.

Lister calls this the question of ‘zoom’, or of ‘aggregation’. The more we ‘zoom out’ to increasingly general ‘policy areas’, the more that will be publicly justified. Less will be publicly justified if we ‘zoom in’, or disaggregate. Zooming out far enough, justificatory liberalism might declare a moderately oppressive regime publicly justified; zooming in enough, many reasonably just laws will be ruled out. The size of the eligible set thus crucially depends on our level of zoom. We need a principled basis on which to define the level of aggregation at which PJP operates.⁵⁰

Gaus offers an elegant solution to this problem.⁵¹ He argues that the determination of what counts as a separate issue, or policy area, should arise from the beliefs of citizens, rather than being decided in advance. Issues should be aggregated precisely when citizens’ belief-value sets entail that they must be. Sometimes, citizens cannot judge the merits of laws on one issue without also considering another issue. More specifically, whether a citizen considers some laws better than having no law depends on what decision has been, or will be, made on a related

⁴⁹ Lister, *Public Reason*, p. 88. My specific example differs from Lister’s.

⁵⁰ In my ‘Does Political Community’, I argue that a similar ‘zoom’ problem applies to Lister’s own public reason liberal view. That problem would not be solved by the justificatory liberal solution offered here.

⁵¹ Gaus, *Order of Public Reason*, pp. 495-497; Gaus, ‘On Two Critics’, pp. 197-200.

question. What is in her eligible set on one question depends on the polity's decisions on another question. In some cases, this will cause the socially eligible set to also demonstrate this kind of dependency.⁵² It is in those cases that we must aggregate.⁵³

A simple example illustrates this point.⁵⁴ A society is deciding whether to build a new road, funded by direct taxation, and whether the road will have a speed limit. Some citizens' belief-value sets will not give an answer as to whether the road should be built unless they know whether it will have a speed limit. They approve the road if there is a speed limit, but reject it if there is not, due to safety concerns. Whether building the road is in their eligible set depends on whether it will have a speed limit. In this case, the socially eligible set will also have this feature. These issues must therefore be aggregated, by comparing [L_1 : road and no speed limit], [L_2 : road and speed limit], and [L_0 : no road (and no speed limit)]. Since some rank L_0 above L_1 , only L_2 is publicly justified.

We are less likely to see justificatory dependency in the case of smoking restrictions. Citizens' views on whether smoking should be banned in these various places will likely be distinct from one another, such that the prohibitions can be considered separately.

We should also note that justificatory dependency will be two-way in some cases and one-way in others. Two-way justificatory dependency occurs when the socially eligible set for each issue depends on what is chosen for the other issue. Such issues must be aggregated, with packages of policies constructed. One-way justificatory dependency occurs when the socially eligible set for one issue is independent, but the content of the eligible set on another issue depends on the

⁵² This is important. In some cases individuals' belief-value sets will feature justificatory dependency but this will not affect the socially eligible set, so aggregation is unnecessary. Lister misses this, and thus exaggerates how often aggregation will be necessary.

⁵³ Or establish an 'order of justification', as I note below.

⁵⁴ I take this example from Gaus, *Order of Public Reason*, p. 538.

decision made on that first issue. In this case, an 'order of justification' can be established: a decision should be made on the former issue first, since it can be considered independently, and then a decision can be made on the latter issue once this former question is settled.⁵⁵

The key point here is that the question of which policies and issues can be considered separately and which must be considered together is determined by the way in which citizens' belief-value sets shape the socially eligible set. It is not something that can be decided in advance by theorists. We can hypothesise that certain kinds of bundling of policies are unnecessary, such as the smoking restrictions case, while others are likely to be needed, such as the road-building case. But the precise relation of different policies is not something that can be settled in the abstract. Instead, it will be worked out within polities, in the process of deliberation and discussion of laws.⁵⁶ Our understanding of the issues at stake in proposed policies, how those issues relate to one another, and thus when policies should be aggregated, or decisions made in a particular order, are all things that develop through public deliberation, rather than being decided in advance by the theory of justificatory liberalism itself.

Lister himself proposes this kind of reply on behalf of justificatory liberals, calling it the 'rule of maximal feasible disaggregation'. He argues that while it is a cogent option, it forces us to reassess our answer to his first question, and to adopt the incremental approach. The reason for adopting maximal feasible disaggregation, rather than allowing more aggregation of policies, is in effect to prevent excess coercion. The problem with bundling a law against wearing hats indoors with the law against murder is that it means coercion is permitted that is not in fact justified to the coerced. All citizens prefer having a law prohibiting both murder and hat-wearing to having no law against either, but this does not really mean that the prohibition on hat-wearing is publicly

⁵⁵ Again, Lister overlooks this and thus exaggerates how often aggregation will be necessary.

⁵⁶ This idea that the structure of issues, and of citizens' beliefs and preferences, is discovered through the process of deliberation is similar to a point made in a different context by David Miller. See his 'Deliberative Democracy and Social Choice', *Political Studies* 40:Special Issue (1992): 54-67.

justified. It ‘sneaks in’, as it were, only on account of the strength of the reasons in favour of prohibiting murder. The reason that we aggregate only when citizens’ belief-value sets make doing so necessary is that we want all coercion to be justified to the coerced, and arbitrary aggregation prevents this. The same argument can be made in favour of the incremental approach, however. Ensuring that *all* coercion is justified to the coerced requires the incremental approach. I defended the non-incremental approach on the grounds that what matters is that the total benefits of laws outweigh their costs. Laws do not need to be preferred to slightly less coercive alternatives, only to not being coerced, since that is sufficient for their coercion to be justified to citizens. But that same argument can be used to justify arbitrary aggregation: citizens prefer the overall package to not being coerced, so that package is publicly justified.

I do not think that we need to accept this analysis. Lister is right that his two questions can be stated in ways that make them sound related, but in fact they are distinct. The point of disaggregation is not to prevent excess coercion, exactly, but to take the structure of citizens’ belief-value sets seriously. The murder and hat-wearing case is one where it seems clear that there is something wrong with aggregation, because we cannot imagine any evaluative standards that would plausibly consider these to be related concerns. If we are to respect citizens by ensuring that laws are justified according to their own evaluative standards then we must disaggregate when their belief-value sets demand as much, and equally must aggregate, or establish an appropriate order of justification, when required. Resisting the shift to the incremental approach, meanwhile, is based on our account of what it means for coercion to be justified to the coerced. As Gaus emphasises, it is incorrect to claim that the incremental approach achieves all coercion being justified to the coerced in a way that the non-incremental approach does not.⁵⁷ Once citizens’ belief-value sets have been used to establish that a particular issue can be considered independently of others, it then simply is the case that a law is publicly

⁵⁷ Gaus, ‘On Two Critics’, pp. 201-202.

justified if all citizens prefer it to having no law on this issue. This means that all consider the benefits of this law to outweigh its costs. It is thus within the socially eligible set.

3.3. A Deeper Worry?

Lister's questions raise a deeper worry, however. The implications of justificatory liberalism, in terms of what (prospective) laws are publicly justified and thus eligible for legitimate enactment, is highly dependent on the answers given to these technical questions. What laws are seen as justified to every citizen depends on whether we choose an incremental or non-incremental approach and when we allow policies to be aggregated. It might seem strange that the implications of a theory of legitimacy would be so dependent on such technical matters. At the very least, it suggests that we need strong principled reasons for the answers we give to these questions. David Enoch has questioned whether the rule of maximum feasible disaggregation has this kind of principled justification.⁵⁸

As a preliminary reply to this, it is worth noting that other accounts of legitimacy have similar features. What laws are eligible for enactment under public reason liberalism depends on various elements of its precise specification. Most obviously, it depends on how we define public reasons. Are all 'secular' reasons public? If some secular reasons are non-public, what 'shared values' generate public reasons? What level of specificity or abstraction are these shared values defined at? How do we judge which public reason arguments are 'plausible'? Another crucial issue is precisely how we understand 'reasonableness'. What makes a citizen, comprehensive doctrine, or political conception 'reasonable'? Similar issues arise for non-political liberal accounts of legitimacy. Whether a law is legitimate according to the right reasons view depends on highly complex questions about the correct theories of morality, meta-ethics, and so on. Even for a pure proceduralist view, there are many questions about which procedures are legitimising and why.

⁵⁸ Enoch, 'Disorder of Public Reason', p. 154.

Justificatory liberals are not alone in facing great complexities in specifying their understanding of legitimacy precisely.

I also hope that I have shown that maximum feasible disaggregation and non-incrementalism are not arbitrary, but based on principled grounds, motivated by justificatory liberalism's core concerns. My interpretation of PJP fits with the central justificatory liberal claim – that respect for one another as free and equal, in the face of reasonable pluralism, requires that coercion be justified to the coerced. The relevant type of justification is conclusive justification, on the basis of coerced citizens' own evaluative standards. This is best understood as open justification. A law is justified to an individual if her moderately idealised belief-value set, the belief-value set she would have after a respectable amount of deliberation, gives her sufficient reason for the law. Given that our concern is with justifying coercion, 'sufficient reason' should be understood in comparison to a baseline of having no law on this issue, such that she prefers to be coerced by this law than not to be coerced. This requires a specification of 'issues' or 'policy areas', which should be based on citizens' own understandings. Questions are related in such a way that they must be considered together, or in a particular order, when what is in the socially eligible set – the set of laws justified to every citizen – on one issue depends on decisions made on another issue.

4. Public and Private Coercion

Justificatory liberals believe that individuals should not be coerced in ways that are not openly justified to them. Such coercion fails to respect individuals as free and equal moral agents. Laws must therefore fulfil PJP in order to be legitimate. It is not only the state that coerces individuals in unjustified ways, however. Individuals also coerce one another. Indeed, it is a commonplace within liberal political theory that without the state individuals would suffer high levels of coercion from one another. One of the reasons that liberals believe that the state is necessary is

to prevent this private coercion.

Many laws against private coercion will be publicly justified. All evaluative standards held by good-willed moral agents will judge that murder, rape, and grievous bodily harm should be legally prohibited. This is partly due to the value they personally place upon having secure liberty from such harms, and partly due to their concern for others as free and equal moral agents. More generally, the fact that laws prevent or reduce private coercion will often be part of what justifies them to citizens. It will often be enough to cause a law to be within the socially eligible set.

Some cases are less clear, however. In particular, some citizens might believe that it can be morally permissible to coercively prevent others from acting immorally. Consider the following case. Lisa believes that ϕ -ing is deeply immoral, and should be prevented. No law against ϕ -ing is publicly justified, however, since Philip considers ϕ -ing to be morally permissible. He has decisive reason to reject any law against ϕ -ing. Lisa further believes that she should privately coerce Philip to prevent him from ϕ -ing. She believes herself to be morally required to threaten Philip, or to forcibly stop him ϕ -ing. It is clear that this coercion is not justified to Philip. Justificatory liberalism therefore considers it morally impermissible – a failure to treat Philip as morally free and equal.⁵⁹ It does not immediately follow from this that Lisa can be *prevented* from coercing Philip, however. Indeed, PJP says that she cannot be. A law prohibiting Lisa from coercing Philip would coerce Lisa, but not be openly justified to her. She considers her coercion of Philip to be morally required, so has conclusive reason to reject such a law. The law would stop Lisa from coercing Philip in ways that are not justified to him, but would itself constitute a violation of PJP, since it is not openly justified to Lisa.

⁵⁹ The necessary and sufficient conditions for the permissibility of private coercion are likely different from those for legal coercion. But justificatory liberals will certainly consider private coercion that is not openly justified to the coerced to be impermissible.

4.1. Responses to Lisa

How should justificatory liberals respond to this case? One option is to argue that individuals like Lisa do not exist.⁶⁰ Gaus argues that the importance of individual agency to all citizens will mean that they recognise a presumption in favour of liberty, which in turn leads to the justification of a wide range of liberal rights, including those that prohibit actions such as Lisa's.⁶¹ All individuals have a conception of themselves as *agents* at the core of their self-understanding; they see their actions as properly being determined by their own deliberations and choices. They will thus endorse the principle that exercises of liberty that do not interfere with others do not require justification to others, whereas interferences with others' agency do require justification. All consider their aims and purposes as good and valuable, so are committed to being free to act upon them. They claim strong rights to not be forced to act against their choices, such that any coercion must be justified in order to be permissible. A set of agency, or liberty, rights is thereby publicly justified.

Gaus's argument here seems right.⁶² Lisa could agree with it, however, and yet claim that her coercion of Philip to prevent him from ϕ -ing is justified. Lisa endorses a general presumption in favour of liberty, protecting individuals' freedom to act upon their own choices and pursue their own purposes. But she also believes that coercion that prevents people from acting in certain immoral ways is morally permissible, and justified by the fact that it stops such immorality.

In response, Gaus would argue that to the extent that she is engaging in our normal practice of

⁶⁰ Swaine has argued that even 'theocrats' are internally committed to principles of freedom of conscience, and to liberal institutions. This is the central claim of Swaine, Lucas, *The Liberal Conscience: Politics and Principle in a World of Religious Pluralism* (New York: Columbia University Press, 2006). I find his arguments unconvincing, but lack space to consider them here. For discussions, see the articles by Garsten, Neal, and Tomasi in *Critical Review of International Social and Political Philosophy* 14:1 (2011), and Swaine's reply there.

⁶¹ Gaus, *Order of Public Reason*, pp. 335-370. For Gaus, these rights are primarily rules of social morality. One of the justifications for the state is that it protects these rights.

⁶² This is a further reason to believe that laws against murder, rape, and so on will be publicly justified.

social morality, Lisa must endorse the principle that recipients of moral demands must have sufficient internal reasons to accept those demands. Our reactive attitudes – resentment, indignation, and so on – presuppose this principle; they presuppose that moral demands are authoritative only when they are conclusively justified to their recipients.⁶³ This is a pivotal point in Gaus's theory. He argues that PJP is not merely a correct *moral* principle, but is also *endogenous* to our ordinary practice of social morality. Everyone is implicitly committed to it. Therefore, Lisa cannot consider her demand that Philip refrain from ϕ -ing to have any authority over Philip.

I lack the space to explain why I find this aspect of Gaus's view unpersuasive.⁶⁴ In short, the problem is that it is implausible to think that we only feel resentment toward others when the moral demands that we place upon them are openly justified to them. Resentment is felt due to a belief that others have an ill-will, and this does not presuppose them having conclusive internal reasons to accept our moral demand. Indeed, the fact they lack such reasons could be seen as further evidence of their ill-will, so reaffirm our resentment.

Further, the version of justificatory liberalism that I am defending only concerns *coercive* impositions. Moral demands, in and of themselves, are not coercive, so need not be openly justified to the coerced, on my account. There is nothing amiss with believing that another is acting wrongly, and even resenting them for it, despite them lacking internal reasons to accept one's moral demand. It is only the coercive enforcement of such a demand that is impermissible. While Gaus believes that PJP applies to the whole of social morality, my view is that it only applies to coercion. This is important for my response to the right reasons view, in Chapter 4, and for my arguments in Part II that justificatory liberalism is compatible with Christian theology.

⁶³ Ibid., pp. 205-224. Gaus, Gerald, 'On Theorizing About Public Reason', *European Journal of Analytic Philosophy* 9:1 (2013): 64-85, pp. 72-79, offers a recent restatement of this view.

⁶⁴ For a helpful discussion see Taylor, Anthony, 'On Gerald Gaus's Justificatory Constituency' (MA Dissertation, University of Manchester, 2013). See also Baccarini, 'Having a Reason', pp. 32-33.

I therefore do not think that justificatory liberals can simply claim that Lisas do not exist, such that no citizens wish to privately prevent others from acting immorally, or will veto laws prohibiting such coercion. A different response is to point out that Philip would reject laws against private coercion that included an exception allowing ϕ -ing to be prevented. Lisa generally endorses laws prohibiting private coercion, but wants an exception that permits coercion that prevents people from acting in certain immoral ways. Philip clearly considers such an exception unwarranted. He wants all private coercion to be prohibited.

This does not necessarily mean that a law including the exception is not openly justified to Philip, however. He might still consider this better than having no law at all. While he considers the law with the exception to be sub-optimal, he might still prefer it to the state not intervening in any such cases. Further, we might well be able to disaggregate, and consider the law prohibiting private coercion against ϕ -ing as an individual issue. Lisa would of course reject such a law.

If we concede that Lisa could exist and that a law preventing her from coercing Philip would not be justified to her, then it seems we must conclude that she cannot be permissibly stopped by the state. Justificatory liberalism considers her actions morally impermissible, but PJP prevents the state from intervening to stop her. This is indeed what Gaus says about many cases of private coercion:⁶⁵ “that other parties are violating rights does not show that state coercion to halt these violations is necessarily just.”⁶⁶ Each individual has a right against coercion that is not openly justified to them. Rights are side-constraints on action; they cannot be violated even to prevent other rights-violations. Lisa is violating Philip’s right, but that does not mean that the state can violate *her* right. Doing so would itself be unjust. While laws preventing private coercion will generally be within the socially eligible set, those laws still need to be in that set in order to be legitimate. A law prohibiting private coercion against ϕ -ing would not be legitimate, since it is not

⁶⁵ Gaus, *Order of Public Reason*, pp. 484-490.

⁶⁶ *Ibid.*, p. 488.

justified to Lisa, so is not in the socially eligible set. The fact that Philip faces such coercion is certainly unfortunate and undesirable. Lisa is acting impermissibly, and ought to stop. But the state cannot permissibly stop her.

This is a coherent position, but is also problematic. It seems strange that a view centred on the claim that individuals should not be coerced in ways that are not openly justified to them might end up allowing citizens to face high levels of such coercion from their compatriots. This is especially concerning because many cases where this occurs will be ones where citizens are imposing their own view of morality upon others – the precise thing that justificatory liberalism says fails to respect individuals as free and equal. It seems perverse that PJP, which was intended to limit coercion to cases where it was justified to the coerced, could lead to large amounts of unjustified private coercion being permitted (legally, not morally).⁶⁷

4.2. The Proviso

Justificatory liberals should thus take a different line here. They should endorse a shift in the burden of proof in uncontroversial cases of private coercion. In general, there should be no law on an issue unless it is openly justified to all citizens – unless all citizens consider it better than having no law. In cases involving private coercion this burden of proof switches, such that there *should* be a law prohibiting this coercion, unless it is outside every citizens' eligible set – unless all citizens consider it worse than having no law. The difference here concerns what happens when a law is in some citizens' eligible sets but not in others'. Normally, such laws must not be enacted. In cases where the law would prevent clear and direct private coercion, however, we should instead say that this law should be enacted. In effect, this shift in the burden of proof means that PJP comes with a proviso. PJP prohibits state coercion in such cases, whereas I argue that justificatory liberals should endorse it. In other words, there is a qualification on the right against coercion.

⁶⁷ Gaus's view probably does not have this implication, if his account of social morality succeeds. Since I reject that account, this issue is a problem for my view.

Individuals have a right against coercion that is not openly justified to them, except in cases where that coercion is preventing them from coercing others in ways that are not openly justified to *them*.⁶⁸

Justificatory liberals should endorse this proviso because it is motivated by their core concern of preventing individuals suffering coercion that is not openly justified to them. The justificatory liberal argument for PJP – that it is wrong for citizens to be forced to live by others' evaluative standards, when they judge such coercion worse than not being coerced, because this is a denial of their moral freedom and equality – applies to all coercion, not just state coercion. It therefore also justifies preventing individuals from privately coercing one another in these ways. The same argument that leads to the view that it would be impermissible for the state to enact a law prohibiting ϕ -ing, because Philip considers ϕ -ing morally unproblematic, also leads to the view that the law can permissibly prevent Lisa from stopping Philip ϕ -ing. This is a proviso on PJP, rather than something implied by PJP itself. But it has the same underlying motivation as PJP.

If Gaus's view led to the concern that too little state action is permitted, such that much unjustified private coercion goes unrestrained, my view might lead to the opposite worry: too much state action is permitted.⁶⁹ Preventing *all* unjustified private coercion might require a highly interventionist state.

The strength of this concern in part depends upon how 'private coercion' is conceptualised.⁷⁰ I should emphasise, therefore, that the proviso only applies to uncontroversial, paradigmatic, cases of coercion – clear threats of harm intended to cause the coerced to do as the coercer wishes. At

⁶⁸ This is not the same as saying that we should aim to minimise overall coercion. A state of affairs fulfilling both PJP and the proviso would not necessarily be the one that minimised coercion. Coercion must be justified, not minimised.

⁶⁹ Ibid., p. 487, notes that Draconian laws could greatly reduce private coercion.

⁷⁰ See *ibid.*, pp. 350-351, for discussion relevant to this paragraph.

first, such 'harm' will only include harm to persons. Confiscation of property is only coercive once property rights are established. Legislation establishing property rights will itself have to fulfil PJP, so be openly justified to all.⁷¹ Once those rights are established, threats to property can unproblematically be seen as a further form of private coercion, so something to which the proviso applies. Beyond the core concept of coercion, there is disagreement about what acts against other individuals are and are not coercive. The proviso does not apply in those cases. It is motivated by the need to prevent coercion like that Philip is subjected to by Lisa, so only covers such core cases. The laws legitimated by the proviso must also directly prohibit or prevent private coercion, rather than only being indirectly related to it.

There will also be cases where laws intended to prevent private coercion are rejected by all citizens. Draconian laws, or laws that would involve high levels of interference with privacy in order to be enforceable, will be considered by all as worse than having no law. Indeed, Gaus's agency arguments apply again here. The high value that citizens place upon their agency, and thus upon their freedom to live according to their own moral standards, plans, and purposes, will mean that any laws that overly restrict this, even in the name of preventing private coercion, will be outside every citizens' eligible set.

A justificatory liberalism that endorses the proviso will immediately advocate laws protecting basic individual rights, so lead to something like the 'minimal state'. Many of the laws enforced by that state will be 'overdetermined' – they will both fulfil PJP and be endorsed by the proviso. This will be true for laws against murder, rape, and so on. Some laws will only be legitimate due to the proviso, however, such as those preventing Lisa's coercion of Philip. Beyond this, all laws must fulfil PJP. I believe that many laws beyond a minimal state will indeed be within the socially

⁷¹ I think that such legislation will indeed be openly justified. Gaus discusses property rights at some length: *ibid.*, pp. 374-381, 509-529; Gaus, 'Coercion, Ownership'. As noted above (p. 51, fn. 31), I think he overstates the case for a 'classical tilt' as the outcome of justificatory liberalism.

eligible set, so be eligible for democratic enactment.

4.3. Responding to Anarchists

My defence of the proviso assumed that *the state* should prevent unjustified private coercion. This raises the question of what gives the state the authority to do this. Why should it be the state that prevents such coercion, rather than other citizens, or some other actor? In response, justificatory liberals can draw on the wealth of traditional liberal arguments for the necessity of the state, as a duly constituted authority, to rescue us from the ‘inconveniences of the state of nature’, to use Locke’s term, or from ‘extreme peril’, to use Wellman’s.⁷² Justificatory liberals can thus endorse a natural duty to establish a state, and affirm the state’s *authority* on this basis. Justificatory liberalism itself then gives an account of (some of) the conditions for the *legitimacy* of that state’s actions. I return to this point in Chapter 6.⁷³

Not only is justificatory liberalism not an anarchist doctrine on my view, therefore, it actually views the state’s establishment as necessary, in order to secure us against illegitimate private coercion. This invites the question of how I respond to anarchists. Anarchists deny either the authority or legitimacy of the state. Given this, it seems that no laws are openly justified to them, so no laws fulfil PJP. The socially eligible set is empty if there are anarchists among the population.⁷⁴ Yet I have allied justificatory liberalism to a statist picture. How can we reconcile these things? This ‘anarchists objection’, as I called it earlier, is an important one, which I lack space to discuss in the necessary level of detail. But I offer a brief response here.

First, insofar as anarchism is a theory of *legitimacy* it will inevitably conflict with justificatory

⁷² Locke, John, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), p. 294 (Second Treatise, Chapter 2, paragraph 13); Wellman, Christopher H., ‘Liberalism, Samaritanism, and Political Legitimacy’, *Philosophy & Public Affairs* 25:3 (1996): 211-237.

⁷³ See pp. 172-179.

⁷⁴ Shadd, ‘A Better Framework’, pp. 63-86, develops this objection.

liberalism. Some (philosophical) anarchists, such as Simmons, believe that actual consent is a necessary condition of legitimacy, and thus no existing states are legitimate.⁷⁵ Justificatory liberals clearly disagree. To the extent that an individual's anarchism is based on an incorrect theory of legitimacy, justificatory liberals must simply say that they are wrong. This does not mean that laws do not need to be openly justified to them. But it is their beliefs about the merits of laws, *given* the existence of the state, that are relevant here, and that play a part in defining the socially eligible set, not their competing view of legitimacy.

A different type of anarchist might believe that the state is not necessary to protect individuals against unjustified private coercion, in the way that I have assumed. They thus have an *empirical* disagreement with my view, believing that the proviso is empirically unnecessary.

A further distinction is needed here. Some of these anarchists might believe that *ideally* we would have no state, but given that we do have a state, and that most citizens believe that it is necessary as the basis for social cooperation, they accept the state as a second-best outcome. Given that others desire to conduct social cooperation through law, and believe the state is necessary to prevent unjustified private coercion, it seems plausible to suppose that many anarchists (of this type) will in practice accept the state. Such anarchists pose no problem for justificatory liberalism. This is one place where the fact that citizens take others' beliefs and values into account in the formation of their own attitudes towards laws and institutions is significant.

Some, however, might believe that not only is the state non-ideal and unnecessary, we should in fact get rid of it – justice demands the removal of the state, in order to establish a non-statist model of social cooperation. Such 'political anarchists' not only reject the natural duty argument for the state and the empirical claim that the state is necessary to prevent private coercion, but

⁷⁵ Simmons, A. John, 'Justification and Legitimacy', *Ethics* 109:4 (1999): 739-771.

actually consider all laws as worse than no law. One possible justificatory liberal response to this is to assert the truth of the empirical claim about the necessity of the state, so have this truth-claim as part of the theory, alongside the assertion of the truth of the justificatory liberal interpretation of PJP. We would then respond to political anarchists in the same way as we respond to Simmons, by setting aside their incorrect view of legitimacy when determining what laws are justified to them. This seems rather ad hoc, however, and a fairly arbitrary empirical claim to include within the foundations of justificatory liberalism. A better response is to acknowledge that the state ought not coerce these anarchists, as long as they do not coerce other individuals. Since no state coercion is openly justified to them, they should be exempt from it. This would also mean that they cannot permissibly take advantage of the benefits that the state and its system of laws brings. I do not think that this kind of anarchism is a common phenomena, however, so the fact that justificatory liberalism requires that such anarchists not be coerced by the state is not a significant concession or concern.

5. Vacuousness?

I opened this chapter by raising the ‘anarchism objection’ to justificatory liberalism, which claims that it should be rejected because no, or very few, laws will fulfil its interpretation of PJP. My detailed explication of that interpretation, including the proviso, has served to rebut that objection. This explanation of justificatory liberalism might raise the opposite objection, however: that it is now hardly a constraint on what laws can be legitimately enacted at all. A minimal state arises out of the proviso. And beyond this, if the goods involved in social cooperation and common social norms, in the form of laws, are as great as liberals tend to think, then citizens’ eligible sets will likely be large, meaning that there is a wide range of socially eligible laws on each issue. Justificatory liberalism seems to give little guidance as to what laws should be enacted.

In itself, this kind of inconclusiveness is not a problem. Some object to Rawlsian public reason

liberalism on the grounds that it will often lead to stand-offs, with different citizens believing that conflicting laws are justified by public reasons. This inconclusiveness has been offered by some as a justification for citizens appealing to non-public reasons, rather than merely public ones.⁷⁶ This is a misunderstanding, however. Rawls is clear that public reason is not intended to give univocal answers to every question; a range of competing laws can be justified by public reasons.⁷⁷ Indeed, Rawls views this as a virtue of his account. It means there is plenty of scope for democratic deliberation and decision-making. Citizens should stay within the bounds of public reason and support the laws they believe to be best supported by it.

Justificatory liberalism can say something similar. As an account of the reason-giving aspect of legitimacy, it never intended to completely determine which prospective laws should be enacted, but merely to identify a range of laws which fulfil PJP, and are thus eligible for enactment. Wide scope is left for deliberation and persuasion, and for laws to be enacted through democratic procedures.

Nonetheless, what seemed like a very stringent demand, that laws be conclusively justified to all citizens, based upon a strong understanding of what is demanded by respect for individuals' moral freedom and equality, has turned out to be a potentially weak requirement, only ruling out laws that some citizens view as worse than nothing. This might seem strange. While authoritarianism and the establishment of any particular comprehensive doctrine are ruled out, a wide range of laws remain socially eligible. A critic might wonder what happened to the stringent demands of individual moral authority. On my interpretation of PJP, many laws that individuals

⁷⁶ For example by Greenawalt, Kent, *Religious Convictions and Political Choice* (New York: Oxford University Press, 1988), pp. 98-172; Quinn, Philip L., 'Political Liberalisms and their Exclusions of the Religious', in Weithman, Paul J. (ed.), *Religion and Contemporary Liberalism* (Notre Dame, Ind.: University of Notre Dame Press, 1997): 139-161, pp. 148-151. For discussion, see Schwartzman, Micah, 'The Completeness of Public Reason', *Politics, Philosophy & Economics* 3:2 (2004): 191-220.

⁷⁷ Rawls, *Political Liberalism*, pp. 450-452. Greenawalt argues there are some issues where we face such 'radical inconclusiveness' that this answer is unsatisfactory.

believe to be pretty bad laws, falling far short of ideal, count as conclusively justified to them, since they are still preferable to having no law.

Further, in Chapter 1 I made much of the fact that public reason liberalism's requirement that there be *some* public reason in favour of laws is too weak, allowing the enactment of laws that are not conclusively justified to all citizens. The suggestion there seemed to be that public reason liberals permitted many laws that violated PJP to be enacted. But one might wonder whether for most laws that public reason liberalism considers legitimate, justificatory liberalism agrees, since no citizen considers them worse than nothing. Of course, this does not vindicate public reason liberalism in these cases. It still permits these laws for the wrong reasons, from a justificatory liberal perspective. But the fact that justificatory liberalism does not appear much, if at all, more restrictive than public reason liberalism, might cause doubts about my earlier argument.

Ultimately, whether this objection is persuasive depends on whether justificatory liberalism's account of what is involved in respecting individuals as morally free and equal when imposing coercive policies and laws upon them is plausible. Justificatory liberals claim that individual moral authority and the need for a stable and just social order are reconciled through laws being openly justified to every citizen.⁷⁸ Individual belief-value sets rule out some coercion as illegitimate, due to being unjustifiable to the individual – worse than their not being coerced. Respect for individuals' freedom and equality means such laws must not be imposed upon them. Individuals must, by their own (moderately idealised) lights, consider laws better than not having any such law.

Given the goods secured through law, we might expect that all can recognise many laws as justified. How large the socially eligible set actually is will depend on empirical facts about

⁷⁸ I expand on this argument in Chapter 4.

citizens' beliefs and values, which are influenced both by their conceptions of the good and by their deliberative engagement with one another. The fact that it is plausible to believe that for many issues the socially eligible set will be fairly large is something we should embrace.

This does not in any way undermine justificatory liberalism's objections to public reason liberalism. It is still the case that public reason liberals permit the enactment of laws that are not justified to some citizens – laws that fall outside citizens' eligible sets. This is particularly likely in cases where citizens have what they take to be conclusive comprehensive reasons to reject a law, despite the public reasons in its favour.⁷⁹

Further, even if the sets of laws that public reason liberalism and justificatory liberalism view as publicly justified are very similar, this does not undermine the claim that justificatory liberalism has a better understanding of the demands that respect for others as free and equal places upon us. Justificatory liberalism and public reason liberalism come to their conclusions about specific laws for different reasons, and this matters for our evaluation of them. They also have different implications for the conduct of ordinary citizens: public reason liberalism demands that citizens fulfil the public-reason giving and restraint requirements, whereas justificatory liberalism does not. Finally, public reason liberalism also must rest upon an unacceptably thick definition of 'reasonableness', whereas justificatory liberalism need not. Showing this is the task of Chapter 3.

⁷⁹ Justificatory liberalism also *permits* the enactment of laws that public reason does not – in cases of "convergence without consensus" (Lister, *Public Reason*, p. 18). The set of laws that fulfil PJP according to justificatory liberalism is not a subset of those that do so according to public reason liberalism.

Chapter 3: Public Reason Liberalism and Justificatory Liberalism on Reasonableness

In this chapter I examine the role that conceptions of ‘reasonableness’ play within political liberal theories. This serves two main purposes. First, it highlights an important objection that justificatory liberals press against public reason liberalism. Second, this objection allows us to identify fundamental differences between these two theories, with regard to their understanding of what it means to treat citizens as free and equal, and the place of ‘justification to persons’ within the accounts. Ultimately, I argue that public reason liberalism is structurally similar to the right reasons view, which I consider in Chapter 4. In making this argument, I mainly focus on Quong’s account, but I believe that equivalent arguments apply to all versions of public reason liberalism.

I should note that the force of the objections to public reason liberalism in this chapter depend to some extent upon the justificatory liberal understanding of moral freedom and equality, which I defend in Chapter 4. My case against public reason liberalism, and for justificatory liberalism, is thus not complete until the end of that chapter. However, I think the objections to public reason liberalism’s use of ‘reasonableness’ also have some freestanding force. Some who reject justificatory liberalism will nonetheless be persuaded by these objections.

1. Rawlsian Reasonableness

Chapter 1 included a lengthy quote from Greenawalt, summarising public reason liberalism. It included the comment that “some opaque citizens may not recognize that [public] reasons are good ones, but they should do so.”¹ Public reasons have a certain good-making property, even if some citizens fail to recognise it. Laws justified by appeal to public reasons can therefore be legitimate despite these ‘opaque’ citizens not accepting those reasons. Public reasons liberals

¹ Greenawalt, ‘What Are Public Reasons?’, p. 82.

usually refer to these citizens as ‘unreasonable’. Political power can be permissibly exercised over unreasonable citizens despite them lacking any (internalist) reasons to accept this coercion, so without any reasons being offered for laws that they recognise as having normative force. They are still offered the right *kind* of reasons, reasons that they *ought* to recognise the force of. Their unreasonableness should thus not prevent them from being permissibly coerced. Unreasonable citizens should still be granted all the rights, benefits and burdens of citizenship, but are not included within the ‘justificatory constituency’,² or ‘legitimation pool’,³ to whom laws must be justified in order to be legitimate.⁴ The fact that they do not accept the reasons used to justify laws does not delegitimise those laws.

This is true, on the Rawlsian account, despite the conception of reasonableness involved being thickly normative. It is not merely an epistemic conception, where being reasonable is about engaging in a respectable amount of deliberation, not making gross logical errors in one’s reasoning, not ignoring relevant factual information, and so on. Reasonableness includes substantial normative elements. First, reasonable citizens must recognise other citizens as free and equal, and view society as a fair scheme of social cooperation. As Mulhall and Swift put it, “no-one can be reasonable unless they accept the conception of the person and of society that is the irreducible core of political liberalism.”⁵ Second, they must recognise that free and equal citizens reasonably disagree on many religious and philosophical questions, due to the burdens of judgment.⁶ Third, and more controversially, reasonable citizens must also accept the criterion of reciprocity, according to which laws must be justified by appeal to reasons that all reasonable

² This is Quong’s term. For example, Quong, *Liberalism Without Perfection*, p. 139.

³ I take this term from Wolterstorff, *Understanding Liberal Democracy*, pp. 81-85.

⁴ Quong, *Liberalism Without Perfection*, pp. 290-314; Cohen, Joshua, ‘Moral Pluralism and Political Consensus’, in Copp, David, Jean Hampton and John E. Roemer (eds.), *The Idea of Democracy* (Cambridge: Cambridge University Press, 1993): 270-291, pp. 285-287.

⁵ Mulhall, Stephen, and Adam Swift, *Liberals and Communitarians*, 2nd edition (Oxford: Blackwell, 1996), p. 236.

⁶ On which, see pp. 14 and 107-108.

citizens can reasonably be expected to endorse – i.e. public reasons.⁷ Rawls implies that accepting his account of public reason follows from recognising the burdens of judgment, writing that reasonable citizens have “the willingness to recognise the burdens of judgment and to accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime.”⁸ Fourth, reasonable citizens must therefore hold to a reasonable political conception of justice and be ready to appeal to it in their public advocacy of laws. Any such reasonable conception includes the three basic liberal principles of every citizen being afforded a set of basic rights and liberties, these being given priority over other ends (such as economic efficiency), and all being guaranteed adequate all-purpose means to make use of their rights and liberties.⁹ Finally, reasonable citizens must also give the political values contained within their political conception priority over all non-public reasons.¹⁰ In sum, reasonable citizens must accept the whole Rawlsian framework, including his ‘right kind of reasons’ interpretation of fair terms of social cooperation among free and equal citizens.¹¹ Following Thomas Besch, I will refer to this conception of reasonableness as ‘reasonableness*’.¹² Citizens who reject any of the elements I have outlined are to that extent unreasonable*, and can permissibly have political power exercised over them without being offered reasons that they recognise as having normative force.

It is important to be clear that Rawls does not simply stipulate that reasonable citizens accept all the elements of his account. Instead, he believes that everyone who accepts a) that citizens are free and equal, b) that society is a fair scheme of social cooperation, and c) reasonable pluralism,

⁷ Rawls, *Political Liberalism*, p. 49.

⁸ Ibid., p. 54.

⁹ Ibid., p. 450; Quong, *Liberalism Without Perfection*, p. 176.

¹⁰ “One qualifies as unreasonable if one accepts these ideals, but fails to accord them deliberative priority in one’s practical reasoning.” Quong, *Liberalism Without Perfection*, p. 291.

¹¹ Ibid., pp. 37-39. See also Quong, Jonathan, ‘What Do Citizens Need to Share? Citizenship as Reasonableness’, in Laycock, David (ed.), *Representation and Democratic Theory* (Vancouver: UBC Press, 2004): 141-158, especially pp. 150-155.

¹² Besch, Thomas M., ‘Political Liberalism, The Internal Conception, and The Problem of Public Dogma’, *Philosophy and Public Issues (New Series)* 2:1 (2012): 153-177.

will also accept his argument for the criterion of reciprocity and ideal of public reason. Accepting the latter follows from accepting the former. Quong similarly suggests that accepting the need for public justification, as understood by public reason liberalism, follows from accepting a)-c).¹³ The upshot, however, is that anyone who does not accept (Rawlsian) public reason liberalism is unreasonable. For Rawls and Quong, this must mean that they reject (one of) a)-c). In fact, I think it is possible to accept a)-c) and yet reject public reason liberalism. Justificatory liberals do so, along with many perfectionists and right reasons view theorists. The dispute between these views is over the *interpretation* of a)-c), and hence their implications for legitimacy and public justification.

What is striking about the public reason liberal account is that what reasons and arguments can legitimise laws is almost completely decided in advance, without any relation to actual citizens' beliefs and values.¹⁴ As Quong explains, the constituency of reasonable* citizens is a hypothetical constituency defined by their acceptance of a set of substantive normative propositions.¹⁵ Laws must be justified by appeal to reasons that everyone in this constituency recognises as having normative force. But what those reasons are is predetermined by the very account of reasonableness*. They are any reasons found in a reasonable* political conception of justice, which is an interpretation and ordering of the political values that all reasonable* citizens, by definition, accept. Any laws justified by appeal to a reasonable balance of these 'public reasons' can be legitimate. As I showed in Chapter 1, this is true even though these laws might not be *conclusively* justified to some reasonable* citizens. It is also true even though many actual citizens might not consider the public reasons to have any normative force. For public reason liberals, a citizen's failure to recognise the force of those reasons is simply evidence for her

¹³ Quong, *Liberalism Without Perfection*, pp. 38, 166, 291.

¹⁴ I say "almost completely" because it is possible that reasonable* citizens might develop a new reasonable* political conception that no-one has previously held or anticipated. This would then be a source of public reasons. There would always have been the *potential* for this conception, and these reasons, but changing social understandings might have led to this conception actually being endorsed.

¹⁵ *Ibid.*, pp. 144-145.

unreasonableness*, since public reasons are, by definition, accepted by all reasonable* citizens. Laws justified by appeal to public reasons satisfy PJP, no matter what actual citizens believe about those laws or those reasons.¹⁶

2. Sectarianism and the Justification of Reasonableness*

This has led Gaus to accuse public reason liberalism, and specifically Quong's view, of being 'sectarian'.¹⁷ For Quong, any principles and laws that are justified to every reasonable* citizen can be imposed on the whole of the population.¹⁸ Beliefs and values accepted by the 'reasonable* sect' are coercively enforced upon everyone. Gaus suggests that this would be unproblematic if those excluded from the constituency of justification, unreasonable* citizens, are only those with very extreme evaluative perspectives, such as psychopaths or those who reject the very idea of morality. Sectarianism is problematic, however, if some of those who are excluded are "good-willed moral agents,"¹⁹ who wish to live with others on fair terms,²⁰ and understand the basic give-and-take and impartiality of moral life.²¹ It is objectionable for such citizens to be subjected to coercion that they cannot endorse, from within their own normative perspective. Quong's definition of reasonableness* is such that many good-willed citizens would be coerced in this way. "The theory commences with a sectarian classification"²² that "excludes a great many good-willed

¹⁶ A public reason liberal theory could have a thinner conception of reasonableness, but all such theories need some way of demarcating the set of reasons that all citizens can accept, which requires some relatively thick conception of reasonableness.

¹⁷ Gaus, Gerald, 'Sectarianism Without Perfection? Quong's Political Liberalism', *Philosophy and Public Issues (New Series)* 2:1 (2012): 7-15. For similar charges against Rawls see Spragens Jr., Thomas A., 'Democratic Reasonableness', in Young, Shaun P. (ed.), *Reasonableness in Liberal Political Philosophy* (London: Routledge, 2009): 85-106, p. 102; Young, Shaun P., 'Exercising Political Power Reasonably', in *ibid.*: 147-164; Friedman, Marilyn, 'John Rawls and the Political Coercion of Unreasonable People', in Davion, Victoria, and Clark Wolf (eds.), *The Idea of a Political Liberalism: Essays on Rawls* (Oxford: Rowman & Littlefield, 2000): 16-33.

¹⁸ Gaus and Quong do not use the 'reasonable*' terminology, but I will continue to do so.

¹⁹ Gaus, 'Sectarianism Without Perfection?', p. 10.

²⁰ 'Fair terms' here does not mean 'terms that all reasonable* citizens can accept'. Public reason liberals believe that fair terms must be mutually acceptable in this way, but justificatory liberals accept that citizens can have different conceptions of what constitutes fair terms of cooperation.

²¹ Notice that this means there is *some* substantive normative content to Gaus's own conception of reasonableness. I discuss this further below.

²² *Ibid.*, p. 11.

and sensible people.”²³ One can be a good-willed moral agent while rejecting some elements of reasonableness*, such as the specific understanding of public reason or the Rawlsian liberal egalitarian values that are built into the account.

Gaus illustrates this using Jonathan Haidt’s ‘moral foundations theory’.²⁴ He claims that in order to be a Quongian (or Rawlsian) reasonable* citizen one must hold views identified by Haidt as typical of ‘left-leaning-liberals’, and must not hold views based on moral foundations typically drawn upon by ‘conservatives’. Yet many such ‘conservatives’ are good-willed moral agents. So are many comprehensive liberals, pure-proceduralist democrats, utilitarians, and traditionalists. Such individuals endorse a)-c) – they believe that others are morally free and equal, that society should be based on fair terms of cooperation, and that not all moral disagreement is due to ignorance, foolishness or wickedness. But they are unreasonable*, because they reject the Rawlsian understanding of a)-c), and thus reject the ideal of public reason. They might disagree with Rawls about the scope of reasonable pluralism, believe that ‘fair terms of cooperation’ can be established without the need for public reasons, hold that coercion that is not justified by public reasons can nonetheless respect citizens’ status as free and equal, or believe that Rawlsian public reason excludes many important moral considerations that are legitimate bases for political decisions. In all of these ways, good-willed moral agents can be unreasonable*.²⁵ Besch makes a similar claim, detailing ways in which individuals who are normatively and epistemically reasonable by any commonsense definition of the term can reject elements of reasonableness*.²⁶

Excluding all such citizens from the justificatory constituency as a first move within a theory, as

²³ Ibid., p. 10.

²⁴ Ibid., pp. 12-15.

²⁵ Gaus might even be unreasonable*, as Enoch points out. Enoch, David, ‘Against Public Reason’, working paper, pp. 14-16. Available at <http://law.huji.ac.il/upload/AgPubRea.pdf>.

²⁶ Besch, ‘Political Liberalism’, pp. 173-174.

Quong does, appears unacceptably sectarian.²⁷ It is objectionable to claim that large swathes of the population of real-life liberal democracies are not owed a justification for laws that they can accept, by drawing upon a thick conception of ‘reasonableness’. In Gaus’s words, this involves imposing “one highly controversial view of what is morally relevant”²⁸ on everyone, by building that view into the definition of reasonableness.

The numerous substantive elements within the idea of reasonableness* form the basis for Quong’s (and Rawls’s) account of the reasons that legitimise laws, and thus the basis on which all citizens – reasonable* and unreasonable* – can be permissibly coerced. It therefore seems that Quong needs to provide further grounds for these elements, if he is to escape the charge of sectarianism. Besch argues that public reason liberalism “needs to subject its idea of the reasonable* to a justification that addresses on an equal footing (some) unreasonable* people.”²⁹ In other words, a justification for the elements of reasonableness* is needed that might be accepted by good-willed, but unreasonable*, citizens.³⁰

Quong explicitly denies this, however.³¹ His definition of the justificatory constituency is internal to his public reason liberal theory, and so based on his own Rawlsian liberal commitments. He claims that no further justification of the values that are embodied in reasonableness* is needed. In particular, there is no need to offer arguments for this conception that might speak to the unreasonable*, by appealing to their own beliefs and values. There are several resources within Quong’s theory which he uses to defend this view, and thus to maintain that there is nothing

²⁷ Quong would reject talk of people being ‘excluded from the justificatory constituency’. It is a hypothetical constituency made up of hypothetical people. Speaking of real-life citizens being excluded from it is a misunderstanding, like talking about citizens being excluded from the original position. However, I am using the phrase as shorthand for saying that no member of the hypothetical justificatory constituency could endorse a certain view. Laws can thus be legitimate despite real-life citizens who hold that view recognising no reasons for them.

²⁸ Gaus, ‘Sectarianism Without Perfection?’, p. 15.

²⁹ Besch, ‘Political Liberalism’, p. 171.

³⁰ For a related, but different, argument that the unreasonable* are wronged by their views not being taken into account, see Wolterstorff, *Understanding Liberal Democracy*, pp. 121-122.

³¹ See, for example, Quong, *Liberalism Without Perfection*, p. 234.

wrong with coercing the unreasonable* with laws that are not justified by reasons that they can accept.

Firstly, Quong argues that the Rawlsian liberal principles and norms that all reasonable* citizens accept are justified to each of them by their own comprehensive doctrines. The overlapping consensus between all reasonable* citizens is on these basic liberal norms, which each accepts for her own reasons.³² Political liberalism can thus 'pass the buck' of justification to those citizens.³³ It need not seek to justify its definition of reasonableness*, by offering a justification of the public reason liberal interpretation of a)-c), because reasonable* citizens do this themselves. Each citizen believes these norms to be true based on their own comprehensive doctrine, rather than public reason liberalism itself engaging in this form of comprehensive justification. Public reason liberalism should not be tied to any particular justification of reasonableness*, since that would prevent the theory from being acceptable to all reasonable* citizens. Instead, reasonable* citizens themselves provide the necessary justification.

The problem with this is that it even if all reasonable* citizens believe the values and norms constitutive of reasonableness* to be justified and true, unreasonable* citizens do not. Unreasonable* citizens, by definition, are given no reason to accept these norms, and indeed believe that one or more of them is false, or at least that they should not be given absolute priority within politics, or that the public reason liberal interpretation of them is mistaken. All good-willed moral agents will accept some interpretation of a)-c), but many will reject the public reason liberalism one. Yet that interpretation, and principles and laws that are justified by appeal to it, are still coercively imposed upon unreasonable* citizens, which is precisely what Gaus and Besch consider sectarian. The fact that reasonable* citizens justify these norms by appeal to their own comprehensive doctrine is of no help here.

³² Quong, *Liberalism Without Perfection*, pp. 180-187.

³³ *Ibid.*, pp. 225-242.

Secondly, Quong can appeal to the place that justification to persons has within his theory, which he calls an ‘internal conception’ of political liberalism.³⁴ He argues that we ought to care about what can be justified to a constituency of persons “only if that constituency has been defined in a way that makes normative sense.”³⁵ Specifically, the justificatory constituency should be defined on the basis of the substantive commitments of its members. The kind of public justification that matters is justification to a constituency of hypothetical, idealised, individuals who share certain substantive commitments we believe to be important, based on our wider (Rawlsian liberal) moral view. The reason for this is that public justification is not a fundamental principle. Instead, it follows from other foundational beliefs – persons as free and equal, society as a fair system of social cooperation (where ‘fair terms of cooperation’ are understood in the specifically Rawlsian sense), the fact of reasonable pluralism, and the importance of certain basic rights and liberties. We, as theorists, start with these commitments, and they lead us to believe that a certain subset of our moral rules – i.e. political values that are enforced through law – must meet the test of public justification in order to have normative authority and be legitimately enforced. The constituency to whom these rules must be justified, however, is limited to those who share the starting commitments. This is where the definition of reasonable* citizens comes from. We, here and now, are committed to certain (Rawlsian) liberal norms, principles, and policies, and these lead us to believe that laws must be justified to all those who share those liberal views and give them appropriate deliberative priority – i.e. to all reasonable* citizens. That is why it is permissible to coerce unreasonable* citizens without offering them a justification they accept.

It is not obvious, however, why the fact that the need for public justification follows from other basic commitments that public reason liberal theorists hold would mean that justification for principles and laws is only owed to the reasonable*. Even if it is reasonable* Rawlsian liberal

³⁴ Ibid., pp. 137-160.

³⁵ Quong, Jonathan, ‘*Liberalism Without Perfection: Replies to Gaus, Colburn, Chan, and Bocchiola*’, *Philosophy and Public Issues (New Series)* 2:1 (2012): 51-79, p. 56.

theorists who recognise the need to publicly justify laws that are imposed on people, why should this justification only be owed to those who are themselves reasonable*?³⁶ It seems equally plausible to claim that we need to publicly justify to those who are reasonable in the weaker sense identified by Gaus and Besch. On their view, as political liberals we recognise that coercion must be justified to the coerced, and that includes justification to those who reject political liberalism. The restrictions on the justificatory constituency thus do not simply follow from the place that public justification has within Quong's theory.

In response to this, Quong would make a third argument, emphasising another aspect of the 'internal conception'. Public reason liberalism is a model for a well-ordered liberal society, a society of reasonable* people. Its aim is to show that those within such a society could agree on standards of public justification, and abide by those standards in their political life together, offering one another public reasons as the justification for every policy and law. This shows that a well-ordered liberal society can prove enduring and stable over time. In other words, the task of public reason liberalism is to show that liberalism's emphasis on freedom does not make a stable well-governed liberal society impossible. It is for this reason that we do not need to worry about justification to unreasonable* citizens. There simply are no such citizens in the well-ordered society. Our concern is with public justification to the hypothetical constituency of reasonable* citizens, and what real-life citizens believe here and now is simply irrelevant. Indeed, any attempt to accommodate political liberalism to beliefs and comprehensive doctrines held within present-day society would make the theory "political in the wrong way,"³⁷ and leave it hostage to illiberal views. As Quong puts it, unreasonable* "people are not part of an ideal, well-ordered liberal society, and so obtaining their agreement is irrelevant to the project of liberal theory's internal

³⁶ Enoch, 'Against Public Reason', pp. 13-23, argues that the concerns motivating public reason liberalism must apply to the unreasonable as well as the reasonable.

³⁷ Rawls, *Political Liberalism*, p. 40; Quong, 'Liberalism Without Perfection: Replies', p. 57.

coherence.”³⁸

The problem with this response is that Quong wants the results of this ideal theory to dictate our views on what principles and laws are legitimate *here and now*. The laws that can be permissibly imposed within our real-life society are those that are publicly justified in the well-ordered liberal society – i.e. those justified to every citizen in the hypothetical constituency of the reasonable*. This can be seen, for example, in his discussion of the containment of unreasonable* doctrines.³⁹ But this jump to the legitimacy of laws within real-life societies appears unwarranted.⁴⁰ Why should we accept that what is justifiable to the hypothetical constituency of reasonable* citizens tells us what laws are legitimate now, in a society which contains both reasonable* and unreasonable* good-willed moral citizens?

The answer, presumably, must be that we accept that the well-ordered liberal society is one that is demanded by justice, and that reasonableness* is the right attitude to have to politics and to public justification. Public reason liberalism tells us about legitimacy here and now because it is a view that we accept, just as the original position tells us about principles of justice here and now because it models and incorporates principles and values that we accept – our considered convictions.

The problem with this answer, of course, is that it simply throws us back onto the question of those who do not accept public reason liberalism, so are not reasonable*. At this point in the argument we cannot say that what they think does not matter, just as Rawls cannot say that those whose considered convictions do not lead them to endorse the structure or outcomes of

³⁸ Quong, *Liberalism Without Perfection*, p. 181. See also Dreben, Burton, ‘On Rawls and Political Liberalism’, in Freeman, Samuel (ed.), *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003): 316-346.

³⁹ Quong, *Liberalism Without Perfection*, pp. 290-314; Quong, ‘*Liberalism Without Perfection: Replies*’, pp. 74-79.

⁴⁰ For a similar objection, see Enoch, ‘Against Public Reason’, pp. 21-22.

the original position do not matter. If the political liberal claim is that laws are legitimate due to being publicly justifiable to the reasonable* because we here and now accept and prioritise the values and principles that define reasonableness* then we run again into the problem of what we say to those who do not accept and/or prioritise those norms. For them, living in a society, here and now, where the legitimacy of laws is measured in this way, as Quong believes it should be, would mean facing coercion that is not justified to them. Quong would say that this is unobjectionable, because these citizens are unreasonable*. But, once more, this is only true on the conception of reasonableness* we determine, by *our* substantive commitments, which by definition are ones that the unreasonable* reject. So this still looks like an unacceptably sectarian position.

Quong's final reply would be to argue that restrictions of the justificatory constituency are necessary in order for the theory to produce substantive liberal conclusions, which as liberals is something we obviously want. Leaving the justification of political principles and laws hostage to the unreasonable* means that there will be many important liberal rights and laws that cannot be publicly justified. Quong explicitly replies in this way to Gaus's accusation of sectarianism, offering the example of All Things Considered Reasoners (ATRCs).⁴¹ These are citizens who endorse the three basic liberal principles that Rawls says are included in every reasonable political conception of justice, but do not accept that these principles must always be given deliberative priority over all comprehensive and non-public beliefs. Gaus, and justificatory liberals more generally, believe that the constituency of justification should include ATRCs, since they are good-willed moral agents. But Quong argues that this would threaten liberal rights. For example, ATRCs might veto laws forbidding religious discrimination in hiring decisions, if their comprehensive doctrines permitted such discrimination. Expanding the justificatory constituency in this way would thus prevent political liberalism from being truly liberal. If laws had to be openly justified to citizens

⁴¹ Quong, '*Liberalism Without Perfection: Replies*', p. 55.

who reject the deliberative priority of Rawlsian liberal political values within the political realm then many important liberal policies would not be publicly justifiable. Such a failure to deliver liberal outcomes is reason enough to reject such a version of political liberalism, in Quong's view.⁴² ATCRs are therefore rightly considered unreasonable.

Three responses can be made to this. First, Gaus would argue that many liberal rights can in fact be justified to every good-willed moral agent.⁴³ Second, and more importantly, Gaus would maintain that if a putative liberal right or policy cannot be justified to every good-willed citizen, including those who do not accord Rawlsian liberal egalitarian norms complete deliberative priority in their political reasoning, then it should not be enforced upon the whole population. If justifying coercion to all citizens means that some liberal egalitarian policies cannot be enacted then we must accept this outcome.⁴⁴ Third, Quong's argument here simply reaffirms that the charge of sectarianism sticks. The exclusion of the unreasonable* from the justificatory constituency is rooted in a willingness to restrict that constituency in order to guarantee certain substantive liberal outcomes. The bulk of the normative work, in terms of determining what laws are legitimate, is being done not by an account of 'justification to persons', but by the extensive principles and values that are built into the conception of reasonableness*. This being the case, that conception surely needs some further justification, and one that at least attempts to be acceptable to all good-willed moral agents.⁴⁵

⁴² Quong, Jonathan, 'What is the Point of Public Reason?', *Philosophical Studies* 170:3 (2014): 545-533, objects to Gaus's view on a similar basis, arguing that it cannot deliver basic liberal outcomes. This also seems to be Quong's response to the standard 'integrity objection': to the extent that citizens think of their religious obligations as having priority over political values, they are unreasonable. See his response to Eberle in Quong, 'What Do Citizens', pp. 154-155.

⁴³ See Gaus, *Order of Public Reason*, pp. 334-388; Gaus, 'Public Reason Liberalism', pp. 19-20.

⁴⁴ Gaus believes his theory would lead to 'classical liberal' policy outcomes. See Gaus, *Order of Public Reason*, pp. 509-544. I noted reservations about this above – p. 51, fn. 31.

⁴⁵ "Insofar as it takes the validity of liberal principles for granted, political liberalism loses its status of liberal theory and lapses into liberal ideology." Zoffoli, Enrico, 'The Place of Comprehensive Doctrines in Political Liberalism: On Some Common Misgivings About the Subject and Function of the Overlapping Consensus', *Res Publica* 18:4 (2012): 351-366, pp. 363-4. Zoffoli is explicitly discussing Quong. See also Waldron's misgivings about 'aggressive liberalism', and discussion of the limits of the work 'reasonableness' can do within liberal theory, in Waldron, Jeremy, 'Toleration and Reasonableness', in McKinnon, Catriona, and

Besch's own view is that the only kind of justifications that can be given for many of the aspects of reasonableness* are comprehensive ones – justifications appealing to controversial ideas of value and of the good.⁴⁶ Several other theorists have reached similar conclusions.⁴⁷ Public reason liberals must argue that it is *good* to be reasonable* in order to justify the normative foundations of their theory and to avoid it simply being a form of sectarian dogmatism. The theory will thus become a form of comprehensive liberal anti-perfectionism, ultimately resting on claims about what makes for a worthwhile human life. On this view, the values of (Rawlsian) liberalism are correct and can be permissibly enforced upon society, even though they are not acceptable to all and any justification of them will rest on controversial ideas about human well-being and thus be rejected by many citizens. These liberal values then demand that laws be justified by public reasons, reasons acceptable to all reasonable* citizens, and this is what leads to the theory's anti-perfectionism.

Quong would resist this pressure to embrace comprehensive liberalism, however, because he does not believe that any justification for liberalism rooted in a particular comprehensive doctrine, or in controversial moral views, can be endorsed by all citizens, even all reasonable* citizens. Comprehensive liberalism is itself sectarian, in this sense.⁴⁸ The move to political liberalism was meant to show that politics can be based upon values and principles that all share, so reverting to comprehensive liberalism, as Besch advocates, appears to be an admission of

Dario Castiglione (eds.), *The Culture of Toleration in Diverse Societies: Reasonable Tolerance* (Manchester: Manchester University Press, 2003): 13-37, especially pp. 21-23, 31-33.

⁴⁶ Besch, 'Political Liberalism', p. 176. (Besch actually uses the term 'perfectionist', but I think 'comprehensive' is more accurate.) Quong seems to agree with Besch; the reason he wants to 'pass the buck' is precisely to avoid his view becoming a form of comprehensive liberalism.

⁴⁷ Mahoney, Jon, 'Public Reason and the Moral Foundation of Liberalism', in Brooks, Thom, and Fabian Freyenhagen, *The Legacy of John Rawls* (London: Continuum, 2005): 85-106 makes a similar argument. Clayton, Matthew, and David Stevens, 'When God Commands Disobedience: Political Liberalism and Unreasonable Religions', *Res Publica* 20:1 (2014): 65-84 use the example of unreasonable religious citizens to argue that political liberalism at times is a partially comprehensive doctrine. Similarly, Mulhall and Swift, *Liberals and Communitarians*, p. 245 argue that Rawls's thick conception of reasonableness shows that the "Rawlsian state must inevitably base itself upon elements of a comprehensive doctrine."

⁴⁸ Quong also argues that comprehensive antiperfectionism must in fact admit some degree of perfectionism, and that this makes it objectionable. Quong, *Liberalism Without Perfection*, pp. 21-26.

failure. Instead, Quong is happy to simply assert Rawlsian liberal values and ideals as a starting point, even if this means imposing them upon citizens who reject those values, or their priority. Yet this leaves him open to charge of sectarianism, to which I have argued that he cannot give an adequate response.

3. Does Justificatory Liberalism Fare Any Better?

One alternative to both Quong's and Besch's approach, of course, is to embrace justificatory liberalism.⁴⁹ Gaus claims that "this much is clear: the future of public reason liberalism is not to develop a controversial ideological position that seeks to exclude large parts of our society as 'unreasonable,' but to press the bounds of inclusiveness as far as possible."⁵⁰ This is what justificatory liberalism seeks to do.

Is embracing justificatory liberalism actually an alternative, however? After all, justificatory liberalism must also deem certain individuals 'unreasonable', and so not owed open justification for coercion. Gaus says that only those who are 'good-willed moral agents' are owed such a justification. In order to be a good-willed moral agent, one must accept basic features of morality, such as its impartiality, that others are worthy of moral consideration, and that one has moral obligations with regard to how others are to be treated. All good-willed moral agents also accept a)-c), even if they understand these principles very differently to Rawlsian public reason liberals.⁵¹ Individuals who are not good-willed moral agents can be coerced without being offered a justification that they can accept. Justificatory liberalism is therefore itself 'sectarian', or

⁴⁹ A different alternative is to seek to offer a non-comprehensive justification for reasonableness*. Arguably, this is the role that the ideas of 'political constructivism' and 'stability for the right reasons' play within Rawls's own account. Besch argues that some ultimate reliance on comprehensive claims is inevitable, and many others have agreed. I have not offered a defence of that claim here, and lack space to consider possible non-comprehensive justifications for reasonableness*. I do think that all forms of public reason liberalism are ultimately objectionably sectarian.

⁵⁰ Gaus, 'Public Reason Liberalism', p. 21.

⁵¹ For example, they might not believe that 'fair terms' means 'terms acceptable to the reasonable*', or that Rawls's ideal of public reason follows from a)-c).

‘dogmatic’, to this extent.

It seems that Besch’s objection might apply here too, therefore, and that justificatory liberals also need to provide a comprehensive justification for their own definition of reasonableness – the idea of good-willed moral agents – or face the same accusation of relying on an objectionable dogmatism. It is not clear whether Besch himself would push this objection against justificatory liberalism. He talks of Quong owing a justification of reasonableness* to *some* unreasonable* citizens – those who satisfy a more inclusive conception of reasonableness, which seems similar to Gaus’s understanding of good-willed moral agents. Those who are reasonable in this sense exercise basic capacities of reason, believe others are worthy of moral consideration, and place positive value on agreement, but reject many of the commitments of reasonableness*. ⁵² Besch implies that those who fail to satisfy this minimal conception of reasonableness are so far beyond the pale that they are not owed (open) justification at all. Besch, Gaus and Quong all seem to accept that *some* level of sectarianism is inevitable, and not to be regretted. ⁵³

Nonetheless, justificatory liberalism’s approach to reasonableness can be expressed in a very similar way to public reason liberalism’s, suggesting that it runs into similar problems. According to justificatory liberals, there are some people who we can coerce without offering them a justification they can accept. There are other moral restrictions on how we can treat such people – we cannot murder them, for example – but these restrictions come from our own moral understanding, and not from needing to ensure that coercion is justified to the coerced. These citizens’ failure to recognise very basic moral notions means that they simply fall outside the domain of those to whom coercion must be openly justified. Public reason liberals say something very similar, as we have seen: those who are not reasonable* can be coerced without being

⁵² Besch, ‘Political Liberalism’, pp. 171-173. C.f. Gaus, Gerald, ‘The Good, the Bad, and the Ugly: Three Agent-Type Challenges to The Order of Public Reason’, *Philosophical Studies* 170:3 (2014): 563-577, p. 570.

⁵³ As Gaus notes, “in one sense any set of moral or political principles will be sectarian in relation to some part of the population.” Gaus, ‘Sectarianism Without Perfection?’, p. 9. Gaus believes the dogmatism within his view is only that which is presupposed by the very idea of social morality. This is part of his reactive attitudes argument – see pp. 66-67, above.

offered a justification they can accept, because they fail to recognise liberal principles and values which one must recognise in order to be within the constituency of persons owed such a justification. It might seem, therefore, that while justificatory liberalism is quantitatively different, in that its definition of reasonableness is much 'thinner', it is qualitatively the same, and is open to the same objections.

The quantitative difference in fact reflects a deeper difference in theoretical foundations, however, which underpins many of the differences between justificatory liberalism and public reason liberalism.

Justificatory liberals, as Gaus comments, are motivated to extend the bounds of inclusiveness as far as possible, so to openly justify coercion to as many citizens as possible. There are limits to how far we can push this inclusiveness, however, due to our own first-person moral commitments. Given our commitment to morality, we cannot push inclusiveness as far as requiring open justification to those who are complete egoists or sociopaths or who deny that they are under any moral obligations at all. We have other basic moral commitments that stand alongside our commitment to treating people as free and equal, and we cannot always violate the former commitments for the sake of the latter. This means that there are some people who we simply cannot treat as free and equal. We are committed to treating as many people as possible as free and equal, and thus as owed open justification for our coercion of them. But there are limits to this, which we hit when we encounter people who are simply not good-willed moral agents, so fail to recognise even the basic demands of the moral point of view.⁵⁴

Quong might claim that his view is similar, but that a thicker set of Rawlsian liberal commitments

⁵⁴ Gaus argues that this is the case with 'Carl', a citizen who Quong uses as the basis of his objection to Gaus in Quong, 'What is the Point'. Gaus notes that when we coerce Carl "we do not treat him as a free and equal moral reasoner" or "as a fully responsible moral agent." "But *in extremis* we must act as we must." Gaus, 'The Good, the Bad', p. 574.

are part of his basic moral framework, such that only those who share those commitments are owed a justification they can accept. But there is in fact a significant difference here, which is that Quong claims to still be treating as free and equal those to whom no such justification is given. Quong's commitment is to treating people as free and equal *qua reasonable* and rational persons*, and he thus claims that public reason liberalism still treats the unreasonable* as free and equal. He writes that "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."⁵⁵ The unreasonable* are offered a justification for coercion that they *would accept*⁵⁶ if they were reasonable*. They are offered public reasons for that coercion. This is sufficient for treating them as free and equal.

Justificatory liberalism denies that this treats these citizens as free and equal. Treating an individual as free and equal always involves offering them open justification for coercion of them – offering them reasons for coercion that they can recognise as sufficient to justify that coercion, from within their own (moderately idealised) belief-value set. The unreasonable* are not treated as free and equal by public reason liberalism, since the reasons they are offered to justify coercion are ones that they cannot accept unless they become reasonable*, which might well require radical changes in their evaluative standards.

Justificatory liberalism thus acknowledges that those it excludes from the constituency of justification, so does not openly justify coercion to, are to that extent not treated as free and equal.⁵⁷ While public reason liberalism claims to treat the unreasonable* as free and equal, justificatory liberalism admits that it does not treat as free and equal those it excludes from the

⁵⁵ Quong, *Liberalism Without Perfection*, p. 313.

⁵⁶ Or at least would recognise as a reasonable interpretation of liberal values, and thus as having normative force.

⁵⁷ They might still be treated as free and equal in other respects, of course. For example, they do not lose the right to vote.

justificatory constituency.⁵⁸ This explains why justificatory liberalism is driven to push the bounds of inclusiveness as far as possible. Failing to openly justify coercion to an individual is to fail to treat them “as a free and equal moral reasoner.”⁵⁹ It is thus a grave thing to do, and should only be done in extreme circumstances. Since we desire to treat all humans as free and equal, failing to do so in this way comes at a great moral cost for us. It is a failure to treat them as full members of the moral community. Hence, we will try to avoid doing so as far as is possible.

Public reason liberalism has a different view here, since it says that people can still be treated as free and equal even when coercion is not justified to them by reasons they can accept, on the grounds that they would accept those reasons if they were reasonable*. This is why public reason liberals are comfortable with a much thicker conception of reasonableness, and do not feel the same pressure to extend the bounds of inclusiveness. This actually makes public reason liberalism very similar to the right reasons view.⁶⁰

The right reasons view says that we treat people as free and equal by imposing upon them only what they would accept if they knew the truth about morality.⁶¹ We offer as justification for coercion reasons that are objectively correct and that show that this coercion is morally justified (or even morally required). Since morality takes everyone’s interests impartially into account, this in itself treats everyone as free and equal, even if many do not recognise any reasons in favour of the coercion, because they do not recognise the objectively correct reasons we appeal to as

⁵⁸ Gaus, *Order of Public Reason*, pp. 279-283. See also Van Schoelandt, Chad, ‘Justification, Coercion, and the Place of Public Reason’, *Philosophical Studies* (forthcoming), pp. 12-17.

⁵⁹ Gaus, ‘The Good, the Bad’, p. 574. I explain this idea further below, pp. 112-117.

⁶⁰ For similar arguments, see Vallier, ‘On Jonathan Quong’; Van Schoelandt, ‘Justification, Coercion’, pp. 7-11. This can be seen in Quong’s response to the ‘Carl’ case (see fn. 54): 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.” Quong, ‘What is the Point’, p. 552.

⁶¹ Or at least if they held to the moral view that is the best one we can form at this time in history, given our epistemic and cultural circumstances. See Arneson, Richard J., ‘Rejecting *The Order of Public Reason*’, *Philosophical Studies* 170:3 (2014): 537-544, p. 541.

having any normative force.⁶² A religious believer might claim that God commands action ϕ and force everyone to comply with this requirement, offering the fact of God's command as the justification, and noting that all would accept this justification if they had correct moral views. If the believer is right about this then she has successfully treated others as free and equal.

Political liberals object to this, arguing that respect for persons as free and equal requires more than simply offering a justification that *we* believe to be correct. Respecting persons means offering a justification that *they* can accept. Yet, as we have seen, public reason liberals in fact end up advocating something very similar to right reasons view theorists.⁶³ The right reasons view says that imposing the requirement to ϕ upon others treats them as free and equal since they would accept the justification for ϕ if they knew the truth about morality. Public reasons liberalism says that imposing the requirement to ψ upon the unreasonable* treats them as free and equal since they would accept the justification for ψ were they reasonable*.⁶⁴

Justificatory liberalism responds to both of these claims in the same way: both approaches fail to treat the coerced as free and equal, precisely because they do not openly justify coercion to the coerced. Justificatory liberals also admit that there may be some cases where we are unable to treat others as free and equal. But since this is a grave moral cost, there is clear motivation for seeking as thin a definition of reasonableness as possible – extending to all persons who we can recognise as engaged in the moral enterprise.

There are therefore deep underlying differences between how moral freedom and equality is

⁶² See *ibid.*, pp. 541-542, and the quotes from Arneson on pp. 13-14, above.

⁶³ "From the convergence liberal's perspective, consensus liberals are simply one more sectarian group attempting to impose their views on others." Vallier, *Liberal Politics*, p. 231.

⁶⁴ It is true that the public justifications endorsed by public reason liberals are more inclusive than those endorsed by a right reasons view that says that the correct conception of the good can be imposed upon all citizens. Public reason liberalism is less sectarian than some versions of the right reasons view. But this does not undermine the similarity I am focusing on. Further, right reasons views can themselves be fairly inclusive. After all, one can be a liberal and hold a right reasons view.

understood by public reason liberals and justificatory liberals. For the justificatory liberal, persons are only treated as free and equal when they are offered open justification for coercion. Public reason liberals must deny this, and claim that what matters is treating people as free and equal *qua* reasonable* and rational, such that an individual is treated as free and equal as long as coercion of her is justified by reasons that she would recognise as having normative force if she were reasonable* and rational. For the justificatory liberal, this shows that public reason liberalism is objectionably sectarian and dogmatic, and ultimately similar to the right reasons view. While justificatory liberalism also inevitably contains a certain degree of sectarianism, its own commitments cause it to seek to minimise this as far as is possible.

4. Conclusion

In Chapters 1 and 2 I argued that public reason liberalism and justificatory liberalism were distinguished by their contrasting understandings of the Public Justification Principle, which states that in order to be legitimate laws must be justified to every reasonable citizen by reasons they can accept. According to public reason liberalism, this means that laws must be plausibly justified by an argument constructed from ‘public reasons’ – reasons that every reasonable citizen accepts, or recognises as having normative force. According to justificatory liberalism, it means that each reasonable citizen must have conclusive reason, from within her own (moderately idealised) belief-value set, to accept the law – the law must be openly justified to her. These formulations of the two political liberal accounts of legitimacy highlight three differences between them:

- a) Public reason liberalism requires an account of ‘public reasons’; justificatory liberalism does not.⁶⁵
- b) Justificatory liberalism permits convergence justifications; public reason liberalism does

⁶⁵ Vallier sees the ‘intelligibility requirement’ – the fact that citizens’ justificatory reasons must be intelligible to others – as meaning that justificatory liberalism does in fact have a category of ‘public reasons’. I think it is better to see intelligibility as a by-product of other features of the view. All openly justified reasons of moderately idealised good-willed moral agents are mutually intelligible. I do not think I have any substantive disagreement with Vallier here.

not.

- c) Justificatory liberalism requires that laws be conclusively openly justified to each citizen; public reason liberalism merely requires that every reasonable citizen can recognise some reason(s) in favour of laws.⁶⁶

My discussion in this chapter has highlighted another difference between the two accounts: contrasting conceptions of ‘reasonableness’, deriving from contrasting understandings of moral freedom and equality. Public reason liberalism requires a normatively thick conception of reasonableness, according to which a citizen must accept a set of substantive liberal principles and values in order to qualify as reasonable, and thus to be within the justificatory constituency. This is necessary in order to characterise the set of public reasons – reasons that every reasonable citizen, so defined, can recognise the normative force of. Justificatory liberalism, on the other hand, does not need to define any such set of reasons, and thus can use a much more inclusive conception of reasonableness. I have argued that this is a great advantage, using Quong’s view as an illustration.

Indeed, I have argued that public reason liberalism is really a version of the right reasons view. The idea of ‘justification to citizens’ within public reason liberalism turns out to be shorthand for ‘justification by the right kind of reasons, as determined by a set of principles and values that all reasonable citizens by definition accept’. While the explanation of these reasons is *framed* in terms of ‘reasons that all reasonable citizens can recognise as having normative force’, this framing is inessential to the theory’s content.⁶⁷ Citizens are said to be treated as free and equal as

⁶⁶ In Chapter 1 I argued that we should prefer justificatory liberalism with regard to c) and that the justificatory liberal positions on a) and b) follow from this. One could also look more directly at arguments with regard to a) and b), and there is some existing literature on both. I will not do this here, however. I will simply note that none of the arguments against convergence justification are convincing. The best objection is that it follows from other aspects of public reason liberalism that convergence is not possible, but if we reject those other aspects then convergence looks natural and appealing.

⁶⁷ As Bohman and Richardson argue, Rawls’s principle of legitimacy “demands that the use of political

long as they *would* accept the justification for the laws that are imposed upon them if they were reasonable, as they ought to be. Similarly, the right reasons view says that citizens are treated as free and equal as long as they would accept the justification for laws if they accepted the truth about morality, as they ought to do. Actual justification to actual citizens, on the basis of their own evaluative standards, has no real place within either account. Neither is sensitive to the beliefs of actual citizens. Further, I have argued that public reason liberals can offer no convincing justification for this feature of their view.

Justificatory liberalism stands in contrast to this, because justification to persons is at its normative core. According to justificatory liberalism, respect for persons as free and equal moral agents requires that coercive interferences with them be openly justified to them – justified according to their own belief-value set, moderately idealised to correct for obvious reasoning errors or inconsistencies and to accommodate any easily attainable empirical information. Those to whom coercion is not openly justified are not treated as free and equal, and thus restrictions on the constituency of justification will be as minimal as possible.

If it is true that public reason liberalism is in fact a version of the right reasons view, then it leads to the question of whether we should in fact adopt a right reasons view – be it public reason liberalism or some other view – rather than accepting justificatory liberalism. Is justificatory liberalism correct in its analysis of the requirements of respect for persons as free and equal, and thus of the foundational place of the open justification of coercion to the coerced? This is what I will explore in the next chapter. We will find that justificatory liberalism faces serious objections from the right reasons view, but that these can be given plausible answers.

power be justified by reasons that are consistent with the constitutive requirements of being a reasonable person,” so it is those substantive requirements that do the work. Bohman, James, and Henry S. Richardson, ‘Liberalism, Deliberative Democracy, and “Reasons that All Can Accept”’, *The Journal of Political Philosophy* 17:3 (2009): 253-274, pp. 259-260.

Chapter 4: The Right Reasons View Challenge

1. The Question of Conscience

According to justificatory liberalism, laws must be openly justified to every citizen:¹ each must have sufficient reason, from within their own (moderately idealised) belief-value set, to conclude that the law in question is preferable to having no law in the relevant policy area. While they might not consider the law optimal, they prefer to live under this law than to have no law.

When this condition is fulfilled, citizens are in an important sense never forced to act against their own all-things-considered moral judgments. These all-things-considered judgments take into account the great good of social cooperation, and the gains achieved by law. They also pay attention to others' beliefs about the issue at hand, and are responsive to others' views and arguments. In other words, their being all-things-considered means that they take into account all considerations that are relevant from the moral point of view. For this reason, Gaus has recently called these judgments citizens' 'inclusive consciences'.² Justificatory liberalism states that a necessary condition of legitimacy is that every citizen's inclusive conscience judges the law to be better than having no such law. If this criteria is not fulfilled then some citizens are subject to coercion that is not justified to them, coercion they consider worse than not being coerced, and this is impermissible.

Why should we accept this, however? In particular, why should we not instead hold that coercion is permissible when it is justified by good, or right, reasons – reasons that show this coercion to in fact be morally desirable? If someone is certain that a law is morally justified, according to the true moral theory, and that its enactment and coercive enforcement would create net moral

¹ Or at least every citizen who meets the minimal criteria of being a good-willed moral agent.

² Gaus, Gerald, 'Private and Public Conscience (Or, Is the Sanctity of Conscience a Liberal Commitment or an Anarchical Fallacy?)', working paper. Available at <http://www.gaus.biz/Conscience.pdf>.

gains,³ then why should the failure of some citizens to recognise this moral truth render the law's enactment impermissible? This challenge to justificatory liberalism, raised by the right reasons view, is the focus of this chapter. Discussing it will allow us to further consider the theoretical core of justificatory liberalism.

It is important to be clear that right reasons views⁴ are not (necessarily) illiberal or anti-democratic. They can recognise extensive limits on governmental authority, including limits grounded in individual rights, and can hold that not all demands of morality can be permissibly enforced.⁵ They can also believe that democratic authorisation is a necessary condition of legitimacy. They need not even be perfectionist. Their key claim is simply that such limits on legitimacy do not arise from the need for coercion to be acceptable to the coerced. The beliefs and values of citizens do not place any principled limit on state coercion.

As I noted in Chapter 1, it is possible to construe the right reasons view as an interpretation of PJP, according to which PJP is fulfilled when laws would be accepted by individuals were they fully informed and fully rational.⁶ It is more straightforward to see right reasons views as rejecting PJP, however. The idea of 'justification to citizens' in effect drops out, since full idealisation removes all dependence on the internal reasons of citizens – on citizens' actual beliefs and values. Coercion is instead permissible when it is justified by true, or right, reasons. Steven Wall calls this 'correctness-based justification', "which refers to a justification that demonstrates that a conclusion is correct, irrespective of whether all persons can reasonably accept it."⁷

³ i.e. The good achieved through the coercive law outweighs any costs associated with coercion, according to the putative coercer's moral theory.

⁴ I use the plural here since there are a variety of such views, distinguished by their different accounts of what the 'right reasons' are. When I mention '*the* right reasons view', I mean to refer to all of these accounts.

⁵ For example, Shadd's theory, developed in his 'A Better Framework', is a right reasons view, but might well lead to a fairly minimal state.

⁶ See pp. 13-14.

⁷ Wall, Steven, 'Is Public Justification Self-Defeating?', *American Philosophical Quarterly* 39:4 (2002): 385-394, p. 386.

An example might be helpful. Anna, a Quaker, believes on the basis of her religious commitments that all war is morally impermissible. Her compatriot Brian, meanwhile, believes that the war their country is currently engaged in is morally required, because it is preventing or correcting some grave injustice. Brian believes that all citizens are morally obligated to contribute to the war effort. Both individuals have reasoned carefully to reach their conclusions, including taking one another's views and arguments into account. They would continue to hold their present beliefs under moderate idealisation. Assume that Brian's judgment is correct – participation in the war effort is in fact morally required. Would it be permissible for Brian to force Anna to participate in the war, violating her inclusive conscience, by enacting a law that made participation mandatory?⁸

For justificatory liberals, Anna should not be forced to contribute to the war. Right reasons view theorists might well disagree. Arneson argues that Brian should force Anna to participate.⁹ Anna has an obligation to contribute, so it is morally impermissible for her to refuse to do so. Further, her lack of contribution would need to be offset by other citizens facing extra costs and risks, meaning that the benefits and burdens of the war are unfairly distributed. Forcing Anna to take part in the war creates moral gains, so certainly is morally permissible, and perhaps even morally required.

This is a strong argument for the permissibility of coercion that is not openly justified to the coerced. It is thus vital that justificatory liberals can respond to it, by justifying their own view that such coercion is impermissible.¹⁰ I will consider several arguments that could be made for this contention. I have offered brief outlines of the argument that I endorse in previous chapters, but

⁸ Of course, Brian couldn't literally force Anna to fire weapons. But the law could incentivise participation through threats of punishment. Even if Anna still refuses, she is being coerced by the law.

⁹ My example is based on Arneson, Richard J., 'Against Freedom of Conscience', *San Diego Law Review* 47:4 (2010): 1015-1040, pp. 1034-1035.

¹⁰ Of course, one could agree that Anna should not be coerced, but for different reasons than justificatory liberal ones. Justificatory liberalism claims to provide the best account of why this coercion is impermissible.

it is worth considering alternatives in order to better understand how my argument differs from other possibilities.

1.1. Autonomy

One argument appeals to the good of autonomy. On this view, autonomy – living according to rules that one rationally legislates for oneself – is a central feature of human flourishing. It is thus good in itself for everyone to follow their own consciences, to form and act on their own understandings of the good and right, and justificatory liberalism best protects this.

The problem with this argument is that an implausibly strong weight must be placed on the good of autonomy in order for this consideration alone to overcome Arneson's claims. Even if autonomy is a great good, as liberals believe, this does not mean that it cannot be overridden by the moral gains achieved by coercion.¹¹ Forcing individuals to comply with laws that cannot be openly justified to them may be presumptively impermissible on autonomy grounds, but this good can be outweighed, as it arguably is in Anna's case.

A justificatory liberal might stand their ground here, and deny that autonomy can ever be overridden. But this leads to a further problem: it grounds justificatory liberalism in a controversial comprehensive claim about the good of autonomy.¹² This would make justificatory liberalism unattractive to many religious citizens, in particular, who do not see autonomy as an overriding good. I will not develop this point further here, since I discuss it in greater detail in Chapter 6.

¹¹ Wolterstorff, *Understanding Liberal Democracy*, p. 319, claims that many modern liberals seem oddly oblivious to the goods that coercion can serve.

¹² Quong, Jonathan, 'On the Idea of Public Reason', in Mandel, Jon, and David A. Reidy (eds.), *A Companion to Rawls* (Chichester: Wiley-Blackwell, 2014): 265-280, pp. 270-271, rejects autonomy justifications for public reason liberalism for this reason.

1.2. Consistency/Fairness

Kyle Swan and Kevin Vallier have recently presented a different argument for why it is wrong to force people to act against their consciences,¹³ claiming that “people have reason to respect the consciences of others because they have conclusive reason to reject a proposal that would violate their own consciences.”¹⁴ Each individual believes that their own conscience is normatively significant, and that they must act in accordance with it. This individual commitment to acting on our conscience, and belief that others should not interfere with that action, commits us to also respecting others’ consciences. We believe that we have good reason to resist interferences with *our* conscientious action, and must therefore recognise that others have equally good reason to resist interferences with *their* conscientious action. If we demand that others respect our authority to act in accordance with our conscience, our internalist reasons, but do not grant that authority to others, then we fail to treat them as moral equals. Fairness demands that we recognise “reasons to respect the consciences of others similar in strength to reasons we have to demand respect for our own.”¹⁵

Arneson considers this argument to rest on a fundamental misunderstanding of what people’s conscientious commitments actually are. An individual’s conscientious aim is not simply to act on whatever she currently believes is morally right, but “to conform her conduct to what is really morally right and required.”¹⁶ Her aim is to discern and follow the right course of action. Loyalty to her conscience is a means to an end, based on a belief that it is the best way to achieve her aim of doing what is right. When she claims authority to act on her conscientious judgment, and to not be forced to act against it, this is not simply because it is *her* judgment, but because (she

¹³ Swan and Vallier’s use of ‘conscience’ differs slightly from Gaus’s ‘inclusive conscience’. The former concerns only ‘core moral judgments’, whereas the latter covers all all-things-considered judgments. This difference does not affect my arguments here. See Swan, Kyle, and Kevin Vallier, ‘The Normative Significance of Conscience’, *Journal of Ethics & Social Philosophy* 6:3 (September 2012), p. 2.

¹⁴ Ibid., p. 12. The language of ‘proposals’ here points to the broader contractualist underpinnings of Swan and Vallier’s view, which I do not discuss here.

¹⁵ Ibid., p. 16.

¹⁶ Arneson, ‘Against Freedom of Conscience’, p. 1034.

believes) it is the *correct* judgment.

This shows that the claim that others should not interfere with my conscientious action need not extend to a claim that everyone else's consciences should be equally protected, in the way that Swan and Vallier allege. I might believe that conscience should be protected when its judgments are correct, and that my judgments are correct and thus should be protected. This does not imply any commitment to allowing similar freedom of conscience to others.

Wolterstorff makes a similar argument, from the perspective of a Christian citizen.¹⁷ Some might claim that if a Christian wants the state to guarantee her freedom to live out her comprehensive doctrine then she must recognise that it would be unjust for the state not to also accord this same freedom to others. However, this assumes that the good in the Christian being free to live out her convictions is her *being free* to do so – a good that is equally present for those with different comprehensive doctrines. If the good achieved is living out *Christianity* specifically, rather than the freedom to do so, then this good is not present for those with other doctrines, so the fairness argument fails. The commitment to act on one's own conscientious convictions does not necessarily imply any commitment to accord this same freedom to others.

If Brian forces Anna to participate in the war, then in one sense he would be forcing her to act against her will, since she conscientiously objects to all war. But in a more important sense, Arneson argues, Brian would be “forcing her to do what in a deep sense she wills to do”¹⁸ – the morally right thing. Anna aims to do what is morally right. Forcing her to act against her judgment when that judgment is wrong “is inducing her to fulfil her deepest aim in her conscientious project.”¹⁹ Not only are there moral gains from forcing Anna to contribute to the war effort, since

¹⁷ Wolterstorff, *Understanding Liberal Democracy*, pp. 320-321.

¹⁸ Arneson, ‘Against Freedom of Conscience’, p. 1035. See also Arneson, ‘Rejecting *The Order*’, p. 6.

¹⁹ Arneson, ‘Against Freedom of Conscience’, p. 1036.

it means the distribution of benefits and burdens is fair and Anna is doing as she morally ought, this coercion is also in line with what Anna herself ultimately wants to do. Anna's mistaken belief that she ought not participate gives no reason not to force her to participate. Forcing her does not in any way wrong her.

1.3. Reasonable Disagreement

The fact that Brian's view of the war is objectively correct, and Anna's is not, is crucial to Arneson's argument. It is what ensures that Brian's coercion of Anna creates moral gains, so is morally permissible. Similarly, Wolterstorff's comments rely on the Christian being certain about her religious beliefs, and the peculiar good of following that particular comprehensive doctrine. This might seem to ignore a crucial premise of political liberalism: the fact of reasonable pluralism. Appeal to this fact, and its implications, could provide an argument for justificatory liberalism.

As Rawls argues, much moral disagreement is due to the 'burdens of judgment', factors that make it epistemically reasonable²⁰ for rational individuals to reach conflicting conclusions.²¹ These include the complexity and contestability of much empirical evidence, the existence of many competing moral considerations, the difficulty of weighing these conflicting values and principles against one another, and the fact that individuals' judgments are influenced by their varying life experiences. Due to these factors, individuals reasonably reach different conclusions on moral and political questions, even when they take into account all relevant evidence and normative considerations, and reason in an adequately rational way. When disagreement is reasonable, all parties should recognise that others have reached intelligible conclusions, without making grievous reasoning errors.

²⁰ In this chapter, 'reasonable' always refers to this epistemological aspect, rather than the normative aspect that I discussed in Chapter 3.

²¹ Rawls, *Political Liberalism*, pp. 54-58.

This idea plays an important role in justificatory liberalism's response to cases like the one we are considering, since it means that Brian cannot simply point out mistakes that Anna has made in her moral reasoning. Instead, he must recognise that as a moral equal she has reasoned as best she can and reached a reasonable all-things-considered moral judgment different to his. In one sense, he cannot claim that his view is superior, even though he believes that it is correct and that Anna's is incorrect.²² He should therefore accept that it would be a denial of her moral freedom and equality to impose his view upon her.

We need to be careful, however, in identifying precisely what it is about the recognition of reasonable pluralism that makes it impermissible for citizens to be coerced in ways that are not endorsed by their own inclusive consciences.²³ In particular, it is important that our account does not suggest that everyone's beliefs are equally epistemically warranted, or that citizens must believe this. It must also not imply that citizens should be sceptical, or doubtful, about their own views; it must be consistent with citizens being certain that their own views are correct, even while recognising their fallibility and that others' conflicting beliefs are reasonable.²⁴

Some arguments appealing to reasonable pluralism fail to meet these desiderata. Joshua Cohen argues that reasonable pluralism means we should not appeal to the whole truth (as we see it) to justify laws, because from the standpoint of other reasonable citizens such an appeal is "indistinguishable from simply appealing to what we believe,"²⁵ and mere appeals to belief carry no force in justification. Appeals to truth and to belief are indistinguishable, he claims, because

²² Gaus, 'Private and Public Conscience', pp. 18-19.

²³ This is something that Rawls is not completely clear on. In fact, he approvingly references Cohen's account, which I criticise below. Rawls, *Political Liberalism*, p. 61, fn. 15.

²⁴ For doubts about the possibility of presenting such an account, see Feldman, Richard, 'Reasonable Religious Disagreements', in Antony, Louise M. (ed.), *Philosophers Without Gods: Meditations on Atheism and The Secular Life* (Oxford: Oxford University Press, 2007): 194-214. Feldman's arguments are relevant to discussions of 'peer disagreement', on which see Enoch, David, 'Not Just a Truthometer: Taking Oneself Seriously (but not Too Seriously) in Cases of Peer Disagreement', *Mind* 119:476 (2010): 953-997.

²⁵ Cohen, 'Moral Pluralism', p. 283.

“what lies between taking our views to be reasonable (about which there may be no disagreement) and our taking them to be true (about which there is disagreement) is not a further reason, but simply our (rationally permissible) belief in those views.”²⁶ Cohen seems to be saying that since we recognise that several competing views are reasonable, we must acknowledge that our belief in a particular view is not a matter of having more reason for it than for the others, but is simply a matter of faith. We have no more reason to believe what we believe than to believe what others believe. This is surely too strong, however. It implies that a belief in reasonable pluralism entails seeing others’ views as *equally* (epistemically) reasonable as our own, equally warranted by the evidence and arguments. This involves a level of scepticism about the comparative merits of one’s own views that is incompatible with truly convinced belief.²⁷

Thomas Christiano points out that the epistemic component of reasonableness within a political liberal account must be fairly minimal, and that this undermines Cohen’s argument.²⁸ Epistemic reasonableness involves not ignoring relevant empirical and moral considerations and not making obvious errors in one’s reasoning. It means one has engaged in a ‘respectable amount’ of reasoning. But not all reasonable views are equally epistemically warranted; some people’s views are better supported, and more defensible, than others. Thus, what lies between taking a belief to be reasonable and taking it to be true often *is* further reasoning and reasons, contra Cohen. Rawls himself allows for this, in that he says that citizens should accept, and base their political advocacy on, what they take to be the *most reasonable* political conception of justice, implying that reasonable conceptions can vary in their degree of reasonableness, or of epistemic warrant.²⁹

²⁶ Ibid., p. 284.

²⁷ I think the same might be true of some of Nagel’s phrasing in Nagel, Thomas, ‘Moral Conflict and Political Legitimacy’, *Philosophy & Public Affairs* 16:3 (1987): 215-240, pp. 230-231 (which Rawls also references approvingly).

²⁸ Christiano, Thomas, ‘Is There Any Basis for Rawls’s Duty of Civility? (A Commentary on Weithman)’, *The Modern Schoolman* 78:2-3 (2001): 151-161, pp. 160-161. See also Christiano, Thomas, ‘Must Democracy Be Reasonable?’, *Canadian Journal of Philosophy* 39:1 (2009): 1-34, pp. 16-25.

²⁹ Rawls, *Political Liberalism*, p. 444.

Christiano takes this as reason to reject political liberalism's claims about the implications of reasonable disagreement. Instead, however, it should simply be taken as reason to reject Cohen's characterisation of reasonable disagreement.

Political liberalism does not require citizens to believe that all views are equally reasonable. One can accept reasonable pluralism while believing that one's own view is better rationally supported than others. The burdens of judgment alert us to the complexity of the evidence and its interpretation, and of the difficulty of weighing competing values and reasons. But this does not mean that our conclusions are simply acts of faith – an arbitrary selection from the options, without any reasons for preferring one view to another. We can often provide arguments for our own views, and be certain we are right, while at the same time recognising that we are fallible, that our arguments are not decisive, and that others can reasonably hold different views, given the difficulty of the question, others' different backgrounds and experiences, and so on. As Quong puts it, the demand that political liberalism makes is that “even if you are certain your own views are true, you must recognise that circumstances make it at least reasonable to affirm opposing views.”³⁰ Langerak concurs, writing that Rawls's view “need not be predicated on scepticism, relativism, or nihilism, since it can regard the other as definitely wrong, albeit in a reasonable way.”³¹

Some have doubted this. Barry, for example, argues that if I am convinced of a belief then I must also believe that others cannot reasonably reject my evidence. After all, “if I concede that I have no way of convincing others, should that not also lead to a dent in my own certainty?”³² Plant concurs, arguing that Rawls requires people to hold their beliefs in a sceptical, detached way that

³⁰ Quong, *Liberalism Without Perfection*, p. 253. See also Rawls, *Political Liberalism*, pp. 62-63.

³¹ Langerak, Edward, ‘Theism and Toleration’, in Quinn, Philip L., and Charles Taliaferro, *A Companion to Philosophy of Religion* (Oxford: Blackwell, 1997): 514-521, p. 520.

³² Barry, Brian, *Justice as Impartiality* (Oxford: Clarendon Press, 1995), p. 179.

is unacceptable to many religious believers.³³

It is not clear why this should be the case, however.³⁴ There seems to be no rational necessity to doubt one's own view in the face of reasonable disagreement. It can be rational to remain certain of one's views even when confronted with others' reasonable rejection of them. Indeed, this is something that philosophers themselves regularly do. We are often faced with plausible arguments on both sides of complex disputes, and can recognise this fact while being certain of our own view, without any failure of rationality. As Quong admits, there is no "obvious way of showing this to be correct,"³⁵ but the burden of proof is on those who deny it. It is a common experience to accept the reasonableness of other viewpoints while being sure of one's own beliefs, and it seems implausibly strong to claim that this is always sub-rational.³⁶

Given this, however, it is not yet clear why the fact of reasonable disagreement should make it impermissible to coerce individuals in ways that are not openly justified to them. After all, Arneson acknowledges that if another individual disagrees with you then this should cause you to consider her reasoning and to re-evaluate your own, to ensure that you have taken all relevant considerations into account.³⁷ This might lead you to change your view. But the fact of disagreement in itself gives no reason for refraining from imposing your view on the other. You can still believe that your view is right and has more epistemic warrant, and can thus be permissibly imposed upon her, even while recognising that her view is reasonable. Brian should certainly deliberately engage with Anna, but if he still believes that her participation is morally

³³ Plant, Raymond, 'Pluralism, Religion, and Justification in Liberal Societies', in Storrar, William F., and Andrew R. Morton (eds.), *Public Theology for the 21st Century* (New York: T&T Clark, 2004), 159-175, pp. 169-170; Plant, Raymond, 'Citizenship, Religion, and Political Liberalism', in Biggar, Nigel, and Linda Hogan (eds.), *Religious Voices in Public Places* (New York: Oxford University Press, 2009): 37-57, pp. 52-54.

³⁴ For a longer discussion of Barry's argument, see Matravers, Matt, and Susan Mendus, 'The Reasonableness of Pluralism', in McKinnon, Catriona, and Dario Castiglione (eds.), *The Culture of Toleration in Diverse Societies: Reasonable Tolerance* (Manchester: Manchester University Press, 2003): 38-53.

³⁵ Quong, *Liberalism Without Perfection*, p. 253.

³⁶ See *ibid.*, pp. 249-253.

³⁷ Arneson, 'Against Freedom of Conscience', pp. 1036-1037. See also Wall, 'On Justificatory Liberalism', pp. 138-139.

obligatory then the mere fact of her continued disagreement gives him no further reason to refrain from coercing her, given that he has carefully considered all of her reasons for opposing the war. This is true even though he can acknowledge that her opposition is reasonable.

1.4. Freedom, Equality, and Moral Authority

This shows that the argument for refraining from forcing others to follow one's correct views cannot be based on a merely epistemic response to reasonable disagreement. Instead, justificatory liberals claim that reasonable disagreement has *moral* implications, as a consequence of individuals being morally free and equal.³⁸ There is a moral wrong involved in forcing moral equals to comply with requirements that they lack sufficient reason to accept, by their own lights. If another individual has sincerely considered and deliberated about all the considerations that bear on an issue from the moral point of view, including taking into account others' arguments, to reach an all-things-considered moral judgment, then you ought to respect that judgment even when you disagree with it. Showing respect in this sense does not mean that you should not seek to persuade them otherwise, by explaining your own reasoning. Indeed, you might go further, and seek to enter into the other's own perspective, to demonstrate that they should agree with your viewpoint based on considerations found within their own comprehensive doctrine.³⁹ All of this is perfectly compatible with respect for them and their conscientious judgment. What is not compatible, however, is to force them to comply with your view when it cannot be openly justified to them – when they believe this coercion to be worse than not being coerced. You should recognise that they disagree in good faith, such that the enforcement of your view is not permissible.

³⁸ Matravers and Mendus, 'Reasonableness of Pluralism', p. 51, make a somewhat similar point about public reason liberalism.

³⁹ Justificatory liberalism thus endorses 'ad hoc justification', where one offers different citizens different reasons for a law, by considering their own beliefs and values. For support of this practice see Wolterstorff, 'Role of Religion', pp. 106-107; Swaine, Lucas, 'Deliberate and Free: Heteronomy in the Public Sphere', *Philosophy & Social Criticism* 35:1-2 (2009): 183-213, pp. 191-193; Stout, *Democracy and Tradition*, pp. 72-73; Eberle, Christopher J., 'Religious Reasons in Public: Let A Thousand Flowers Bloom, But be Prepared to Prune', *St. John's Journal of Legal Commentary* 22:2 (2007): 431-443, pp. 434-435.

This argument crucially turns on a particular understanding of moral freedom and equality. What it means to be morally free, according to Gaus, is that one is free to interpret morality's demands for oneself, to judge based on one's own reasons and reasoning what moral obligations one is under.⁴⁰ This is not freedom *from* morality, since one should still act on one's moral obligations, but it is freedom to form one's own view of what those obligations are. Further, individuals who have formed such views face one another as moral equals, so no-one's judgment has authority over another's. "Moral persons are all equally authoritative interpreters of the demands that morality places on one."⁴¹ This means that none can permissibly force others to live by views that are not openly justified to them. Moral freedom among moral equals involves freedom from being forced to follow another's interpretation of one's obligations, if that interpretation is not within one's eligible set. Thus, "to conceive of another as a free and equal moral person is simply to acknowledge a fundamental constraint on the justification of claims of moral authority over her."⁴² One can only impose one's view on another if it is openly justified to them – justified to them by their own reasons.⁴³ Otherwise one is claiming a coercive authority for one's own view that is incompatible with respecting others as morally free and equal.

This is why justificatory liberalism holds that it is impermissible for Brian to coerce Anna into participating in the war. Such coercion fails to treat Anna as a moral equal. Brian is in effect claiming that his own interpretation of morality's demands is authoritative over Anna, despite the fact that she reasonably rejects his view, based on her own conscientious reflection.

It is important to be clear that justificatory liberalism does not imply that there is no moral truth

⁴⁰ Gaus, *Order of Public Reason*, p. 15. The difference between this and the autonomy-based argument that I dismissed above is that the latter appeals to a particular idea of the good life, or of human flourishing. Gaus's argument is about respect for persons' moral status. In other words, it is about the right, rather than the good.

⁴¹ *Ibid.*, p. 15.

⁴² *Ibid.*, p. 17.

⁴³ This is a necessary, not sufficient, condition for permissible coercion. For the sake of brevity, I sometimes speak as if it is a sufficient condition in this chapter.

about matters such as the permissibility of war, or that we cannot know what that truth is. It does not commit us to rejecting moral realism, or to any kind of scepticism about our epistemic access to moral truth. The claim that individuals are equally authoritative interpreters of the demands of morality is not a claim that their views are equally true. It is consistent with believing that there is a correct answer, and that only some individuals affirm it. 'Equally authoritative interpreters' means that individuals lack the authority to *enforce* their own view upon others, when that view is not openly justified to those others.

Further, justificatory liberalism does not entail that moral disagreement should lead us to doubt our views. It is consistent with individuals being completely sure that their own conscientious judgment is correct, and others' mistaken.⁴⁴ The claim is not that Brian should decide that he might well be wrong. Instead, the claim is that, even while being sure he is right, Brian should recognise that he is not permitted to impose his correct view on Anna, given that she, a moral equal, disagrees with him, and his view lacks authority over her. This makes Gaus's argument, and his use of the fact of reasonable disagreement, clearly preferable to Cohen's.

As an aside, I should reemphasise that Gaus's justificatory liberal view is much wider than mine. Gaus argues that persons' equal moral authority means that all of social morality must be publicly justified. This means that one cannot make moral demands upon others that are not openly justified to them. My view is narrower than this, since it focuses exclusively on coercion. I do not believe that there is always something objectionable about telling another that they ought to ϕ , and even resenting and blaming them if they do not ϕ , despite their inclusive conscience rejecting this moral demand. What is objectionable, on my account, is *forcing* another to ϕ , coercively imposing this moral demand upon them. It is coercion that must be openly justified, not moral demands more generally.

⁴⁴ It also agrees with Arneson that moral disagreement should lead us to re-evaluate our arguments and reasoning, to ensure that we have adequately taken account of all relevant considerations.

Arneson would be unpersuaded by the justificatory liberal argument. He would likely deny that Brian's coercion of Anna involves claiming that his view is authoritative for her. Brian is claiming authority not for *his view*, but for *morality itself*. Brian and Anna being moral equals means that they are equally subject to the demands of morality. Since Brian has correctly perceived those demands, and Anna has not, Brian's view can be permissibly imposed upon Anna. But this is nothing to do with the fact that it is *Brian's view*; it is because it is the *correct view* of morality's demands. Brian coerces Anna into fulfilling the moral obligations that she does in fact have.⁴⁵

Enoch also presents this objection, arguing that justificatory liberalism conflates coercing people for the reason 'that *p* (as I believe)' with coercing them for the reason 'that I believe that *p*'. These are completely different. The latter involves claiming that another must follow our view because it is our view; this is objectionably authoritarian. But the former involves claiming that another must act upon their actual moral obligations, and coercing them so that they do so. Coercing another for the reason that *p*, at least if it is true that *p*, "is not authoritarian at all."⁴⁶ It involves no claim that *I* have natural authority over a moral equal; the claim is only that *morality* has authority over them.

Enoch is right that an agent who justifies coercion by appeal to a moral principle coerces on the grounds that the moral principle is true, not that she believes it to be true. She claims authority for morality, not for her view of morality. But Gaus's point is that these are *normatively indistinguishable*, when the coerced individual lacks accessible reasons to accept the coercion.⁴⁷ If the coerced individual, under moderate idealisation, decisively rejects the moral principle, or particular moral demand, then it is a denial of their freedom and equality to nonetheless coerce

⁴⁵ See Arneson, 'Democracy is Not Intrinsically Just', pp. 51-54.

⁴⁶ Enoch, 'Disorder of Public Reason', p. 160.

⁴⁷ Gaus, 'The Good, the Bad', p. 573. Notice that this is similar to Cohen's claim, but explicitly normative rather than epistemological. The epistemic premise – reasonable disagreement – plays a crucial role within the argument, but the argument is not solely epistemological.

them. Moral equals are equally authoritative interpreters of the demands of morality, so when they reasonably disagree over what those demands are it is impermissible for one to coercively impose their view upon the other, if the latter considers this worse than not being coerced. Such coercion always involves the claim that one's reasoning and conclusions should be normative for another, despite the fact that they lack reason to accept one's view. It therefore treats them as a moral inferior. Coercing people into complying with true morality is not necessarily authoritarian, but it is when they lack reason to accept this coercion as better than facing no such coercion – when it is not openly justified to them.

Rawls makes a similar point in his own discussion of reasonable pluralism: “those who insist, when fundamental political questions are at stake, on what they take as true but others do not, seem to others simply to insist on their own beliefs.”⁴⁸ The claim that their own beliefs are true and others' are false “is a claim that all equally could make” and one that “cannot be made good by anyone to citizens generally.”⁴⁹ This idea of ‘making good’ is key for the justificatory liberal. Unless one's claims about the demands of morality can be ‘made good’ by reasons accessible to one's interlocutors, such that coercion is openly justified to them, it is impermissible to coercively impose those demands upon them.

The right reasons view denies that this kind of ‘making good’ is necessary in order to treat others as free and equal. Arneson acknowledges that from the first-person perspective what an individual's best conscientious judgment says is morally right and what is in fact morally right are indistinguishable. But from the third-person perspective they are “sharply distinguishable.”⁵⁰ One of the parties in a moral disagreement is wrong and the other right. This is a morally significant feature of the situation, which he claims that justificatory liberals ignore.

⁴⁸ Rawls, *Political Liberalism*, p. 61.

⁴⁹ *Ibid.*, p. 61.

⁵⁰ Arneson, ‘Against Freedom of Conscience’, p. 1030.

Justificatory liberals do not ignore this, however, but instead consider it a feature that we cannot appeal to in real-life cases of moral and political disagreement. From our third-person perspective as theorists we can stipulate that Brian is correct about the ethics of the war, and claim that this makes it permissible for him to coerce Anna (while it is impermissible for Anna to coerce Brian). But Anna and Brian confront one another as moral equals who have reasonably reached conflicting moral judgments, taking into account all relevant considerations as best they can, and who cannot 'make good' to each other their claims that they are the one who is correct. This is why it is impermissible for Brian to force Anna to participate in the war. Brian can, and should, deliberately engage with Anna and seek to persuade her that she is mistaken. But *coercion* of Anna is impermissible, given that participation in the war is not openly justified to her.

It is also important to note here that justificatory liberals need not deny that Anna acts wrongly by not contributing to the war.⁵¹ If she is in fact morally required to participate then she does wrong by failing to do so.⁵² But this is perfectly consistent with holding that it would be wrong to force her to contribute.

Joseph Raz points out that justificatory liberalism's response to disagreement involves giving others' views a weight that we do not give our own.⁵³ From an individual's perspective, the fact that she holds a view in itself gives her no reasons for action. Her reasons for action are the considerations that led her to form that view. Yet justificatory liberalism claims that she should give the fact that *others* have a view weight in itself. The weight that she gives to others' views when she refrains from imposing her view upon them derives not from the considerations that informed those views, but from the mere fact that others have those views. That fact is claimed to

⁵¹ Gaus might disagree, since for him all of social morality must be publicly justified in order for its demands to apply to people.

⁵² Another way of putting this is to say that Anna fails to act as she objectively ought to act, so acts wrongly. This does not necessarily mean she is blameworthy.

⁵³ Raz, 'Disagreement in Politics', pp. 27-28.

give her reasons for action, despite the mere fact that *she* has a particular view not giving her such reasons. Further, justificatory liberalism also says that others should not impose their views upon her, merely because she holds the view that she does. So it says that others should give her view a weight that she does not give it herself; it should give *them* reasons for action despite not giving *her* reasons for action.

Raz's observations here are correct, but it is unclear why they form any kind of objection to justificatory liberalism. The whole point, for justificatory liberals, is that reasonable disagreement gives you reasons for restraint because the other, a moral equal, disagrees with you. This reason for restraint comes from respect for them as morally free and equal. While this does give the mere fact that they hold a certain view a weight that you do not give to the mere fact of your own view, this is not a problem.

2. Does Justificatory Liberalism Really Respect Persons?

So far in this chapter I have used the right reasons view as a foil in order to show why justificatory liberals believe that respect for persons as morally free and equal requires that laws be openly justified to all citizens. However, some right reasons view theorists have argued that justificatory liberalism does not truly respect citizens' beliefs and values, so fails to live up to its own promises. In the remainder of this chapter I will defend justificatory liberalism against two objections of this form.

2.1. Authoritarianism and Patronisation

Justificatory liberals believe that the right reasons view allows 'moral authoritarianism',⁵⁴ since it denies that moral persons are equally authoritative interpreters of the demands of morality, and

⁵⁴ I take this term from Wall, Steven, 'Public Reason and Moral Authoritarianism', *The Philosophical Quarterly* 63:250 (2013): 160-169.

instead permits some individuals to enforce their beliefs upon others, even when those others lack sufficient accessible reasons for accepting those moral demands, so the coercion is not openly justified to them. But justificatory liberalism itself does not require *actual* consent to legitimise coercion. Justificatory liberals claim that coercion is permissible when it is in fact openly justified to the coerced – when they have conclusive reasons from their own moderately idealised belief-value set to prefer it to not being coerced. This is true even if the actual citizen does not recognise these reasons, and does not consent to the coercion.⁵⁵

Enoch argues that this is no less authoritarian than permitting coercion justified by appeal to the demands of true morality.⁵⁶ He asks why it would be objectionably authoritarian to coerce Alf into ϕ -ing when ϕ -ing is demanded by morality, but Alf lacks sufficient accessible reasons for accepting this, yet *not* objectionably authoritarian to coerce Alf when Alf has sufficient accessible reasons but does not recognise this fact, so does not endorse the coercion. In both cases one is coercing Alf and claiming that this coercion is justified, and in both cases Alf rejects this claim.

Indeed, Enoch argues that the coercion that justificatory liberals permit is *more* objectionable than the coercion they prohibit. Justificatory liberalism prohibits the state from coercing Alf into ϕ -ing on the grounds that Alf is morally obligated to ϕ , even when he indeed is so obligated, if that coercion is not openly justified to Alf. It claims that we fail to treat Alf as morally free and equal if we force him to ϕ . But justificatory liberalism permits us to coerce Alf into ϕ -ing when Alf has sufficient reason to endorse this coercion, but does not endorse it. Yet in this latter case we are not only coercing Alf against his will, but are also claiming to understand Alf's own moral commitments better than he does. We are claiming that Alf has made a mistake in his reasoning,

⁵⁵ In Gaus's terms, the Member of the Public that represents this citizen would recognise these reasons, even if the actual citizen does not. See Gaus, *Order of Public Reason*, pp. 263-292.

⁵⁶ Enoch, 'Disorder of Public Reason', pp. 165-167; Enoch, 'Against Public Reason', pp. 23-30. For a different use of a similar objection, see Rossi, Enzo, 'Legitimacy, Democracy and Public Justification: Rawls' Political Liberalism Versus Gaus' Justificatory Liberalism', *Res Publica* 20:1 (2014): 9-25, especially pp. 20-21.

and that if he reflected properly upon his own beliefs and values then he would accept our coercion as justified. This simply “adds insult to injury.”⁵⁷ It is absurd to claim that it is somehow less authoritarian. Wolterstorff presents a similar objection, arguing that the judgments that justificatory liberalism mandates concerning what others would believe when moderately idealised are patronising and paternalistic. They involve telling people that even though they reject one’s imposition, they *would* agree if they were better informed or reasoned better, and that this somehow makes the coercion permissible.⁵⁸

This is a dispute about the reasons that individuals must have in order for coercion of them to be permissible. Enoch claims that if we do not link permissible coercion to the reasons that individuals believe they have, to *actual* consent, then it is absurd to link it to *accessible* reasons. If we are willing to coerce people against their will then this should be on the basis morality’s actual demands, even if this means appealing to inaccessible reasons.⁵⁹ If we sometimes can permissibly force people to act on what they have reason to do, then the relevant reasons should be true, including external, reasons, rather than accessible, internal, reasons.

Gaus explicitly discusses this objection.⁶⁰ He points out that there is a very important difference between coercing someone based on reasons that they cannot accept and coercing them to comply with laws for which they have sufficient accessible reasons. The former is authoritarian ‘browbeating’, whereas the latter is not. To coerce another based on inaccessible reasons is to insist that she must act as I would have her act, to comply with my view of moral truth, despite her not being able to see any reasons to accept this view. This fails to treat her as morally free and equal. On the other hand, if the reasons I appeal to are ones that are accessible to her, then I am

⁵⁷ Enoch, ‘Disorder of Public Reason’, p. 166.

⁵⁸ Wolterstorff, *Understanding Liberal Democracy*, p. 74. See also Wolterstorff, ‘Paradoxical Role’.

⁵⁹ Or reasons that the individual would only accept under full idealisation – i.e. “the principles that our best attainable epistemic standpoint singles out.” Arneson, ‘Rejecting *The Order*,’ p. 544.

⁶⁰ Gaus, *Order of Public Reason*, pp. 29-30; Gaus, ‘On Two Critics’, p. 186.

appealing to her own evaluative point of view, to her own beliefs and values. This manifests respect for her as an equally authoritative interpreter of morality's demands. I am showing that her own reasons endorse this coercion as better than not being coerced. It is true that if she rejects the coercion then I am claiming that she has made an error in her reasoning. But this error is in failing to recognise her own internal reasons, rather than a failure to comply with an inaccessible moral truth.

Wolterstorff claims that justificatory liberalism in effect encourages individuals to say to one another, "I know what's good and right in this situation, and if you just had your head on straight you'd agree with me."⁶¹ The right reasons view could equally be accused of this, however. It allows individuals to coerce others based on the fact that they would agree if they knew the truth about morality. The 'patronising' objection can run both ways.⁶²

Claiming that another has reasons – either external or internal, inaccessible or accessible – that they do not themselves actually recognise is always going to be controversial. When it comes to justifying coercive interference, such claims must be based on accessible reasons, showing that others should accept the imposition on the basis of their own beliefs and values, since it is openly justified to them. This respects them as morally free and equal in a way that the right reasons view does not.

2.2. Self-defeat

Enoch and Wall have both developed self-defeat objections to justificatory liberalism. In short, they claim that PJP must apply to itself, and thus cannot be used to regulate political life unless

⁶¹ Wolterstorff, *Understanding Liberal Democracy*, p. 74.

⁶² Wolterstorff himself avoids this objection by affirming a largely proceduralist account of legitimacy. See *ibid.*, pp. 125-135.

every citizen has sufficient reason to accept it.⁶³ The principle must meet the ‘reflexivity requirement’.⁶⁴ In reality, many citizens reject PJP. It therefore fails by its own standards. In this section I will develop my own version of this objection and show how justificatory liberals can best respond to it.

First, we should note that it is far from obvious that PJP must apply to itself. Indeed, Gaus argues that it does not.⁶⁵ He draws an analogy with the ‘falsification principle’ in the natural sciences, which states that legitimate scientific arguments must contain a falsifiable empirical premise. This principle does not contain any empirical premises, but this does not make it self-defeating, because it does not apply to itself. It is a meta-principle about what arguments within a discourse are legitimate. It is not itself an argument within that discourse, so it need not satisfy its own standard. Gaus argues that requirements of public justification should be understood in a similar way. Justificatory liberals believe that legitimate laws must be openly justified to every citizen. Only such laws should be imposed upon citizens. But one need not also believe that all citizens must (or do) accept this principle in order to consistently hold it, and use it to assess the legitimacy of laws. Like the falsification principle, PJP need not satisfy the reflexivity requirement. The fact that many citizens reject it therefore does not make it self-defeating.

Unfortunately, the objection cannot be dismissed this easily. While Gaus is certainly correct about justificatory liberalism’s formal content, Enoch and Wall argue that the *rationale* behind PJP is such that it must apply to itself. Specifically, they claim that if PJP does not meet the reflexivity requirement then justificatory liberalism can be objected to on precisely the same grounds that

⁶³ Enoch, ‘Disorder of Public Reason’, pp. 170-173; Wall, ‘Public Reason’. Wall, ‘Is Public Justification’, argues that public reason liberalism is also self-defeating. See also Raz, ‘Disagreement in Politics’, pp. 29-30.

⁶⁴ This idea was first discussed by Solum, Lawrence B., ‘Constructing an Ideal of Public Reason’, *San Diego Law Review* 30:4 (1993): 729-762. See also D’Agostino, Fred, ‘The Orders of Public Reason’, *Analytic Philosophy* 54:1 (2013): 129-155.

⁶⁵ Gaus, *Order of Public Reason*, pp. 227-228. See also Gaus, *Justificatory Liberalism*, pp. 175-178; D’Agostino, Fred, and Gerald Gaus, ‘Public Reason: Why, What and Can (and Should) it Be?’, in D’Agostino, Fred, and Gerald Gaus (eds.), *Public Reason* (Aldershot: Ashgate Dartmouth, 1998): xi-xxiii, pp. xviii-xxi.

justificatory liberals object to the right reasons view. The rationale for PJP is to avoid moral authoritarianism, yet justificatory liberalism is itself authoritarian if PJP fails to satisfy the reflexivity requirement. Since many citizens reject PJP, or at least any specific interpretation of it, justificatory liberalism is self-defeating.

The easiest way to approach this objection is by considering a series of examples. It is important to note that the individuals within these examples are not intended to represent ordinary citizens deciding whether to advocate or vote for laws. Justificatory liberalism does not impose obligations upon ordinary citizens to only support laws that are publicly justified.⁶⁶ Instead, the individuals within the examples should be understood as theorists, discussing what laws would be legitimate if democratically enacted within their polity. They are considering the objective legitimacy of various laws, not which laws to personally support.

Andy endorses the right reasons view. He believes that laws must have a sound justification in order to be legitimate. He is also religious, and believes that scripture shows law L_1 to be required by justice. L_1 can thus be permissibly enforced upon everyone within the polity, since it is justified by the correct theory of justice.⁶⁷

Becky is a justificatory liberal, and considers the imposition of L_1 to be authoritarian and impermissible. L_1 is not within the socially eligible set, so forces all citizens to comply with a particular understanding of morality, which many reject. Its imposition fails to treat as morally free and equal those citizens to whom it is not openly justified.

Becky believes that another law, L_2 , is in the socially eligible set, so is legitimate. L_2 is openly justified to every citizen – each has sufficient reason from within their own belief-value set,

⁶⁶ See pp. 148-152, below.

⁶⁷ Clearly Andy would need a more complex argument than this, but I simplify here for the sake of brevity.

appropriately moderately idealised, to accept L_2 as preferable to having no law on this issue. L_2 's enactment therefore respects all citizens as free and equal, even if many would prefer a different law.

Colin is also a justificatory liberal, but believes that L_2 is *not* in the socially eligible set. Colin believes that Becky has over-idealised citizens' belief-value sets. She has imputed to them empirical information and a level of reasoning that is beyond the reach of many citizens, and it is only on this basis that she believes L_2 to be justified to them by 'their own' beliefs and values. When we use a more appropriate, more moderate, level of idealisation we find that L_2 is not openly justified to some. The enactment of L_2 would thus disrespect those citizens, coercing them in ways that they lack sufficient reason to accept.

Becky and Colin disagree over what Wall calls the 'test of public justification'.⁶⁸ A complete specification of PJP must describe, among other things, the nature and degree of idealisation of citizens' belief-value sets that we apply in determining whether laws are openly justified to them. This test of public justification is then used to ascertain whether a law is publicly justified. There can be reasonable disagreement over this test, as is seen in the case of Becky and Colin. Becky and Colin disagree over the appropriate level of idealisation, leading them to disagree over whether L_2 is in the socially eligible set.

This is what gives rise to Wall's version of the self-defeat objection.⁶⁹ Becky claims that L_2 can be legitimately enacted, despite Colin's protests. According to Becky's understanding of PJP, L_2 passes the test of public justification, so is publicly justified. Its enactment would respect all citizens as free and equal. Colin rejects this, arguing that there are some citizens who would not

⁶⁸ Wall, 'Public Reason', p. 164.

⁶⁹ Ibid., p. 165-167. See also Wall, Steven, 'Political Morality and Constitutional Settlements', *Critical Review of International Social and Political Philosophy* 16:4 (2013): 481-499, especially pp. 491-493.

be so respected if L_2 was enacted, since L_2 is not openly justified to them. According to *his* understanding of the test of public justification, L_2 is not publicly justified. Perhaps L_2 is even not justified to *Colin*, according to his test. Colin can recognise that Becky believes the law to be openly justified to everyone, including himself, but part of the explanation for this is her test of public justification, which he (reasonably) rejects. The enactment of L_2 would involve the imposition of Becky's particular, and controversial, understanding of the test of public justification, and so of PJP, upon all citizens, even those who reject it. This would itself be authoritarian.

Notice that Colin's objection to L_2 is similar to Becky's objection to L_1 . Colin claims that L_2 is not openly justified to all citizens, so its imposition would disrespect some, just as Becky claims this about L_1 . We might therefore suppose that if Becky's objection to L_1 is sound then Colin's objection to L_2 is also sound. Even though Andy believes that L_1 is justified according to the correct view of morality, given reasonable disagreement he should recognise that L_1 cannot be legitimately enacted. Similarly, even though Becky believes that L_2 is publicly justified according to the correct test of public justification, given reasonable disagreement over that test she should recognise that L_2 cannot be legitimately enacted.

It is for this reason that Wall believes justificatory liberals must embrace reflexivity. The test of public justification, the precise specification of PJP, must itself be accepted by every citizen, since otherwise some are not treated as free and equal, as we see in Becky and Colin's case. PJP does not formally apply to itself, as Gaus points out, but it must in fact do so, given the motivation behind justificatory liberalism – the avoidance of coercion that is not justified to the coerced.

This admission would come at grave cost to justificatory liberalism, however. It seems unlikely

that citizens will agree on a common test of public justification, even after deliberation.⁷⁰ A different approach would be to say that every citizen can have their own understanding of the test of public justification, and legitimate laws are ones that all recognise as being within the socially eligible set. But this reintroduces the anarchism objection; it might well mean that few laws are publicly justified. Wall's conclusion is that the attempt to avoid moral authoritarianism in political life is doomed to failure, at least in the modern world.

To respond to Wall, one must argue that there is a normatively significant difference between Becky's disagreement with Andy and her disagreement with Colin. Andy is seeking to enforce his own view of morality's demands, in the face of reasonable disagreement among moral free and equals. This is morally authoritarian. Becky is not doing this. She believes that L_2 is openly justified to every citizen – that every citizen has conclusive reason to prefer L_2 to having no law, at the correct level of idealisation. Becky's understanding of the test of public justification is part of the explanation for why she believes L_2 to be legitimate, and that test is controversial – Colin rejects it. But Becky is not enforcing that test upon Colin, or anyone else. She is defending a law that she believes is justified to all, on the basis of that test. She is thus attempting to treat all citizens as free and equal, according to her understanding of public justification. Becky believes that L_2 is openly justified to every citizen, and thus its enactment would not be morally authoritarian. Andy, in contrast, is simply seeking to impose his own moral view.

Wall would likely find this highly dubious. After all, Colin has expressed his dissent to Becky. He has explained to her why he rejects her understanding of the test of public justification, such that he considers L_2 illegitimate. If Becky continues to consider L_2 legitimate then she is holding *her* understanding of the test of public justification, and therefore of what laws are in the socially eligible set, to be authoritative for everyone, despite Colin's protests. Yet justificatory liberalism's

⁷⁰ Wall also points out a further dilemma even if such a common view *could* be found. Wall, 'Public Reason', p. 168.

core claim is that all citizens are equally authoritative interpreters of the demands of morality.

The vital point, however, is that Becky is not treating her *evaluative standards* as authoritative for everyone. She recognises that coercion must be openly justified to the coerced, and thus respects others' reasons for laws, and the principles, values, and norms that those reasons are based on. Justificatory liberalism never claimed to respect people's beliefs 'all the way down', as far as accommodating their beliefs about the reason-giving aspect of legitimacy itself.⁷¹ This is clearly impossible, since justificatory liberalism claims to be the *correct* theory of legitimacy, the correct account of what is required with regard to the reasons that justify laws, if laws are to be permissibly imposed. Becky believes that her view of the test of public justification is the right one, and thus that L₂ is conclusively justified to every citizen according to their own belief-value sets – by reasons that are accessible to them. She believes that the enactment of L₂ respects everyone as free and equal, coercively imposing only what they have sufficient internal reasons to accept. This is in contrast to Andy's endorsement of L₁. It is true that Colin considers Becky mistaken about the test of public justification, but justificatory liberalism cannot hold that everyone's views of legitimacy must themselves be respected. That would clearly be self-defeating. If Becky is sure of her own view of legitimacy, despite Colin's protests, then she rightly believes that L₂ can be legitimately enacted.⁷² It is of course possible that Becky is wrong, and Colin right, about the test of public justification, such that L₂ is not in fact publicly justified, according to the objectively correct theory of legitimacy. Becky's best understanding says that L₂ is publicly justified, however, and she does not disrespect other citizens by continuing to hold, and act on, that belief.

Unfortunately justificatory liberalism is not yet in the clear, however, since this response to Wall

⁷¹ I made this point with respect to anarchists above, on pp. 72-74.

⁷² My discussion here connects to Gaus's "affirmation of the centrality of the first-person point of view". Gaus, *Order of Public Reason*, p. 225-232. See also Gaus, 'Private and Public Conscience', pp. 24-25; Gaus, *Justificatory Liberalism*, pp. 175-178.

opens the door to a further challenge. Denise believes that at the correct level of idealisation all citizens would be Mormons. After a respectable amount of reasoning, with an adequate amount of information, all citizens would recognise the truth of Mormonism. Denise therefore believes that law L_3 , which is morally required according to Mormonism, fulfils PJP. All have conclusive reason to accept L_3 according to their own belief-value sets, moderately idealised, since all accept Mormonism once idealised in this way.

Becky considers Denise to be deeply mistaken. Denise is demonstrably wrong to claim that after merely moderate idealisation all citizens would be Mormons. Many citizens hold views that directly conflict with Mormonism. It is implausible to claim that a respectable amount of good reasoning would lead all to accept it. Denise evidently holds to an incorrect test of public justification. According to the correct test (i.e. Becky's), L_3 is not publicly justified. If enacted, L_3 would coerce many citizens who lack accessible reasons to accept it, so would fail to respect those citizens as free and equal.

The problem, however, is that Becky's objection to Denise's view is identical to Colin's objection to Becky's view. Each claims that the other has a mistaken, over-idealising, test of public justification, and therefore permits the imposition of laws that are not publicly justified. If Becky's response to Colin's objection is sound then it appears that Denise can respond to Becky in precisely the same way. Denise understands that Becky rejects her test of public justification, but nonetheless believes it to be correct, and thus that laws justified by Mormonism can be permissibly enacted.

It appears that justificatory liberalism must accept Denise's claim here, so accept that she can believe Mormon laws to be publicly justified. However, many citizens might believe that their own understanding of morality would be accepted by all after moderate idealisation. Justificatory

liberalism was supposed to prevent the enforcement of particular understandings of morality upon all citizens. This was its central objection to the right reasons view. Yet it now appears to fail at this – laws justified by particular conceptions of the good can still be imposed upon everyone, when accompanied by the claim that everyone accepts that conception of the good when appropriately idealised.⁷³ All of the justificatory liberal objections to the right reasons view therefore apply to outcomes that it itself permits.

The justificatory liberal response to this must be that there is a truth about legitimacy.⁷⁴ There is a fact about what is the correct test of public justification, the correct interpretation of PJP, and thus about what laws are legitimate.

Becky believes that her view is correct. She believes that Colin's view does not idealise citizens' belief-value sets enough, while Denise over-idealises. They therefore make false claims about what moderately idealised citizens would accept. This is true even if Mormonism is in fact the objectively correct religion. Given her belief that she has the correct view of legitimacy, Becky is right to object to Denise's view and continue to hold her own, even though Colin's objection to Becky's own view is similar to her objection to Denise's. The difference, from Becky's perspective, is that Becky's view of legitimacy is the correct one and Colin and Denise's are not. If Becky is right about this, so her view is indeed the correct view of legitimacy, then Becky's view of legitimacy should be followed by the polity and the others' should not be.

Parallels can obviously be drawn between this justificatory liberal response and the right reasons view. The right reasons view says that whatever our disagreements about morality, laws justified

⁷³ Eberle, Christopher J., 'What Does Respect Require?', in Cuneo, Terence (ed.), *Religion in the Liberal Polity* (Notre Dame, Ind.: University of Notre Dame Press, 2005): 173-194 objects to Gaus's view on a similar basis.

⁷⁴ Gaus would reject this response, due to his broader project of seeking a 'public moral constitution'. See Gaus, Gerald, 'On the Appropriate Mode of Justifying a Public Moral Constitution', *The Harvard Review of Philosophy* 19 (2013): 4-22.

by the true morality can be enforced, just as justificatory liberalism says that whatever our disagreements about legitimacy, the correct view of legitimacy should be followed. The defence of justificatory liberalism I just presented appears the same as the defence the right reasons view makes *against* justificatory liberal claims. The difference, however, is that the right reasons view is an incorrect, and disrespectful, view of legitimacy, which coerces individuals in ways that are not openly justified to them, and thus fails to treat them as free and equal. Justificatory liberalism is the correct theory of legitimacy, since it respects citizens as free and equal by only enforcing laws that are openly justified to every citizen.

Clearly we will disagree about precisely which laws are openly justified to all, and thus about which laws are legitimate. This is inevitable; justificatory liberalism does not claim to avoid all controversy.⁷⁵ Sometimes, a law will be enacted that its proponents believe is publicly justified but some believe is not openly justified to them, such that they are being impermissibly coerced. If the proponents of the law have a correct understanding of the test of public justification then these complaints are mistaken, while if the proponents have it wrong then the complaints are correct. The justificatory liberal theorist must present what she believes to be the correct account of legitimacy, and the correct specification of PJP – the account she believes to fit with the objective truth about legitimacy.⁷⁶ This will be controversial, but to the extent that the theorist has the correct view, that view correctly assesses when laws respect citizens as free and equal, even if some reject it. What matters is that laws are in fact openly justified to all citizens. Disagreement about whether laws are so justified, flowing from disagreement about the precise test of public justification, does not undermine the theory.⁷⁷

⁷⁵ See Gaus, 'On Theorizing', pp. 79-80.

⁷⁶ I do not claim to complete this task in this thesis. I have not given a precise specification of moderate idealisation, for example. I think it is clear that Denise's claim that everyone would accept Mormonism after only moderate idealisation is mistaken, however.

⁷⁷ Lister, *Public Reason*, pp. 98-101, argues that this will undermine the authority of the state. Reasonable disagreement about what laws are in the eligible set means that justificatory liberalism has philosophically anarchist implications. I am not sure why this would be the case, however. There are important questions

An analogy can be drawn here with actual consent theory. Most political philosophers deny that actual unanimous (informed) consent to a law is necessary for its legitimacy, but many would accept it as sufficient. This is the case even though no-one has consented to consent theory. Even if some citizens reject the sufficiency of actual consent, such theorists would not think that this undermines the legitimacy of a law that has received such consent. Their confidence in unanimous consent as providing legitimacy means they reject complaints about the legitimacy of the law.

Justificatory liberalism's response to the self-defeat objection is similar. Some will reject the correct theory of legitimacy. But this does not stop it being the true theory, and publicly justified laws respecting all citizens as free and equal. If Becky's understanding of legitimacy is correct then she rightly objects to Denise's view and rightly rejects Colin's objection, despite the apparent similarity between these objections. Just as actual consent theory respects people's actual consent but doesn't need to respect their views about actual consent theory itself, justificatory liberalism respects people's evaluative standards and their moral freedom and equality, even if sometimes laws are enacted which some consider to not be in the socially eligible set, due to their mistaken understandings of legitimacy.

The analogy with actual consent theory shows that any force that the self-defeat objection has comes from doubts about justificatory liberalism itself, or a particular specification of it, rather than because the objection succeeds on its own terms. If one accepts actual consent as a sufficient condition of legitimacy, then self-defeat objections to it clearly fail. Similarly, to the extent that we accept the truth of justificatory liberalism, the self-defeat objection to it also fails. The objection has no force independent of other objections or reasons we have to reject justificatory liberalism.

about appropriate political institutions and processes for dealing with this disagreement, but I do not think they pose deep problems for state authority.

3. Conclusion

In previous chapters I argued for justificatory liberalism's superiority over public reason liberalism. In this chapter I have sought to directly justify justificatory liberalism's interpretation of PJP, and to defend it from objections rooted in the right reasons view. I have not answered every question about the specification of PJP, or discussed justificatory liberalism's institutional implications. Nonetheless, I hope to have successfully defended justificatory liberalism as the best account of the reason-giving aspect of legitimacy.

In Part II I approach the same questions from a different angle, that of Christian theology, in order to ascertain whether Christian citizens can accept political liberalism, and in particular justificatory liberalism.

Part II: Christian Political Theology Encounters Political Liberalism

Chapter 5: Engaging With Christian Theology

1. Introduction

In this Part I will investigate how Christian political theologians have responded, and might respond, to political liberalism – in both its public reason liberal and justificatory liberal forms. I consider arguments both for and against Christianity’s compatibility with political liberalism, in order to establish whether Christian citizens can accept this view of legitimacy. There are (broadly) two reasons for doing so.

Firstly, it seems highly relevant to both the plausibility and feasibility of political liberalism whether religious citizens, including Christians, can accept its key tenets. If Christians have strong theological reasons to reject political liberalism’s central claims, such as PJP, then this raises doubts about whether it is an adequate theory of legitimacy for modern pluralistic societies. Political liberalism is a response to the fact of reasonable pluralism, so it would be damaging for the theory if adherents to Christianity could not accept it.¹ To discover whether Christians can accept political liberalism, we must examine political theology.² As David Hollenbach states, “if a secular understanding of the public role of religion makes demands that Christians cannot accept on their own terms, Christians will not be able to accept these demands.”³

Secondly, many objections to political liberalism have been made by, and on behalf of, religious

¹ For public reason liberals, this would mean that all Christians are unreasonable, which appears a troubling implication.

² As I noted in the Introduction (p. 6, fn. 13), I use the term ‘political theology’ to refer to Christian theology applied to politics, rather than to the school of thought inspired by Schmitt.

³ Hollenbach, David, *The Common Good and Christian Ethics* (Cambridge: Cambridge University Press, 2002), p. 114.

believers.⁴ A proper assessment of these objections, as they apply to Christians, requires knowledge of Christian theology.

Some have simply asserted that political liberalism *must* be in tension with religious belief, since it restricts the role that religious arguments can play in political life by requiring that there be non-religious reasons for laws.⁵ Indeed, public reason liberalism bars religious arguments from playing *any* justificatory role. On this basis, political liberalism is often accused of prohibiting religious citizens from practising their comprehensive doctrines in politics. It only does so, however, if those comprehensive doctrines include the belief that their values and dogmas should be imposed on others, even when those others lack reason to accept this imposition. This might not be the case. An individual could wholeheartedly affirm certain religious and (religiously-grounded) moral propositions without believing that they should be coercively imposed, or even that they should influence her polity's laws. Political liberalism conflicts with the views of those who believe that they must follow their religion in all domains of life⁶ only if, and to the extent that, acting on their religious beliefs involves rejecting PJP or violating the obligations that political liberalism places upon citizens. It could be that "a person's comprehensive view calls on him to accept a political arrangement in which issues are resolved without direct reference to comprehensive views,"⁷ making it compatible with public reason liberalism. Alternatively, a citizen's comprehensive doctrine might call on her to accept political arrangements where laws are only imposed when all can accept them on the basis of their own beliefs and values, making it compatible with justificatory liberalism. In other words, citizens' understanding of what

⁴ For example, Wolterstorff, 'Role of Religion'; Neal, Patrick, 'Political Liberalism, Public Reason, and the Citizen of Faith', in George, Robert P., and Christopher Wolfe (eds.), *Natural Law and Public Reason* (Washington, D.C.: Georgetown University Press, 2000): 171-201. For discussion, see Boettcher, James W., 'Public Reason and Religion', in Brooks, Thom, and Fabian Freyenhagen (eds.), *The Legacy of John Rawls* (London: Continuum, 2005): 124-151; Neal, Patrick, 'Is Political Liberalism Hostile to Religion?', in Young, Shaun P. (ed.), *Reflections on Rawls: An Assessment of his Legacy* (Farnham: Ashgate, 2009): 153-175; Vallier, *Liberal Politics*, pp. 45-78.

⁵ Wolterstorff is accused of this in Quinn, Philip L., 'Religious Citizens Within the Limits of Public Reason', in his *Essays in the Philosophy of Religion*, ed. Christian B. Miller (Oxford: Clarendon Press, 2006): 187-206.

⁶ i.e. 'Integralist believers'. See p. 24, fn. 46.

⁷ Greenawalt, 'Natural Law', p. 539.

obedience to God requires might cohere with political liberalism.⁸

To discover whether this is the case with regard to Christianity, we must turn to theology – to the internal resources of the Christian worldview. Yet most theorists who discuss religious objections to political liberalism fail to examine political theology. One purpose of this Part is to correct this.

1.1. Preliminaries

It is important to be clear on the terminology that I will use within this Part. I use the term ‘liberalism’ to refer to views with an “emphasis on the political importance of equal basic individual rights.”⁹ As Macedo states, this is “liberalism’s moral core.” “Persons are understood, in their political capacity, as free and equal, and an urgent political imperative is to secure citizens in their basic interests understood in the language of rights and justice.”¹⁰ All forms of liberalism emphasise individual freedom and guarantee citizens a broad range of basic rights and freedoms, including freedom of thought, expression, association, and religion.

All liberals also endorse the idea that exercises of political power must be justified to citizens. Coercion of free and equal citizens should never be a brute fact. But they disagree on what this requirement amounts to. Some liberals accept the right reasons view, so believe coercion is justified to citizens when it is justified by sound reasons. Others believe the justification for coercion must simply consider everyone’s interests, or that coercion is legitimate as long as it results from a procedure that takes into account all citizens’ interests or views. Political liberals make the distinctive claim that, in order to be legitimate, laws must be justified to all (reasonable) citizens by reasons that they can accept. Political liberalism is thus a subcategory of liberalism,

⁸ Neal, ‘Is Political Liberalism’, pp. 168-169.

⁹ Macedo, Stephen, ‘Hauerwas, Liberalism, and Public Reason: Terms of Engagement?’, *Law and Contemporary Problems* 75:4 (2012): 161-180, p. 162.

¹⁰ *Ibid.*, p. 162. See also Quong’s fourfold definition of liberalism: *Liberalism Without Perfection*, pp. 14-15.

defined by its endorsement of PJP.¹¹

As I argued in Part I, there are two types of political liberalism. Public reason liberalism holds that laws must be justified by appeal to public reasons, a special class of reasons that are acceptable to all citizens. Justificatory liberalism holds that laws must be conclusively justified to all citizens. Each must have sufficient reason, from their own (moderately idealised) belief-value set, to consider laws better than having no law in the relevant policy area.

I endorsed justificatory liberalism in Part I, but in these chapters I consider the compatibility of Christian political theology with both types of political liberalism. One reason for this is that public reason liberalism is the focus of existing arguments for the (in)compatibility of Christianity with political liberalism, since it is the dominant strand. A deeper reason is that some theorists have argued that Christians should accept public reason liberalism, on the basis of their faith. If these theological arguments succeeded, such that a Christian view of legitimacy dovetails with public reason liberalism, then this would be problematic for my view, since I have rejected public reason liberalism in favour of justificatory liberalism. I therefore consider such arguments in Chapters 7 and 8, and argue that they fail.

This is not to say that Christians necessarily have decisive reasons to *reject* public reason liberalism. I dismiss several arguments for this conclusion in Section 2. Before doing so, several further preliminary comments about my approach in this Part are necessary.

First, the questions that I am considering arise with regard to all religions, and indeed all non-religious comprehensive doctrines, found within the liberal polity. So why do I exclusively focus on Christianity? There are several answers to this. One is that there is much to be said on this subject

¹¹ See Eberle's distinction between political liberalism and 'mere liberalism'. Eberle, *Religious Conviction*, pp. 11, 58-59.

in reference to Christianity, so I lack space to also consider other worldviews. Another reason is that there is a well-developed and easily accessible Christian political theology literature, including material that focuses on Christianity's relationship with (political) liberalism. On top of this, my personal interests and knowledge lie in this area, making it the obvious religion for me to consider. Finally, the liberal democracies in which political liberalism has been discussed are historically Christian. Indeed, the USA still has a majority Christian population.¹² If political liberalism cannot accommodate a religion that is numerically and culturally so significant in Western societies then this poses a huge problem for it. Christianity is also a major world religion more generally – numerically, it is the largest global religion.¹³ For all of these reasons, my focus is on Christianity. Clearly this does not imply that other religions are unimportant, or that there is not interesting and important work to be done examining the same questions in relation to those religions.¹⁴

Second, it is important to note that there is a great deal of diversity *within* Christianity. There is much theological disagreement both within and between the many Christian denominations. In one sense, there are as many 'Christianities' as there are Christians, although certain core tenets are accepted by every Christian. One important point of disagreement for our purposes is over the sources of truth and of moral authority. All Christians see the Bible as an important authority, but their understanding of what this entails varies widely, as do the exegetical and hermeneutical principles they apply to the text. Different Christian traditions also have different understandings of how the Bible relates to other sources of truth, such as church tradition, the teaching of

¹² The 2007 Pew Forum 'U.S. Religious Landscape Survey', found that 78.4% of adults in the USA were Christian, while 16.1% were 'unaffiliated'. The figures in the UK 2011 census were 59.3% and 25.1%. See <http://religions.pewforum.org/reports> and <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/rpt-religion.html>.

¹³ In 2010, 31.5% of the world's population were Christian, according to a 2012 Pew Forum report. 16% were unaffiliated. See <http://www.pewforum.org/2012/12/18/global-religious-landscape-exec/>.

¹⁴ There is some existing literature on political liberalism and Islam: March, Andrew, *Islam and Liberal Citizenship: The Search for an Overlapping Consensus* (New York: Oxford University Press, 2009); Badamchi, Meysam, 'Political Liberalism for Muslim Majority Societies' (PhD Dissertation, Luiss Guido Carli University, 2012).

religious authorities, human reasoning, and scientific evidence. Some of this diversity will be highlighted in this Part.

I will often talk about what ‘Christians’ believe or accept. In light of the diversity within Christianity, this should be taken as shorthand for a statement about what many Christians believe, or what is a common view among Christians. This inevitably involves judgments about what is the mainstream view within Christianity, and indeed about what Christians *ought* to believe. While one aim of this Part is to investigate how political theologians *do* respond to political liberalism, I also *evaluate* those responses, and make arguments about what Christians *should* believe.

Third, and relatedly, I focus on arguments made by academic theologians, as representatives of Christianity. This might raise concerns about whether those arguments match the beliefs of ordinary Christians. Consulting the work of academic theologians might not give an accurate answer to the question of whether Christian citizens can accept political liberalism. Indeed, some theologians have begun to ask questions about the relationship between academic theology and the theological beliefs of Christian laypeople, or ‘ordinary theologians’ as they have become known.¹⁵

Nonetheless, there are good reasons to focus on academic arguments within these chapters. Academic theologians have thought about the issues more deeply than ordinary Christians, and usually have a more developed moral and political philosophy integrated with their theology. If we are to consider the best of Christian thinking on issues concerning political liberalism then it is appropriate to turn to theologians’ writings. Further, the views and arguments of academic

¹⁵ For example, Astley, Jeff, *Ordinary Theology: Looking, Listening and Learning in Theology* (Aldershot: Ashgate, 2002). Astley defines ‘ordinary theology’ as “the theology and theologising of Christians who have received little or no theological education of a scholarly, academic or systematic kind” (p. 56).

theologians do have influence on the beliefs of ‘ordinary’ Christians, often mediated through the teaching of priests and other church leaders. Finding that Christian theology is compatible with political, and indeed justificatory, liberalism – as I argue in this Part – is not the same as showing that any particular Christian individual does or even should accept political liberalism, on the basis of their religious beliefs. But it does show that political liberalism does not inherently conflict with the Christian faith, so Christians *can* accept it.

Fourth, I will sometimes speak of ‘theological arguments’ and ‘philosophical arguments’. ‘Theological arguments’ have explicitly theological premises – premises about God, Scripture, religious belief, and so on. ‘Philosophical arguments’ refers to arguments that do not contain such premises, such as the arguments I made in Part I. This distinction is not intended to be derogatory, or to imply that theological arguments are philosophically unsound.

Further, the reason for turning to theological arguments in order to examine the acceptability of political liberalism to Christians is not that Christians cannot accept philosophical arguments. Christians can and do accept sound philosophical argumentation. Indeed, as Nigel Biggar notes, some questions are purely philosophical ones, on which theology does not contribute anything specific.¹⁶ Christians strive for theological integrity, for the conformity of their moral and political beliefs with their theological ones. But “few Christians would interpret fidelity to their beliefs as a necessary rejection of all values not explicitly theologically derived.”¹⁷ Nonetheless, what Christians can and cannot accept in terms of political morality is shaped by their theology, which is why it is important to examine theological arguments related to political liberalism. My doing so does not imply that the philosophical arguments I made in Part I are irrelevant for, or cannot be

¹⁶ Biggar, Nigel, *Behaving in Public: How to Do Christian Ethics* (Grand Rapids, Mich.: W.B. Eerdmans Publishing Company, 2011), pp. 10-11. Biggar’s example is the question of “what makes it valid to distinguish an evil that is intentionally caused from one that is caused deliberately but unintentionally” (p. 11).

¹⁷ Bayer, Richard C., ‘Christian Ethics and “A Theory of Justice”’, *Journal of the American Academy of Religion* 64:1 (1996): 45-60, p. 53, fn. 6.

accepted by, Christians, however.

2. Objections to Political Liberalism's Treatment of the Religious

Several prominent objections to political liberalism concern the demands that it places upon religious citizens. If these objections successfully showed that religious citizens cannot endorse political liberalism then the rest of my discussion in this Part would be superfluous. However, many of the objections are misguided, and based upon an overly restrictive reading of the requirements that political liberalism places upon citizens, as I will show in this section. Rejecting these objections clears the way for my focus on the more fundamental question of whether Christians can accept political liberalism on the basis of their own theology. The unsuccessful objections do point to a potential tension between the demands of Christianity and of political liberalism, however, which I introduce in Section 3, and which frames the rest of this Part.

The objections have primarily been made with regard to public reason liberalism, so I mainly focus on that variant of political liberalism in this section, before applying the discussion to justificatory liberalism.

The central objection is that public reason liberalism places greater burdens upon religious than non-religious citizens. It demands that the religious shed their deepest identities when entering the political realm, and base their political action on reasons that do not reflect their truest or deepest beliefs and values. Secular citizens are able to present all of their reasons in political advocacy, whereas religious citizens must appeal to reasons that are detached from their real identity. Religious citizens must 'split' their identities, acting on different reasons and motivations in the public and private spheres, with their religious identities relegated to the latter. This is unfair, since religious citizens bear a burden that the non-religious do not. It prevents religious citizens from living an integrated life. Some have even claimed that it violates citizens' free

exercise of religion.¹⁸

Connected to this, Luke Bretherton claims that public reason liberalism prevents citizens from having a “genuinely common life,” since they cannot “respond to and engage with [each other’s] primary concerns and self-understanding.”¹⁹ Rawls’s view “occludes people’s most basic reasons for acting,”²⁰ so prevents real dialogue. Bretherton also accuses Rawls of having an overly narrow understanding of deliberation, excluding non-verbal and non-rational forms of communication.²¹ In all these ways, Rawls does not allow enough plurality in public deliberation.

Similarly, Jeffrey Stout states that the public-reason-giving and restraint requirements seem “contrary to the spirit of free expression that breathes life into democratic culture.”²² He comments that “if they are discouraged from speaking up in this way, we will remain ignorant of the real reasons that many of our fellow citizens have for reaching some of the political and ethical conclusions they do.”²³ Oliver O’Donovan concurs. Public reason liberalism stultifies deliberation by predetermining what reasons can be publicly presented. It “offers us ‘reason’ as a pre-determined quantity, ready sliced and ready packaged.”²⁴ This undermines the integrity of *all* citizens, because “to achieve any moral or intellectual integrity, their political reflections must be

¹⁸ For versions of these objections see Wolterstorff, ‘Role of Religion’; Jamal, Arif A., ‘Addressing Religious Plurality: A Consideration of Four Models’, *Oxford Journal of Law and Religion* 2:2 (2013): 330-353, pp. 330-338; Chaplin, Jonathan, *Talking God: The Legitimacy of Religious Public Reasoning* (London: Theos, 2008), pp. 29-36; Calhoun, Craig, ‘Secularism, Citizenship, and the Public Sphere’, in Calhoun, Craig, Mark Juergensmeyer and Jonathan Vanantwerpen (eds.), *Rethinking Secularism* (Oxford: Oxford University Press, 2011): 75-91.

¹⁹ Bretherton, Luke, ‘Translation, Conversation or Hospitality? Approaches to Theological Reasons in Public Deliberation’, in Biggar, Nigel, and Linda Hogan (eds.), *Religious Voices in Public Places* (New York: Oxford University Press, 2009): 85-109, p. 88.

²⁰ *Ibid.*, p. 88.

²¹ For other claims that political liberals have too cognitive an understanding of reason, see Bader, Veit, ‘Excluded, Included or Foundational? Religions in Liberal-Democratic States’, in D’Costa, Gavin, Malcolm Evans, Tariq Modood, and Julian Rivers (eds.), *Religion in a Liberal State* (Cambridge: Cambridge University Press, 2013): 135-163, p. 140; Rossi, ‘Legitimacy, Democracy and Public Justification’.

²² Stout, *Democracy and Tradition*, p. 68.

²³ *Ibid.*, p. 64.

²⁴ O’Donovan, Oliver, ‘Judgment, Tradition and Reason: A Response’, *Political Theology* 9:3 (2008): 395-414, p. 409.

coherent with the wider-ranging trains of thought by which all human beings have to live.”²⁵

2.1. Rawlsian Replies

Since all of these critics have Rawls in mind, either implicitly or explicitly, I will first show why they are misguided with reference to his account. Rawls can make five points in response to the objections.²⁶

First, religious believers are not specifically picked out or targeted by public reason liberalism. The requirements that it imposes apply “in the same way to all persons *qua* citizens.”²⁷ Every citizen must offer proper political justifications – arguments using public reasons – for the laws they support.²⁸ Clearly, some will find this harder than others. Perhaps non-religious citizens will generally find that their comprehensive doctrines and political conceptions more closely match one another, and contain more of the same reasons. But this does not show that public reason liberalism is *unfair* to religious citizens. Rawls certainly does not deliberately impose special burdens upon them. Secular comprehensive doctrines also contain non-public reasons, which cannot be used as political justifications, so the restraint requirement constrains non-religious citizens as well as religious ones.²⁹

Second, public reason liberalism does not prohibit citizens from presenting their non-public reasons within public deliberation, at least on Rawls’s ‘wide view’.³⁰ Citizens can present non-public, including religious, reasons at any time, subject to the proviso that they offer public

²⁵ Ibid., p. 409. See also Finnis, John, ‘Is Natural Law Theory Compatible with Limited Government?’, in George, Robert P. (ed.), *Natural Law, Liberalism, and Morality* (Oxford: Clarendon Press, 1996): 1-26, p. 10.

²⁶ For another list of replies, see Griffin, Leslie, ‘Good Catholics Should be Rawlsian Liberals’, *Southern California Interdisciplinary Law Journal* 5:3 (1997): 297-373, pp. 312-322.

²⁷ Boettcher, ‘Public Reason and Religion’, p. 136.

²⁸ And against laws that they oppose.

²⁹ Rawls, *Political Liberalism*, pp. 452-454.

³⁰ Ibid., p. 462. Boettcher calls this ‘weak inclusionism’. Boettcher, James W., ‘Strong Inclusionist Accounts of the Role of Religion in Political Decision-Making’, *Journal of Social Philosophy* 36:4 (2005): 497-516.

reasons ‘in due course’. This proviso is admittedly very vague. The most plausible interpretation is that public reasons must be the ultimate justification for laws, and citizens and officials must have public reasons for their votes. Public reasons must carry the justificatory load. Thus, when it comes to the point of decision, and citizens are seeking to persuade one another to vote in particular ways, they must present public reasons. Up to this point, however, citizens may present only non-public reasons, if they wish. Further, even when public reasons must be presented, non-public reasons can be offered alongside them. Indeed, it is desirable for non-public reasons to be offered in this way. It allows citizens to see that others have a firm commitment to a political conception of justice, and how that conception links to, and is grounded in, their broader comprehensive doctrine.³¹ It thus provides assurance that others are reasonable and sincere in their political justifications.

Third, the restrictions on reasons only apply in a narrowly delimited sphere. It is narrow in two senses. First, in terms of *place*: public reason restrictions only apply in the formal public political sphere.³² Political discussion within the background culture, which includes all the institutions of civil society, as well as the media and economic institutions, is unrestricted. Citizens can deliberate with one another there using any reasons, and indeed any forms of communication, that they choose. The open deliberation that Bretherton and Stout desire can, and indeed should, occur throughout the media and associational life of society. This provides many opportunities for citizens to share a real common good, and to engage with one another’s deepest concerns and self-understanding.³³ Second, the restrictions apply only to what Rawls calls ‘constitutional essentials and matters of basic justice’, fundamental questions about the structure of political life, so the sphere is narrow in terms of *scope*. Rawls comments that “many if not most political

³¹ Rawls, *Political Liberalism*, pp. 463-464; Boettcher, ‘Public Reason and Religion’, p. 130.

³² Rawls, *Political Liberalism*, pp. 442-444.

³³ Bretherton himself eventually admits that Rawls “does allow for a high degree of plurality in public deliberation” after all (‘Translation, Conversation or Hospitality?’, p. 91). It’s not clear why Bretherton does not consider this concession to undermine his objections.

questions do not concern these fundamental matters.”³⁴ Citizens’ advocacy and votes on issues falling outside this domain can permissibly be solely based on non-public reasons.

Fourth, the public-reason-giving and restraint requirements are moral, not legal, duties.³⁵ Citizens retain the legal right to appeal exclusively to religious reasons in their political advocacy, even in the public political forum and when deliberating fundamental questions. Citizens who do this fail to treat their compatriots with respect as free and equal citizens, so act wrongly.³⁶ But there is no coercive enforcement of the duties that they violate, so no violation of their free exercise of their religion. Rawls’s view places moral demands on the way that right is exercised, but does not infringe the right itself.³⁷

Finally, and most importantly, the objections misunderstand the relationship between a citizen’s various beliefs and values within Rawls’s theory.³⁸ The idea is not that one must leave one’s comprehensive doctrine behind when entering the public realm, in order to instead appeal to a pool of shared reasons, which are acceptable to all but disconnected from citizens’ fundamental beliefs. Instead, one should endorse a political conception as coherent with, or even supported by, one’s comprehensive doctrine. One’s comprehensive doctrine *itself* gives one reason to accept a political conception and use it as the basis of one’s political advocacy. Citizens should not split themselves into two different identities, one public and one private. They should have a unified identity that *includes* a willingness to cooperate with others on terms all can accept, and so an acceptance of the (limited) restrictions that this places on political advocacy.

³⁴ Rawls, *Political Liberalism*, p. 214. There is some ambiguity here, however. Public reason restrictions at least do not apply to non-fundamental matters “in the same way, or so strictly” (p. 215).

³⁵ Ibid., p. 217.

³⁶ They also undermine civic friendship. Ibid., p. 447.

³⁷ Quinn, ‘Religious Citizens’, p. 201.

³⁸ I discuss this relationship in much greater detail in my ‘Can My Religion Influence My Conception of Justice? Political Liberalism and the Role of Comprehensive Doctrines’, *Critical Review of International Social and Political Philosophy* (forthcoming).

Perhaps some confusion has arisen due to Rawls's demand that political conceptions of justice be 'freestanding' from comprehensive doctrines, capable of presentation in a way that is independent of any such doctrine. The acceptance of a particular political conception should not require the prior acceptance of a particular comprehensive doctrine; political conceptions must not presuppose comprehensive doctrines. But this does not mean that comprehensive doctrines and political conceptions should be unrelated. Rawls's discussion of 'full justification' belies this idea.³⁹ Individual citizens should embed their political conception into their comprehensive doctrine, so that the two cohere. The political conception thus becomes a 'module' in one's broader belief-value set.⁴⁰ At minimum, this means that one's political conception and comprehensive doctrine should not overtly conflict.⁴¹ More desirably, one's comprehensive doctrine should provide *support* for one's political conception, providing reasons for accepting the various values and beliefs embodied within it. Presenting public political arguments based on one's political conception of justice is thus part of acting on one's broader belief-value set, rather than being in tension with it.

Rawls thus *agrees* with O'Donovan that the rules governing public conduct must connect with those governing private conduct, so that our moral identities can encompass both, and we do not annihilate ourselves when moving from the private to the public sphere.⁴² For O'Donovan, this "means that public disciplines, too, must arise from within the same moral traditions that shape the identities that move among the practical spheres."⁴³ He views this as an argument against public reason liberalism, since he claims that the principles and values within public reason "do not derive from, or connect with, first-order reasons,"⁴⁴ so are "devoid of reasons that could lead

³⁹ Rawls, *Political Liberalism*, pp. 386-387.

⁴⁰ *Ibid.*, p. 12.

⁴¹ At least not "too sharply." *Ibid.*, p. 40.

⁴² The same response can be given to Finnis.

⁴³ O'Donovan, Oliver, 'Reflections on Pluralism', *The Princeton Seminary Bulletin* 29 (2008): 54-66, p. 57.

⁴⁴ *Ibid.*, p. 58.

us to act.”⁴⁵ This is not true of Rawls’s account, however. Rawls accepts the importance of the connection between citizens’ fundamental identities and the ‘public disciplines’ that are required of them. His account of full justification is precisely aimed at showing how the values of public reason do connect with citizens’ ‘first-order reasons’.

Many of the objections to Rawlsian public reason liberalism made by, and on behalf of, religious citizens are incorrect. The key point is that Rawls does not want to stifle open and wide-ranging public deliberation, where citizens present and discuss all of their political reasons and arguments, contra Stout and Bretherton. Instead, his concern is that the final justification for laws be one that all citizens can accept. In other words, PJP must be fulfilled. The constraints that apply to citizens in their public political advocacy are seen as following from this, so are fairly limited. They boil down to the claim that the justificatory load in the political decision-making of each citizen must be borne by public reasons. Citizens must have public reasons for their own votes, and must present public reasons to others when seeking to persuade them to vote in a particular way. Beyond this, citizens can have, present, and debate a plethora of non-public (including religious) reasons. Further, citizens should recognise the limited constraints on their political conduct as justified from within their own worldview. All of this means that citizens share in a genuine common good, and enjoy civic friendship, when they abide by the ideal of public reason.

Similar replies can be given by all public reason liberals, although the details of their theories vary. Some versions are more restrictive than Rawls’s in various ways. For example, Audi does equate ‘public reasons’ with ‘secular reasons’.⁴⁶ Quong rejects the restriction on the scope of public reason, applying it to all laws, not merely those concerning constitutional essentials and matters of basic justice.⁴⁷ Charles Larmore argues that Rawls should have stuck to the ‘narrow view’ of

⁴⁵ Ibid., p. 57.

⁴⁶ See pp. 16-17.

⁴⁷ Quong, *Liberalism Without Perfection*, pp. 273-287.

public reason, where non-public reasons should never be presented in arguments made within the public political sphere.⁴⁸ Other versions of public reason liberalism are less restrictive than Rawls's. Both Jürgen Habermas and Cécile Laborde apply restrictions on reasons only to the deliberations and decisions of representatives, officials, and judges, within the formal institutional sphere.⁴⁹ Ordinary citizens face no restrictions on the reasons for their advocacy and votes. Habermas also argues that religious reasons presented in the informal sphere can be 'translated' into secular ones, which can then have force within the formal sphere. Further, citizens are obligated to engage with all the reasons that others present, including religious ones.⁵⁰ Despite these variations, all these theorists can draw on the Rawlsian responses above to refute the objections that they treat religious citizens unfairly, undermine their integrity, and stifle public deliberation.

This does not mean that there is no need to examine political theology. Indeed, Rawls's idea of 'full justification' confirms why it is important to consider the reasons that theology provides for Christians to accept, or reject, public reason liberalism. Patrick Neal has argued that as a practical demand upon religious citizens, Rawls's ideal of public reason is 'innocuous'.⁵¹ I think Neal overstates his case here, since he implies that Rawls imposes practically no restraints on religious reasons at all,⁵² which is not true. Religious reasons still cannot act as the ultimate justification for laws, or for citizens' advocacy or votes. Importantly, however, Neal is really arguing that public reason liberalism is innocuous for religious citizens *who accept it*. What really matters, therefore, is the prior question of whether they can in fact do so. One of the implicit tasks of this Part is

⁴⁸ Larmore, Charles, 'Public Reason', in Freeman, Samuel (ed.), *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003): 368-393, pp. 386-387. Boettcher, 'Strong Inclusionist Accounts', calls this 'exclusionism'.

⁴⁹ Habermas, 'Religion in the Public Square'; Laborde, 'Justificatory Secularism'. Both of these theorists equate public with secular reasons, however.

⁵⁰ In this regard, Habermas imposes *stricter* obligations on citizens than Rawls does. For criticism, see Lafont, Cristina, 'Religion and the Public Sphere: What are the Deliberative Obligations of Democratic Citizenship?', *Philosophy & Social Criticism* 35:1-2 (2009): 127-150.

⁵¹ Neal, Patrick, 'Is Public Reason Innocuous?', in Young, Shaun P. (ed.), *Reasonableness in Liberal Political Philosophy* (London: Routledge, 2009): 23-44.

⁵² Neal, 'Is Political Liberalism', p. 158, states this explicitly.

investigating whether Christians can give a political conception of justice the kind of ‘full justification’ that Rawls desires, and see the demands that public reason liberalism places upon them as part of their own belief-value set, rather than as imposed from outside.⁵³

I should also note that my argument in this section is not intended as an endorsement of public reason liberalism. The fact that Rawls’s view can be defended from certain religiously-motivated objections does not make it the correct theory of legitimacy. In fact, my discussion of ‘full justification’ again highlights one of its fundamental problems. Citizens who cannot complete a full justification of a reasonable political conception, or who reject public reason liberalism on the basis of their comprehensive doctrine, are deemed unreasonable, and excluded from the justificatory constituency. I objected to this feature of the view in Chapter 3. Some of the objections that I have dismissed in this section could be read as pointing toward this ‘reasonableness objection’. For example, while public reason liberalism does not contain a predetermined conception of the reasons that can be presented in public deliberation, as O’Donovan claims, it *does* contain a predetermined conception of the reasons that can ultimately justify laws, and excludes those who reject those reasons as unreasonable. *Prima facie*, political liberal views that allow for convergence justifications would appear more attractive to Rawls’s religious critics, even if those critics’ precise objections to Rawls’s theory often miss the mark.

2.2. Application to Justificatory Liberalism

Notably, the religiously-motivated objections I have considered focus on the implications of public reason liberalism – on the demands that it places on citizens with regard to their public deliberation and reason-giving. They therefore apply with even less force to justificatory liberalism, which does not endorse either the public-reason-giving or restraint requirements. There are two basic reasons for this. First, justificatory liberalism does not contain a distinction

⁵³ This is the central concern, with regard to Islam, of March, *Islam and Liberal Citizenship*.

between public and non-public reasons. Any reasons that are openly justified to citizens can justify laws to them, including comprehensive reasons. Laws can be justified via convergence as well as consensus. There thus cannot be a public-reason-giving requirement. Second, justificatory liberalism's primary concern is that enacted laws fulfil PJP, so are justified to every citizen. A concern with the reasons that citizens offer in their political deliberations is derivative from this. Justificatory liberalism would only endorse the restraint requirement, which says that citizens should not support laws for which their only reasons are comprehensive, if it increased the likelihood that enacted laws would fulfil PJP. But this is not the case. If laws are to be justified to every citizen on the basis of their own belief-value sets then citizens should be encouraged to present all of their reasons, and to persuasively engage with the beliefs and values of other citizens. Justificatory liberals thus endorse what James Boettcher calls 'strong inclusionism', according to which citizens are under no obligations of restraint with regard to the reasons that they present for laws.⁵⁴

Vallier helpfully distinguishes between 'reason-restraint' and 'proposal-restraint'.⁵⁵ Justificatory liberals reject reason-restraint, since it is rendered unnecessary by the legitimacy of convergence justifications. Justificatory liberals might nonetheless support proposal-restraint. Citizens might be obligated to not propose or support certain laws, in order to ensure that laws that are not publicly justified are not enacted. Citizens would be under such duties if it made it more likely that enacted laws fulfil PJP. There are good reasons to believe that any such duties are very minimal, however.⁵⁶

First, individual citizens will often not know whether a law is publicly justified, due to the limited information they have about others' reasons. Gaus and Vallier draw a comparison between public

⁵⁴ Boettcher, 'Strong Inclusionist Accounts'.

⁵⁵ Vallier, *Liberal Politics*, pp. 184-185.

⁵⁶ I argue for this more fully in my 'Mutual Respect, Public Justification, and Public Reason' (MPhil thesis, University of Oxford, 2012), pp. 44-51. See also Vallier, *Liberal Politics*, pp. 182-196.

justification and Friedrich Hayek's analysis of information within markets.⁵⁷ Individuals in an economy know their own plans and purposes, but not those of all others. They desire to produce and consume an optimal bundle of goods, given their preferences, but others' preferences partly determine what this optimal bundle is. Hayek argued that markets sum up vast amounts of information in a price signal, and individuals act on this signal, using their local and personal knowledge to satisfy their aims. The market works efficiently when each individual acts upon her local knowledge, so that the maximum possible level of information is fed into the system.

Similarly, the public justification of laws depends on the moderately idealised belief-value sets of every citizen. It is thus important that information about citizens' beliefs and values is broadcast through the polity. Proposal-restraint requirements are "apt to distort the dispersal of information," particularly since "the most reasonable voters may self-censor their views."⁵⁸ Since each citizen's system-wide knowledge is fallible, "the best political institutions draw directly on the firmest knowledge possessed by citizens – their own local and personal knowledge – and use that to generate publicly justified outcomes."⁵⁹ Citizens should therefore be allowed to support, and present reasons for, any laws that are openly justified to them. It is then the role of state institutions to ensure that only publicly justified laws are enacted.⁶⁰ If individuals pre-empt this by only supporting laws that they believe to be publicly justified then vital information will fail to enter the system, and outcomes could in fact be worse.

This argument applies even when citizens *know* that a law cannot be justified to some of their compatriots, so does not fulfil PJP. Citizens' continued support of such laws has benefits in terms

⁵⁷ Gaus and Vallier, 'Roles of Religious Conviction', pp. 67-70.

⁵⁸ Ibid., p. 69.

⁵⁹ Ibid., p. 69.

⁶⁰ This shift of focus onto *institutions* is an important implication of justificatory liberalism, as Vallier, *Liberal Politics*, pp. 181-196 makes clear. This opens up many important questions about institutional design and the responsibilities of officials, representatives, and judges. Unfortunately I lack space to discuss those questions here.

of dispersing information about their reasons and views, which could lead to a different, publicly justified, law being enacted. Such support also involves the risk that an illegitimate law might be enacted, however. Given this risk, perhaps citizens are under an obligation to not support laws that they know violate PJP.

This proposed obligation is still too strong, however, for three reasons. First, as Gaus argues, political action is not purely instrumental; it can have goals other than the enactment of the advocated policy.⁶¹ Support for a law often has expressive purposes, voicing discontent with a situation, or trying to provoke others to reconsider an issue. “The political arena, especially as it concerns voters, has far more tasks than simply turning voters’ judgments into laws: voters employ their political liberties to convey their concerns and aspirations.”⁶² These expressive purposes are a legitimate part of politics, so give us reason to reject proposal-restraint requirements that curtail them. Second, even if a citizen knows that some of her compatriots have decisive reason to reject a law, actively supporting and arguing for it might be an important part of her attempts to persuade others of its merits. Third, most citizens do not have a high level of influence over what laws are enacted within their polity.⁶³ They can often support laws without this causing those laws to be enacted, and thus without anyone being unjustifiably coerced.⁶⁴ Citizens can usually contribute information about their beliefs and values and fulfil expressive and persuasive purposes without this causing any of their compatriots to be wronged by being coerced in ways that are not justified to them.

We should thus further weaken the proposal-restraint requirement, to say that citizens should not support laws that they both know cannot be publicly justified *and* justifiably believe are likely

⁶¹ Gaus, ‘Place of Religious Belief’, pp. 28-29.

⁶² *Ibid.*, p. 29.

⁶³ I am assuming here that the polity is a large representative democracy.

⁶⁴ See Vallier, *Liberal Politics*, p. 186; North, ‘Public Reason’.

to be enacted if they support them.⁶⁵ This is the minimal duty of proposal-restraint that justificatory liberalism imposes upon citizens. If a citizen knows that some of her compatriots have decisive reason to reject a law and also believes that the law will likely be enacted if she supports it, then she should not do so. Doing so would make her morally responsible for the enactment of a law that violates PJP, and thus for her compatriots not being respected as free and equal. In practice, this duty will only affect particularly influential citizens, such as representatives and officials. In general, citizens are permitted to support any law, based on any of their reasons.

The vital wider point here is that the implications of political liberal theories for citizens are downstream from their account of legitimacy – i.e. from their interpretation of PJP.⁶⁶ The public-reason-giving and restraint requirements are part of (Rawlsian) public reason liberalism because they are seen as necessary for ensuring that enacted laws fulfil PJP. Justificatory liberalism's alternative interpretation of PJP removes the need for these citizenship duties. Citizens have a collective responsibility to ensure that enacted laws fulfil PJP. But this duty is best discharged through the design of political institutions and the conduct of representatives and officials. Ordinary citizens are not under duties of reason-restraint, and will usually not be constrained by the minimal duty of proposal-restraint. Justificatory liberalism is therefore not subject to any of the objections to public reason liberalism that I discussed above.

This does not necessarily make justificatory liberalism acceptable to Christians, however, since Christians might have reasons to reject PJP itself, or the justificatory liberal interpretation of it. To discover whether this is the case, we must examine political theology.

⁶⁵ This latter condition is vague, but suffices for my purposes here.

⁶⁶ This is noted by Neal, 'Is Political Liberalism?', p. 157, and throughout Vallier, *Liberal Politics*. Many critics of Rawls's views miss this. They argue that Rawls wrongly prevents open deliberation, but fail to see his views on deliberation as an implication of his view of legitimacy. Their objections thus miss the mark. A prime example of this is Jamal, 'Addressing Religious Plurality'.

3. Conflicts of Loyalty

In Section 2 I rebutted several objections to public reason liberalism, and explained why they do not apply to justificatory liberalism. Those objections do point to a set of difficult cases, however. ‘Conflicts of loyalty’ occur when a citizen believes that she has a religious obligation to support a law’s enactment, but knows that it does not fulfil PJP.⁶⁷ Political liberalism says that this law should not be enacted, because it is not justified to all. But the citizen’s religion mandates the law’s enactment. These cases are central to the challenge that religion poses to political liberalism of all sorts. As Boettcher admits, they are “a genuine moral-political problem.”⁶⁸

The precise nature of these conflicts differs between public reason and justificatory liberalism, and between different versions of each, due to the different obligations they impose upon citizens. Most obviously, a conflict with public reason liberalism occurs whenever a citizen believes that she has a religious obligation to support a law for which she has only non-public reasons. The law cannot be justified by public reasons, so she violates the public-reason-giving and restraint requirements if she supports it. But she believes that she has decisive religious reasons to support the law.

Such conflicts do not arise for public reason liberal theories like Habermas’s, which do not impose the public-reason-giving and restraint requirements upon ordinary citizens. But they can still arise for elected representatives and officials, who are under those obligations. Further, an ordinary citizen might believe that a law ought to be enacted despite there being no public reasons for it. While simply having this belief does not violate any duties, or impose any unjustified coercion upon others, Habermas might consider it a moral deficiency that she is willing for her compatriots

⁶⁷ For extended discussions of such cases, see Eberle, ‘Basic Human Worth’; Lott, Micah, ‘Restraint on Reasons and Reasons for Restraint: A Problem for Rawls’s Ideal of Public Reason’, *Pacific Philosophical Quarterly* 87 (2006): 75-95. See also McConnell, Michael W., ‘Believers as Equal Citizens’, in Rosenblum, Nancy L. (ed.), *Obligations of Citizenship and Demands of Faith: Religious Accommodation in Pluralist Democracies* (Princeton, N.J.: Princeton University Press, 2000): 90-110.

⁶⁸ Boettcher, ‘Public Reason and Religion’, p. 138.

to be coerced in this way.

Similar comments apply to justificatory liberalism. The minimal duty of proposal-restraint will bind for some influential citizens and officials, who thus face conflicts of loyalty whenever they have religious reasons to violate this obligation. More generally, a willingness for laws to be enacted that one's compatriots have decisive reasons to reject might be deserving of criticism, even if it does not violate any duties of reason- or proposal-restraint.

Believing that a law would be morally ideal or just is not in itself criticisable, of course. One does nothing wrong by merely *facing* a conflict of loyalty. After all, one might recognise that this ideal law ought not be enacted, since it violates PJP. What might be objectionable, however, is believing that the law should in fact be enacted, despite knowing that it is not justified to all. This might reflect a disrespectful attitude towards one's compatriots, since one is willing for them to be treated as less than free and equal, by facing coercion that is not justified to them.

Conflicts of loyalty do not only arise for religious citizens. Any citizen who endorses a comprehensive doctrine or theory of ideal justice can face cases where they believe that morality or justice mandates a law that does not fulfil PJP. All citizens can face cases where their ideal view of justice or the good is ruled out by political liberalism's legitimacy requirement.

As many have noted, however, conflicts of loyalty seem especially likely, and especially troubling, for religious citizens, because of the nature of religious obligation. Eberle writes that "many theists will regard their obligation to obey God as far and away their most important obligation, such that in case of conflict between that obligation and some other... they must opt in favour of obedience to God."⁶⁹ Religious obligations are often *overriding*. They also are often *totalising*.

⁶⁹ Eberle, *Religious Conviction*, p. 145.

Many theists take their “obligation to obey God to extend to whatever they do, wherever they are, and in whatever institutional setting they find themselves.”⁷⁰ Religious obligation’s totalising nature makes conflicts of loyalty a distinct possibility. Its usually overriding nature means that citizens are particularly likely to believe that they ought to act against political liberalism when the conflict involves religion. Religious beliefs are the paradigmatic example of fundamental loyalties that are experienced “as creating binding and nonnegotiable duties.”⁷¹

As an example, consider the case of Matt, who believes on the basis of his Christian faith that embryos have the same moral status as adult humans, so their destruction is murder.⁷² Matt therefore believes that there should be a law banning embryonic stem-cell research. Assume that PJP is not fulfilled here, according to either the public reason or justificatory liberal interpretations. There are no public reasons in favour of this law, and some citizens have decisive reasons to reject it.⁷³ Matt therefore faces a conflict of loyalty. According to public reason liberalism, he acts wrongly if he advocates or votes for the law, since he can provide no public reasons in its favour. According to justificatory liberalism, support for the law is not itself wrong, but Matt might be criticisable if he believes that the law should in fact be enacted within his polity. His prioritising of his religiously-grounded obligation over PJP seems to display an attitude of disrespect toward his compatriots, since it means that he is willing for them to be treated as less than free and equal. Matt could also be violating the minimal duty of proposal-restraint, if he is a public official or representative.

Both public reason and justificatory liberals need to explain how they respond to conflicts of loyalty. They need an account of what citizens facing these conflicts should do, and how they

⁷⁰ Ibid., p. 145.

⁷¹ Perry, John, *The Pretenses of Loyalty: Locke, Liberal Theory, & American Political Theology* (Oxford: Oxford University Press, 2011), p. 30.

⁷² For an argument to this effect, see <http://www.gotquestions.org/Christian-stem-cell-research.html>.

⁷³ I am not endorsing this assumption, of course.

should be viewed if they violate this prescription. The theories' acceptability to citizens who face conflicts of loyalty, including Christian citizens, will be affected by how they respond to such cases.

Framing this issue in terms of 'conflicts of loyalty' assumes that Christians can have *some* loyalty to political liberalism. If Christians have strong theological reasons to reject political liberalism outright then they would face no conflicts of loyalty at all. Apparent conflicts of loyalty would be signs of the deeper incompatibility between Christianity and political liberalism. Chapter 6 considers whether this is the case with regard to justificatory liberalism, since that is the view that I defend. I argue that despite certain initial appearances, there is no a deep incompatibility between justificatory liberalism and Christianity.

Conflicts of loyalty would also not arise if Christians have conclusive reasons to *accept* political liberalism, including its implications for both the legitimacy of laws and their own conduct. If Christians have *some* theological reasons to accept political liberalism then conflicts of loyalty are not between the internal demands of Christianity and the external demands of liberalism, but occur within Christianity itself. A particular law is believed to be morally required on religious grounds, but Christians also accept that laws that cannot be justified to all should not be enacted. If the theological arguments for political liberalism are *decisive*, then in such cases Christian citizens should conclude that the law should not be enacted, and should obey the duties imposed by political liberalism. In John Perry's terms, their loyalties will have been 'harmonised'.⁷⁴

Perry argues that Locke's task in his *Letter Concerning Toleration* is to achieve a harmonisation of loyalties.⁷⁵ Locke contends that Christianity *requires* toleration, because one cannot coerce people into faith or salvation. Loyalty to God therefore involves endorsing toleration, and accepting that

⁷⁴ Perry, *Pretenses of Loyalty*, pp. 49-69.

⁷⁵ *Ibid.*, Chapters 3-5, examine Locke's views in detail.

the government should only pursue secular ends. “Locke’s political philosophy seeks to arrange loyalties in such a way that the good Christian and good citizen will always follow the same course.”⁷⁶ This harmonisation of loyalties, using a theological argument, is a prerequisite of Christians supporting toleration.⁷⁷ The same is true for political liberalism. If this theory of legitimacy and the demands that it places upon citizens are decisively supported by Christianity, then Christian citizens will not face conflicts of loyalty. Instead, their loyalty to God will undergird a loyalty to political liberalism.

Existing arguments to this effect in the literature all concern public reason liberalism. The success of these arguments would be problematic for my account, since I have defended justificatory liberalism over public reason liberalism. Chapters 7 and 8 examine the two strongest such arguments, and show why they fail.

Chapter 8 then seeks to show that Christians have *some* reason to accept political liberalism. I show that there are various theological considerations in favour of *liberalism*, and argue that while they do not give decisive support for *political* liberalism, or justificatory liberalism in particular, they do show that Christians can accept that theory of legitimacy.

Since the theological arguments for political liberalism are not decisive, however, conflicts of loyalty can arise. Christians can have loyalty to political liberalism, but will also face situations where that loyalty clashes with their religious obligations, since the two are not fully harmonised. Chapter 9 finally considers these cases directly, in order to ascertain how justificatory liberals should respond to them. Finding a satisfactory response to such cases is important both for the

⁷⁶ Ibid., p. 68.

⁷⁷ Perry considers various attempts to harmonise citizens’ religious and liberal loyalties, and argues that none are fully successful. In more recent work, he claims that this highlights the need to include *rhetoric* as a central aspect of democratic theory. See Perry, John, ‘Arguing Out of Bounds: Christian Eloquence and the End of Johannine Liberalism’, in D’Costa, Gavin, Malcolm Evans, Tariq Modood, and Julian Rivers (eds.), *Religion in a Liberal State* (Cambridge: Cambridge University Press, 2013): 219-243.

plausibility of justificatory liberalism as a theory of legitimacy and for its acceptability to Christian citizens.⁷⁸

By the end of this Part I will therefore have defended four claims:

- Christianity is not incompatible with justificatory liberalism (Chapter 6).
- Christianity does not decisively support public reason liberalism (Chapter 7 and Chapter 8, Section 1).
- Christians can accept political liberalism – there are theological considerations in its favour (Chapter 8). While this applies to both public reason and justificatory liberalism, the latter is the philosophically superior theory, as I argued in Part I.
- Justificatory liberalism has a plausible response to conflicts of loyalty, which should increase its attraction to Christian citizens (Chapter 9).

⁷⁸ And to other citizens who face conflicts of loyalty.

Chapter 6: Deep Tensions?

In this chapter I explore the possibility that there are deep tensions between Christian theology and political liberalism, particularly justificatory liberalism. I argued in Chapter 5 that several common objections to political liberalism's implications for religious citizens fail. Nevertheless, the Christian worldview might be incompatible with justificatory liberalism at a more fundamental level. The justificatory liberal understandings of politics, the individual, or morality might conflict with those of political theology. Even if there is some overlap between Christian political theology and justificatory liberalism, their basic anthropology or teleology might be incompatible.

In exploring this issue, I will mainly focus on the work of prominent contemporary theologian Oliver O'Donovan. O'Donovan is widely regarded as a central figure in the revival of political theology in recent years.¹ He has also developed a sophisticated account of political authority, which is explicitly intended as an alternative to certain forms of modern liberalism.²

Before turning to O'Donovan, I consider a story from the book of Judges, the seventh book of the Old Testament, since several objections to justificatory liberalism arise from its narrative. These have clear similarities to the right reasons view objections I examined in Chapter 4, but are worth discussing on their own terms, since they arise from a specifically theological basis.

1. The Judges Objections

Judges repeatedly notes that "everyone did what was right in his own eyes."³ This is seen as

¹ As noted by Novak, David, 'Oliver O'Donovan's Critique of Autonomy', *Political Theology* 9:3 (2008): 327-338, p. 327; Schweiker, William, 'Freedom and Authority in Political Theology: A Response to Oliver O'Donovan's The Desire of Nations', *Scottish Journal of Theology* 54:1 (2001): 110-126, p. 110.

² O'Donovan, Oliver, *The Desire of the Nations: Rediscovering the Roots of Political Theology* (Cambridge: Cambridge University Press, 1996), pp. 243-284.

³ Judges 17:6; 21:25. Unless otherwise indicated, all Scripture quotations are from ESV® Bible (The Holy Bible, English Standard Version®), copyright © 2001 by Crossway, a publishing ministry of Good News Publishers.

deplorable, and a sign of the social and spiritual disarray within Israel. Each person deciding for herself what is right and wrong, and simply acting on her own understanding of morality, is something that the Bible sees very unfavourably. Indeed, D.A. Carson argues that the Christian understanding of “the fundamental definition of evil” is “human beings, made in the image of God, denying the rights of their Maker to establish the proper course of their lives and their living, denying, if possible, his very existence, and seeking to establish a moral order on the basis of such a denial.”⁴

Judges illustrates this, in chapters 17-21, with two shocking stories, showing Israel’s disastrous religious and moral situation. In the second story,⁵ a Levite man is passing through Gibeah, a Benjaminite town.⁶ A stranger offers him a bed for the night. A large group of men arrive at the stranger’s house and demand that the Levite be released to them, so that they can rape him. The stranger pleads with the gang, offering them his daughter instead. Eventually, the Levite hands his concubine over to the men. They rape and mistreat her all night, and she dies from the injuries that she sustains. In the morning, the Levite takes her body back to his own town, where he cuts it into twelve pieces and sends one piece to each of the twelve tribes of Israel, demanding that they consider and act on what has occurred. In response, 400,000 men of Israel gather and go to war against the Benjaminites, decimating that tribe. As a final act, the people of Israel permit the few surviving Benjaminite men to kidnap women from other Israelite tribes, in order to start new families, so that the tribe is not completely eradicated. After this sordid tale, in which every actor has been portrayed in a very negative light, the writer of Judges states his verdict in the final words of the book: “In those days there was no king in Israel. Everyone did what was right in his own eyes.”⁷ This horrifying story is intended as an illustration of what occurs when everyone is permitted to act, both individually and in concert, on their own desires, lusts, and beliefs about

⁴ Carson, D.A., *The Gagging of God: Christianity Confronts Pluralism* (Leicester: Apollos, 1996), p. 425.

⁵ Judges 19-21.

⁶ The Levites and Benjaminites were two of Israel’s twelve tribes.

⁷ Judges 21:25.

what is morally appropriate. In three short chapters we encounter adultery,⁸ cowardice,⁹ gang rape,¹⁰ a war that verges on genocide,¹¹ and people trafficking.¹²

The writer of Judges explicitly links this situation of moral and spiritual anarchy to the lack of political authority. The fact that “everyone did what was right in his own eyes” is directly related to the fact that “there was no king in Israel.”¹³ The writer sees a political ruler, who could enact and enforce laws applying to everyone, establishing public justice, as the solution to Israel’s sorry state. A king would ensure that people were held to uniform social standards, rather than simply acting on their personal moral judgments. Judges itself contains glimpses of the positive effects of this, with leaders periodically rising up and ruling¹⁴ the nation. But the writer seems to believe that only an established political order could provide a long-term solution for the nation’s social, spiritual, and moral problems. In practice, the performance of Israel’s kings in the following centuries was less laudable than this writer would have hoped.¹⁵ Nonetheless, an important Biblical principle is established here. Political authority is a good thing, while a situation where people simply act based on their own desires and moral beliefs is not.¹⁶

This principle is reaffirmed in the New Testament, particularly by Saint Paul. Romans 13:1-7 speaks favourably of political authorities, and exhorts Christians to submit to rulers. Earlier, in Romans 1:18-32, Paul argues that people abandoning a sense of accountability to God, and to the moral order that he has established, and instead simply acting on their own passions and beliefs,

⁸ Judges 19:2.

⁹ Judges 19:24.

¹⁰ Judges 19:25.

¹¹ Judges 20.

¹² Judges 21:16-23.

¹³ Judges 21:25. See also 17:6; 18:1; 19:1.

¹⁴ Or “judging” – hence the name of the book.

¹⁵ See 1 and 2 Kings. Many of the Old Testament’s prophetic books contain indictments of the kings for moral and spiritual apostasy.

¹⁶ To be clear, I am using the story in Judges to illustrate this general principle, rather than claiming to engage in detailed exegesis or Biblical studies. The idea that governments are necessary to restrain evil and prevent wrongs is central to Christian political thought, as the rest of this chapter and Chapter 8 demonstrate.

is itself a sign of God's judgment. God 'gives people over' to their dishonourable desires, allowing them to face the pernicious consequences of refusing to comply with his moral requirements.

This is not to imply that the Bible, or Christianity, advocates the coercive enforcement of all of morality's dictates by political authorities; far from it. As I will show in Chapter 8, there is a long-established tradition of Christian arguments for limited government. Rulers have a limited domain of competence and authority, and should not endeavour to control all of their subjects' lives, or legally enforce all of Christian morality. Carson comments that "in a fallen world there may be many reasons for fostering and preserving a form of government that allows the articulation of ideas we hold to be wrong." Christians should "urge" their worldview on the world, rather than "impose" them.¹⁷

1.1. "Everyone Did What Was Right in Their Own Eyes"

The principles we have found in Judges and Romans do suggest an objection to the justificatory liberal understanding of legitimacy, however.¹⁸ Justificatory liberalism seems to condone a situation where everyone does what is right in their own eyes, which is precisely what Judges condemns. If so, Christians have strong reasons to reject justificatory liberalism in favour of a right reasons view.

This impression is mistaken, however. The moral foundation of justificatory liberalism is the idea that individuals have equal moral authority, so cannot be permissibly coerced unless that coercion is openly justified to them. Individuals cannot permissibly be forced to comply with others' understandings of morality's dictates unless this requirement is satisfied. Even if some (or even a majority of) citizens believe that a law is required by morality, it must not be enacted unless it is openly justified to every citizen to whom it will apply – unless every citizen has sufficient reason

¹⁷ Carson, *Gagging of God*, p. 420.

¹⁸ And also, relatedly, to contractarian and contractualist understandings of morality more generally.

to prefer it to having no law in this area. Violating this Public Justification Principle involves denying the moral freedom and equality of those who lack such reason. Those who impose the law in effect claim that everyone should be forced to follow *their* understanding of morality, even those who (reasonably) reject it.

We should distinguish two interpretations of this last assertion. On one reading, one denies others' moral freedom and equality by claiming that one's understanding of morality is normative for others – that they ought to follow it, despite rejecting it. On a second, weaker, reading, the problem is not with *believing* that others ought to follow one's moral views, but with *forcing* them to do so, through the enactment of coercive laws. On this reading, there is nothing wrong with believing that others *should* comply with the moral standard one endorses, or even with exhorting them to do so. It is the *coercive enforcement* that is impermissible. Justificatory liberalism, on my account, only makes this latter, weaker, claim.¹⁹

Even on this weaker reading, however, justificatory liberalism might be in tension with the Bible's viewpoint. Justificatory liberalism still seems to endorse a situation where everyone does what is right in their own eyes. Individual consciences are given pride of place; all coercive violations of them are anathema. Authoritative laws can only be permissibly enacted when every individual endorses them. Coercion is only permitted when all can recognise it as right – when it coheres with what is right in their own eyes. Rather than preventing the moral anarchy that Judges laments, justificatory liberalism appears to facilitate it, by forbidding any coercion that cannot be accepted by all.

¹⁹ As I discussed in Chapter 2 (pp. 66-67), Gaus makes the stronger claim that only moral demands arising from rules of social morality that are justified to an individual may be placed upon her. Whereas my view only concerns coercion, particularly coercion through laws. Gaus's wider view could be incompatible with Christian theology, even if the justificatory liberal view of legitimate coercion is not. I have no opinion on this, but Gaus would presumably deny it.

On one level, this objection is clearly mistaken. Justificatory liberalism is not an anarchist doctrine, or a theory of minimal government.²⁰ This is because of its account of what it means for a law to be justified to an individual. They need not believe that it is the best possible law, or the one that best embodies morality's demands. Instead, the need to abandon what Gaus has recently called the 'personal optimising perspective'²¹ is built into the theory. A law is justified to an individual when it is, according to her own evaluative standards, better than having no law in this policy area. The individual's judgment here will take into account the advantages of the social coordination and stable expectations that the law secures. The law might not be her most-preferred law, but if she prefers it to not having any law then it is justified to her, since by her own lights it is better to face this coercion than not to. Although she would prefer a different law, given reasonable pluralism it is unreasonable to insist on that particular law being enacted. Any law that she prefers to nothing, such that she prefers to be coerced by it than not to be coerced at all, is within her eligible set – the set of laws that is justified to her.²² The socially eligible set, the set of publicly justified laws, is then formed by the overlap of these individual eligible sets.

Justificatory liberalism thus does not say that each should simply do what is right in their own eyes. Indeed, it shares Judges' concerns about the damaging effect of such a scenario. Justificatory liberals recognise the importance of political authority for securing many moral and social goods. They merely require that the laws enacted by this political authority be justified to every citizen. This is not licence for everyone to do what is right in their own eyes. It merely states what is required if we are to avoid moral authoritarianism in political life. For individuals to be respected as free and equal, coercion must be justified to them, in the sense that I have specified.

²⁰ As I argued in Chapter 2.

²¹ Gaus, 'Private and Public Conscience', pp. 14-16.

²² Laws thus do not have to be such that no-one has any reasonable objection to them. I might have objections to a law, since it is not my most-favoured law, without this ruling it out of my eligible set. Some mistakenly take political liberalism to hold that there must be no reasonable objections to laws. For example, Shadd, 'A Better Framework'. Shadd rightly argues that such a standard would have anarchistic implications (pp. 61-94).

1.2. Moral Realism

A different version of the 'Judges objection' focuses on the fact that justificatory liberalism views the legitimacy of laws as dependent on the beliefs and values, the evaluative standards, of all citizens within a polity. This might seem like a denial of moral realism – a denial of the fact that there exists an objective moral order, imposing moral standards and requirements upon everyone, whatever their beliefs and values. Christians believe that such objective moral standards exist, with God determining their content. If God declares that ϕ -ing is impermissible, then ϕ -ing is impermissible, even if Alf's evaluative standards give him no reason to believe this. Alf does wrong by ϕ -ing even if he believes, based on his own belief-value set, that there is nothing wrong with ϕ -ing. Yet justificatory liberalism claims that Alf must not be prevented from ϕ -ing, if a law prohibiting ϕ -ing would not be justified to him. The major fault with this kind of liberal theory, from a (Judaean-)Christian perspective, is that it does not recognise that we are answerable to God for our actions.²³ Our deepest value should not be living as we choose, but living in accordance with God's will and the moral order that he has established.

Justificatory liberals need not reject either moral realism or our answerability to God, however.²⁴ It might be true that ϕ -ing is impermissible, and that Alf acts wrongly when he ϕ s, failing to submit to God's law and sinning against his Maker. Justificatory liberalism merely denies the further claim that this makes it permissible for other humans to *coercively prevent* Alf from ϕ -ing, if this coercion is not openly justified to him. We should note that a law against ϕ -ing might be justified to Alf; he might have sufficient reason to prefer this law to having no law on ϕ -type conduct at all. If not, since Alf believes that all ϕ -ing is permissible and should be unregulated by the state, then we cannot enact a law prohibiting ϕ -ing. This does not mean that ϕ -ing is in fact morally permissible, however, or that Alf does no wrong by ϕ -ing. It merely means that this true moral requirement must not be coercively imposed upon Alf, since he lacks reason, from his own

²³ Novak, 'Oliver O'Donovan's Critique', p. 331.

²⁴ Contra Shadd, 'A Better Framework'. (For example, p. 267, fn. 539.)

belief-value set, to accept it. Such coercion would be the imposition of others' beliefs about the demands of morality upon Alf, despite him (reasonably) rejecting their interpretation of morality's demands. To impose this law would be to deny Alf's status as a free and equal moral person – an equally authoritative interpreter of the demands of morality. Even though Alf is wrong, and those who oppose ϕ -ing are right, about what morality objectively requires, from the first-person perspective of those involved in this dispute the law coercively imposes the views of some citizens on others who lack reason to accept those views. It is this which justificatory liberals considers objectionably authoritarian.

Justificatory liberalism takes no sides on who knows the truth,²⁵ and does not deny that there is an objective moral order. It is not anti-realist. It also does not affirm what Carson calls 'philosophical pluralism', the idea "that any notion that a particular ideological or religious claim is intrinsically superior to another is necessarily wrong" and thus "no religion has the right to pronounce itself right or true, and the others false, or even... relatively inferior."²⁶ Justificatory liberalism simply denies that knowing the truth permits one to coerce those who reject one's claims and lack (sufficient) reason to accept them.

Some Christians would still object, however.²⁷ If they are certain, based on Christian revelation, that a particular form of conduct is morally prohibited, and further have good reason (as they see it) to believe that this moral requirement should be enforced through law, then why should the fact that some consider it unjustified prevent this law from being imposed?²⁸ Ultimately, this is a

²⁵ Although individual justificatory liberals will clearly have views on this. If I am right that a Christian can be a justificatory liberal, then such an individual will clearly think that Christianity contains much moral truth.

²⁶ Carson, *Gagging of God*, p. 19.

²⁷ Carson, for example, seems willing to impose some religiously-grounded morality, through deliberative democratic procedures. He wrestles with the tension between the certainty of Christian truth and the empirical fact of pluralism in *ibid.*, pp. 417-429.

²⁸ Some Christians would deny that Christian believing can ever be 'certain' in the way I have assumed. See Beckley's explanation of Gustafson's view: Beckley, Harlan R., 'A Christian Affirmation of Rawls's Idea of Justice as Fairness: Part I', *The Journal of Religious Ethics* 13:2 (1985): 210-242, pp. 217-218.

rejection of the justificatory liberal understanding of humans' moral freedom and equality. For the justificatory liberal, we are all equally authoritative interpreters of the demands of morality, and no-one's interpretation should be coercively imposed on another without it being openly justified to them – even if the coercer has a high degree of confidence in their view. The Christian I am imagining rejects this, on the grounds that God's truth applies to all even if they lack internalist reasons for it. God being the source of moral truth stands opposed to the moral authority that justificatory liberalism assigns to individuals.

In response, we must reemphasise that justificatory liberalism does not deny that God ultimately determines what is morally right and wrong, or that people can act wrongly even when they lack internalist reasons to recognise this wrong. It does not deny that some individuals have true moral beliefs, while others have false ones. Further, given that God is not our moral equal, if he himself decided to coerce us then he would not need to openly justify this to us. The situation we face, however, is one of reasonable disagreement over what the demands of morality, and of God, are. And we, as humans, are morally free and equal. The imposition of Christian morality through law is not the imposition of God's truth by God, but its imposition by humans upon moral equals who reasonably reject this interpretation of morality. It is this that is objectionable, if it is not justified to the coerced.

This raises the crucial question of whether Christians can accept this understanding of moral freedom and equality. This is the subject of Section 3. Before turning to that issue, however, I consider a slightly different question: whether the Christian understanding of the origins and nature of political authority conflicts with justificatory liberalism.

2. The Origins of Political Authority

2.1. Providentialism Against Political Liberalism

A second potential deep tension between political liberalism and political theology concerns their accounts of the origins of political authority, or the way in which governments are authorised to govern. Political liberals seem committed to a contractualist doctrine of the creation of political authority. Political rights originally rest in individuals, who agree together to create and authorise a government, which then holds political authority. Locke famously argued that the executive power of the law of nature was held by individuals within the state of nature. Individuals entrust this power to the community through the social contract.²⁹ Individuals are the ultimate source of political authority; governments have authority only due to their citizens' consent. Political liberalism seems to follow this Enlightenment idea. The claim that all coercive acts of government must be justified to every citizen implies that citizens are the ultimate authorities.³⁰

Many Christian theologians reject this, and endorse a different, providentialist, account of political authorisation, according to which political authority is a gift of God. This has led some to strongly oppose liberalism. Liberalism is based "upon an illusory human subject who constructs order and denies transcendence,"³¹ on "the notion of the abstract will, exercising choice prior to all reason and order, from whose *fiat lux* spring society, morality and rationality itself."³² Christians believe that God creates all order and meaning, so reject the constructivist idea that the moral and social "order had to be posited,... created by political will or by arbitrary social self-determination."³³ Social order is "a gift to be received and appreciated,"³⁴ whereas liberals see it

²⁹ Locke, *Two Treatises*, Second Treatise, Chapters II, VII (especially paragraphs 7-12, 87-89).

³⁰ According to Shadd, a fundamental source of political liberalism's problems is its commitment to 'maximal popular sovereignty'. See his 'A Better Framework', pp. 291, 328-348.

³¹ Insole, Christopher J., *The Politics of Human Frailty: A Theological Defence of Political Liberalism* (London: SCM Press, 2004), p. 1.

³² O'Donovan, *Desire of the Nations*, p. 274. See also O'Donovan, Oliver, *The Ways of Judgment* (Grand Rapids, Mich.: W.B. Eerdmans, 2005), p. 297.

³³ O'Donovan, *Desire of the Nations*, p. 279.

³⁴ *Ibid.*, p. 279.

as arising from the unconstrained choices of atomistic individuals, so deny “any element of transcendence or givenness when framing human laws.”³⁵

O'Donovan explicitly rejects the idea that politics is fundamentally based on reciprocal relationships of self-government, instead emphasising “the non-reciprocal relation of subjects to rulers.”³⁶ This follows the command in Romans 13:1 that individuals “be subject to the governing authorities.”³⁷ Non-reciprocal relationships are given by God, in order that all may flourish. Human flourishing requires community, and in particular a community that realises a common good. This is only possible if there is a political authority, able to judge wrongs and defend the common good from threats.³⁸ God has therefore authorised rulers, to fulfil this end. As Saint Paul puts it, the authorities “that exist have been instituted by God.”³⁹ Paul conceives of rulers as ministers (or servants) of God, who carry out God's wrath on wrongdoers.⁴⁰ Rulers are commissioned by God to judge right from wrong and to punish wrongdoers, thus establishing peace and justice. Crucially, we do not have a choice about whether to live under this kind of political authority. Instead, O'Donovan argues, our situation in the face of political authority is that of finding ourselves under an obligation to do something.⁴¹ We are obligated to obey political rulers as part of our obedience to God.

This does not mean that individual citizens have no role beyond passively accepting their

³⁵ Insole, *Politics of Human Frailty*, p. 71. Insole himself defends liberalism against these assertions, which he attributes to theologians such as O'Donovan, Robert Song, John Milbank, and Robert Kraynak.

³⁶ O'Donovan, *Ways of Judgment*, p. 127.

³⁷ See also 1 Peter 2:13-14: “Be subject for the Lord's sake to every human institution, whether it be to the emperor as supreme, or to governors as sent by him to punish those who do evil and to praise those who do good.”

³⁸ Shadd, ‘A Better Framework’, pp. 204-252, also emphasises the idea that government is centrally concerned with preventing wrongs. Coercive political power is necessary ‘by reason of sin’ (pp. 174-177). See also Wolterstorff, Nicholas, *The Mighty and The Almighty: An Essay in Political Theology* (Cambridge: Cambridge University Press, 2012), pp. 83-104.

³⁹ Romans 13:1.

⁴⁰ Romans 13:4. Again, see also 1 Peter 2:13-14.

⁴¹ O'Donovan, *Ways of Judgment*, p. 129. O'Donovan comments that this “is simply a special case of a situation deeply woven into our experience as human agents.”

obligation to obey. First, although authority is a providential gift, humans design specific political forms and choose persons to occupy positions. The ruler is the representative of the people, in this sense. As O'Donovan explains, rulers being 'ministers of God' "does not imply a *special* intervention of the divine to appoint a particular ruler, but a *general* provision of non-reciprocal relations under which we may flourish."⁴² Political authority is still a "human institution," in Saint Peter's words.⁴³ Societies are gifted by God with the power to establish such an institution, and citizens can play a role in deciding who holds authority. Providentialism is thus not anti-democratic. Indeed, many theologians have presented theological arguments for democracy.⁴⁴

Second, citizens should *recognise* the political authority.⁴⁵ Collectively, citizens 'see' themselves in their representative, recognising that their rulers act to protect the common good in which they all participate. Individually, citizens should recognise who bears political authority, sustain that bearer in place (for example through paying taxes⁴⁶), and discern the demands of that authority from moment to moment, working out whether the ruler's commands fall within their sphere of God-given authority, and thus oblige obedience.

O'Donovan contrasts obligation with compulsion: "to do something one is obliged to... is to do it freely, not under compulsion."⁴⁷ The obligation is "laid upon us by the authority,"⁴⁸ so we do not act 'spontaneously', entirely of our own will. Nonetheless, it should be a free action, and "to

⁴² Ibid., p. 129. Wolterstorff, *Mighty and The Almighty*, p. 95, also affirms this 'non-particularist' interpretation.

⁴³ 1 Peter 2:13.

⁴⁴ See Fergusson, David, *Church, State and Civil Society* (Cambridge: Cambridge University Press, 2004), p. 36; Chaplin, Jonathan, 'Christian Justifications for Democracy', *Ethics in Brief* 11:3 (2006); Wolterstorff, *Understanding Liberal Democracy*; Wolterstorff, *Mighty and The Almighty*, especially pp. 148-156. O'Donovan also gives a modest defence of democracy, while rejecting several common arguments for it (*Ways of Judgment*, pp. 171-178).

⁴⁵ O'Donovan, *Ways of Judgment*, pp. 135-137.

⁴⁶ Romans 13:6.

⁴⁷ O'Donovan, *Ways of Judgment*, pp. 129-130.

⁴⁸ Ibid., p. 131.

oblige us freely to do something, authority must present us with a reason for doing it.”⁴⁹ Although citizens are under an obligation they did not spontaneously choose, their obedient actions should still be free, which requires that they recognise that there are good reasons for them. This does not mean that governments must give conspicuous and clear reasons for every one of their dictates, however. A general recognition that the government serves the common good is sufficient for citizens to act freely in fulfilling their political obligations. This might mean that citizens can rightfully disobey when they are certain that their government has stepped outside its God-given remit, or is acting contrary to justice and the common good.⁵⁰ “it is always the subject’s business to be clear in his or her own mind that this or that command actually *requires* obedience.”⁵¹ But this does not mean that they are only obligated to obey laws when they understand the reasons for, and rightness of, the specific command. Individuals should obey their rulers even when this is not the case, in recognition of their God-given authority.

Third, O’Donovan notes that prior to these political obligations individuals have obligations to one another as members of society, which include seeking to understand and safeguard the common good. He calls this “the duty of public candour.”⁵² Fulfilling this duty requires the appraisal of the conduct of political authorities, and personal conduct that seeks to secure the common good within other spheres of life, such as one’s commercial and social engagements. This is “the pre-political social virtue on which any good political community is founded.”⁵³

Not all political theologians accept O’Donovan’s precise claims. But many endorse his general picture of the origins of political authority and political obligation. As Jonathan Chaplin writes, “the generative source of political authority is divine action, and this excludes the idea that

⁴⁹ Ibid., p. 130.

⁵⁰ Wolterstorff, *Mighty and The Almighty*, pp. 83-104, emphasises that government has a limited sphere of God-given authority. Directives falling outside this sphere do not generate obligations to obey.

⁵¹ O’Donovan, *Ways of Judgment*, p. 136.

⁵² Ibid., p. 138.

⁵³ Ibid., p. 138.

political representation amounts to any kind of popular authorization of the office of government itself.”⁵⁴ While popular authorisation of particular officeholders is necessary, political authority itself does not derive from consent or contract. It is a God-given gift for the promotion and protection of society’s common good. Consent and human authorisation plays a role, but at the highest level it is divine authorisation that determines the existence and role of government. Fergusson makes the same argument, writing that “while the people can acknowledge and even control the legitimate use of political power, they neither create it nor alter its function. Its creation and purpose are already established by God.”⁵⁵ This view of the origins and function of political authority is not authoritarian and does not give governments unlimited power. But the limits on governments’ power are set by God, not by the free consent of citizens. This seems to conflict with the liberal, voluntaristic, theory of political authority.

2.2. Natural Duty Theory and Providentialism

Providentialism has clear similarities to one theory of political authority and political obligation that is popular with modern liberals, however – the natural duty theory.⁵⁶ This account centres on individuals’ natural duty to act justly toward one another. Others have claims of justice against us, such as to the protection of their basic rights. The duties correlative to these rights can only (or best) be fulfilled through the establishment of political institutions, with the authority to issue binding directives. We need a public system of rules in order to protect basic rights and fulfil our natural duties of justice. Thus, in Rawls’s words, we have a duty “to support and to comply with

⁵⁴ Chaplin, Jonathan, ‘Representing a People: Oliver O’Donovan on Democracy and Tradition’, *Political Theology* 9:3 (2008): 295-307, p. 297. This appears to rule out ‘Christian anarchism’. Perhaps some Christian anarchists endorse the office of government, but hold that it should be shared among the community rather than concentrated in the state. But O’Donovan and Chaplin might say that Christian anarchists simply have their theology wrong, since we are theologically mandated to live under centralised governments.

⁵⁵ Fergusson, *Church, State*, p. 36. See also Barth, Karl, ‘The Christian Community and the Civil Community’, in Green, Clifford (ed.), *Karl Barth: Theologian of Freedom* (Minneapolis, Miss.: Fortress Press, 1991): 265-296, pp. 269-272. Barth argues that the state is an “instrument of divine grace” (p. 271) for preventing sin and stopping the worst from happening.

⁵⁶ For versions of this theory, see Waldron, Jeremy, ‘Special Ties and Natural Duties’, *Philosophy & Public Affairs* 22:1 (1993): 3-30; Wellman, ‘Liberalism, Samaritanism’.

just institutions that exist and apply to us.”⁵⁷ We have obligations to obey the political authority that ‘applies to us’, whether we consent(ed) to it or not.⁵⁸ The ‘generative source’ of political authority, to use Chaplin’s phrase, is its necessity if we are to fulfil our natural duties of justice, rather than any act of consent.

The natural duty theory coheres with much of O’Donovan’s account. Indeed, for O’Donovan, “authority lays its obligation on us by what it can effectively achieve for justice. If it can achieve nothing, it lays no obligation on us, and therefore is not an authority.”⁵⁹ One interpretation of O’Donovan’s comments about our pre-political obligation to safeguard the conditions of the common good is that the establishment of political authority is necessary in order for us to fulfil this obligation. Our obligations to obey political authority thus *derive* from our prior obligation to one another to secure the conditions of the common good.⁶⁰

This similarity between providentialist and natural duty theories can also be seen in Bernd Wannenwetsch’s theological account. He notes that Romans 13:5 states that individuals should submit to authorities “as a matter of conscience,” or “because of conscience,” and argues that this “presupposes inner and free consent as a matter of conviction not force.”⁶¹ Citizens’ obedience is thus related to consent. But their consent does not *generate* political authority. Instead, it is a *recognition* that political authority is God-given. They *ought* to consent, out of obedience to God.⁶² Submission to rulers is thus submission to God’s ordinance of political authority.⁶³ Wannenwetsch argues that this is very different to Hobbes’s and Rousseau’s view

⁵⁷ Rawls, *Theory of Justice*, p. 99.

⁵⁸ A common objection to the natural duty view asks how we determine what authority ‘applies to us’. Waldron, ‘Special Ties’, pp. 11-27, offers one response to this ‘particularity objection’.

⁵⁹ O’Donovan, *Ways of Judgment*, p. 142.

⁶⁰ I do not think that O’Donovan would endorse this interpretation, however.

⁶¹ Wannenwetsch, Bernd, ‘Soul Citizens: How Christians Understand Their Political Role’, *Political Theology* 9:2 (2008): 373-394, pp. 380-381.

⁶² See also Wolterstorff, *Mighty and The Almighty*, pp. 91-92. Wolterstorff takes submitting ‘out of conscience’ to mean submitting ‘because one is morally obligated’.

⁶³ As with other providentialist theorists, Wannenwetsch argues that this means citizens can judge

that submitting to rulers is in fact submitting to one's *own* will. Their view "owes itself to a blunt inversion of the Christian tradition in that it makes the free consent of the people the constitutive element of political authority rather than a proper response to it."⁶⁴

Wannenwetsch's account is similar to natural duty theories, however. Indeed, his argument that citizens *ought* to consent, out of obedience to God, is reminiscent of Hanna Pitkin's claim that Locke's view of political obligation collapses into a 'nature of government' theory, whereby "you are obligated to obey because of certain characteristics of the government."⁶⁵ Specifically, the obligation depends on the government "acting within the bounds of *the* (only possible) contract,"⁶⁶ the terms of which are determined by laws of nature, rather than by any act of consent. Obedience is due to the government because of its nature; "your personal consent is essentially irrelevant to your obligation to obey."⁶⁷ In terms of their central structure, providentialist and natural duty accounts of the origins of political authority and political obligations are remarkably similar.

Natural duty theories say that states have legitimate authority because they are necessary if we are to fulfil our duties of justice. Providentialism says that political authority is established by God, in order to secure the conditions for the common good. Both agree that basic wrongs must be prevented, basic rights protected, and those who violate those rights punished. The difference is that one is what Wolterstorff calls an account 'from above', focusing on "the relation of God's

individual government acts to some degree, and disobedience is sometimes warranted. Such disobedience is conceived as an act of obedience to the higher ordination of political authority, so is only warranted when a political authority's commands severely compromise obedience to that higher authority. Wannenwetsch, 'Soul Citizens', pp. 386-387.

⁶⁴ Ibid., p. 390.

⁶⁵ Pitkin, Hanna, 'Obligation and Consent', in Laslett, Peter, W.G. Runciman, and Quentin Skinner (eds.), *Philosophy, Politics and Society: Fourth Series* (Oxford: Basil Blackwell, 1972): 45-86, p. 56.

⁶⁶ Ibid., p. 57.

⁶⁷ Ibid., p. 57. Pitkin might overstate her case here. Even if we have a natural duty to obey *a* government, Locke arguably believes consent to be needed to explain why we are obligated to obey *this particular* government. In other words, Locke uses consent to answer the 'particularity objection' (see fn. 58, above).

authority to the authority of the state,”⁶⁸ while the other is an account ‘from below’, explaining political authority without bringing God into the picture. Their accounts of the origins of political authority and the reason why we must submit to it are very similar, however.

Wolterstorff emphasises that accounts from below and from above can be compatible. I examine his account from above, which is broadly similar to O’Donovan’s and is based on Romans 13:1-7, in Chapter 8. Wolterstorff also offers an account from below. Its central claim is that “we each have a natural right to there being, when possible, some institutionalised arrangement for protecting us against being seriously wronged by our fellows. In the modern world, that institutionalised arrangement is the state.”⁶⁹ Wolterstorff’s two accounts of the origins of political authorisation – one providentialist, the other secular – fit neatly together. Indeed, he argues that God, from above, authorises the state to do what it was already authorised to do, from below.⁷⁰ Further, Wolterstorff’s account from below has clear similarities to natural duty theories, and is probably an example of such a theory.⁷¹ This again demonstrates compatibility of providentialism with natural duty theories.

2.3. Providentialism and Political Liberalism

This should lead us to reconsider whether the providentialist account of political authority is inconsistent with political liberalism, given that several political liberals, including Rawls and Quong, have explicitly defended a natural duty theory.⁷² Quong argues that states have authority because we better fulfil our duties of justice by obeying their directives. This gives the state the moral right to enact and enforce legislation. However, there is reasonable disagreement over

⁶⁸ Wolterstorff, *Understanding Liberal Democracy*, p. 245.

⁶⁹ Wolterstorff, *Mighty and The Almighty*, p. 102. Wolterstorff, *Understanding Liberal Democracy*, pp. 269-274, explains this account more fully.

⁷⁰ Wolterstorff, *Mighty and The Almighty*, p. 103.

⁷¹ I am not certain about this, because Wolterstorff only ever sketches his account. I suspect that a fuller explanation would vindicate my claim.

⁷² Rawls, *Theory of Justice*, pp. 293-301; Quong, *Liberalism Without Perfection*, pp. 126-135.

what justice demands. If laws were only legitimate if they were *perfectly* just, then most citizens would consider the state's dictates to lack legitimate authority most of the time. This would undermine the state, and so undermine our capacity to fulfil our natural duties. Instead, therefore, we should hold that laws are legitimate as long as citizens can recognise them as *reasonably* just. For Quong, citizens can do so when laws are justified by a plausible argument using values that all reasonable citizens accept.⁷³ Laws are reasonably just, and thus legitimate, as long as they are justified by public reasons. In this way, the natural duty theory leads to public reason liberalism.

More generally, one can hold both that the state's authority derives from our natural duty of justice and that legitimate laws must be justified to every citizen. The former statement is about the origins of political authority, whereas the latter is about the limits that such authorities are under. The former shows us that we are obligated to live under a political authority, under just institutions, while the latter tells us something about what that authority can and cannot legitimately do.⁷⁴

The same could be true of *providentialist* accounts and political liberalism. The former claim that political authority is a gift of God, rather than deriving from the collective delegation of citizens' pre-political rights, or from their consent. This does not mean that political authorities can do whatever they wish, however. There are clear limits on the role that governments have and what laws they should and shouldn't enact. Much of O'Donovan's theory is about these limits.⁷⁵ PJP is

⁷³ Quong uses an idea similar to the justificatory liberal 'eligible set' here, before jumping to a public reason liberal understanding of what 'reasonably just' means, by appealing to shared values. I think his argument actually favours a justificatory liberal interpretation, based on laws being openly justified to all citizens.

⁷⁴ Sadurski makes a similar point, arguing that political liberalism is about the legitimacy of particular exercises of political authority, not the more general question of the legitimacy of governments or authorities. Sadurski, Wojciech, 'Legitimacy of Law in a Liberal State: The Contours of Public Reason', Sydney Law School Legal Studies Research Paper, pp. 23-24. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2387140.

⁷⁵ For this reason, O'Donovan views himself as a liberal.

another claim about those limits, and there is nothing about providentialism in general that is inconsistent with that claim.⁷⁶

My argument so far in this section has been as follows. Christian theologians hold to providentialist accounts of political authority, which seem to conflict with political liberalism. Many have criticised liberalism for failing to recognise the providentialist origins of governmental authority. However, many liberals, including political liberals, accept natural duty theories of political authority, which are very similar to the providentialist account.⁷⁷ Political liberalism's compatibility with natural duty theory points to its compatibility with providentialism.

Are those theories compatible with *justificatory* liberalism, however? One might suspect that justificatory liberalism's claim that coercion must be openly justified to the coerced is not consistent with the natural duty theory, or with providentialism, in the way that other forms of liberalism are. Its stringent restriction on the permissibility of coercion might seem inconsistent with claiming that individuals are under natural duties of justice that require political authority in order to be fulfilled. The state might even be prevented from doing things that the natural duty theory says that it ought to do. This is incorrect, however. Justificatory liberals can accept the natural duty theory, and thus can accept providentialism.

The argument is similar to Quong's. The natural duty theory explains why states have authority in general, but given reasonable pluralism we cannot simply say that laws are legitimate when they are just. Instead, legitimate state directives must respect citizens as free and equal. This requires that laws be within the socially eligible set, so openly justified to all citizens. We need states in order to fulfil our duties of justice to one another, but we disagree on what those duties are – on

⁷⁶ I am not claiming that O'Donovan's specific account is consistent with political liberalism. Indeed, they conflict in various ways, as should be clear from my explanations above and in the next section. My point here is that it is possible to accept *some* providentialist account while also endorsing PJP.

⁷⁷ One might even say that these theories are secularised versions of providentialism.

what justice consists in. Given this disagreement between free and equal citizens, laws must be judged by all as better than having no law in order to be legitimate.

A different way to make this point is to say that justificatory liberalism is an account of when coercion is morally permissible, not of political *authority*. It does not explain why the state's directives impose duties upon me such that I am obligated to obey them.⁷⁸ According to justificatory liberalism, legal coercion is legitimate when laws are within the socially eligible set. It does not tell us why citizens are obligated to obey the law, or what gives the state the moral power to impose such obligations.

Justificatory liberalism does provide some potential resources for such an account. According to the proviso, which I explained in Chapter 2, a central role for the state is preventing unjustified private coercion.⁷⁹ This claim has resonances with certain natural duty theories, and could contribute to such a view. One could follow Wellman in arguing that we have Samaritan duties to protect one another from basic harms, including those that come through coercion by others, and that we fulfil this duty through the state, so are obligated to obey it.⁸⁰

One might also appeal to the fact that laws fulfil PJP in arguing for the state's authority. This would be a further argument, however, and not the core justificatory liberal position, as I have articulated it. Further, on some understandings, the state's authority should be general – a standing power to create binding obligations through laws. An appeal to the fact that laws fulfil PJP appears more piecemeal than this, so might not be an appropriate grounding for authority.

Justificatory liberalism says that the state ought to prevent unjustified private coercion (the

⁷⁸ Quong does not distinguish legitimacy and authority in the way I do here. I also diverge from Gaus here, since his justificatory liberalism is centrally about authority, rather than permissible coercion.

⁷⁹ See pp. 69-72.

⁸⁰ Wellman, 'Liberalism, Samaritanism'.

proviso), and beyond this enacted laws must fulfil PJP. These are claims about the legitimacy of coercion, not about the duties of citizens or authority of the state. Justificatory liberalism needs the assistance of an account such as the natural duty theory in order to explain why openly justified enacted laws are not merely *legitimate* but also *authoritative*, obligating obedience.

Providentialism could also fulfil this role. For a providentialist justificatory liberal, God is the one who ultimately authorises governments, giving them the authority to rule. He does so because they are essential for preventing basic wrongs and securing the conditions for the common good. Enacted laws must be from within the socially eligible set, so openly justified to all, in order for citizens to be respected as free and equal. But it is the providential origins of governments that explains why states have authority, so why citizens are obligated to obey them. Providentialism is about the source of the state's authority, whereas justificatory liberalism is about the legitimacy of particular laws.

Even if this is right, it still leaves open the question of whether Christianity is compatible with the justificatory liberal view of legitimacy itself, and particularly its conception of citizens as free and equal. That is the issue to which I now turn.

3. Autonomy, Freedom, and Moral Authority

In Sections 1-2 I argued that justificatory liberalism need not conflict with providentialism, which sees God as the source of political authority, and that the 'Judges objections' can be defused. Justificatory liberalism is an account of legitimacy, not political authority. It does not contradict moral realism or state that everyone should do what is right in their own eyes. It does not deny that there is an objective moral order, or that people who violate God's law act wrongly. As I argued in Chapter 4, it also does not require that individuals doubt their own views or cease to

believe that they know the truth about morality.⁸¹ Justificatory liberalism is simply an account of the limits on the permissibility of coercion, including the coercive enforcement on morality, that arise from the fact that humans are morally free and equal.

Christians agree that humans are morally free and equal. Humans are made in God's image and are loved by Him, and thus have great, and equal, dignity. All humans have equal, very great, worth, due to being created and loved by God.⁸² Indeed, O'Donovan claims that "the equality of each individual human being... is, and can only be, a theological assertion."⁸³ Christians also believe that God has given humans freedom, and individual liberty is to be highly valued.⁸⁴

Christians might not be able to accept the justificatory liberal understanding of moral freedom and equality, however – the specific interpretation of these concepts that justificatory liberalism requires. This interpretation centres on the idea of equal moral authority, which means that no individual should be coerced into following moral demands that are not openly justified to them. In Gaus's words, "moral persons are all equally authoritative interpreters of the demands that morality places on one" and therefore "a free moral person is one who acts according to her own reasoning about the demands of morality."⁸⁵ All versions of political liberalism accept the importance of Rawls's second moral power, the capacity for a conception of the good.⁸⁶ Citizens should be free to develop, revise, and live by their own view of what is good, valuable, and meaningful in life, and not be coerced into following others' views. Perhaps Christian understandings of freedom do not cohere with these ideas, such that Christians cannot accept the central moral underpinnings of the conception of legitimacy I defend.

⁸¹ See p. 114.

⁸² For discussion of what grounds basic equality and rights from a Christian perspective, see Wolterstorff, Nicholas, *Justice: Rights and Wrongs* (Oxford: Princeton University Press, 2008), pp. 285-362.

⁸³ O'Donovan, *Ways of Judgment*, p. 40.

⁸⁴ See Shadd, 'A Better Framework', pp. 165-174, for discussion of the points in this paragraph, from the perspective of the Christian Reformed tradition.

⁸⁵ Gaus, *Order of Public Reason*, p. 15.

⁸⁶ Rawls, *Political Liberalism*, p. 30.

3.1. Autonomy

A common theological objection to liberalism is that it places too much emphasis on personal autonomy,⁸⁷ defined by Lucas Swaine as “a condition in which one engages in unforced and considered choosing, complemented by a self-reflective disposition and an attitude of revisability with respect to one’s interests, beliefs, aims, and attachments.”⁸⁸ This framing is not helpful for our purposes, however, since political liberalism is not wedded to autonomy in this sense. It does not hold that this kind of autonomy is necessary for a good life. As Mulhall and Swift put it, “one does not have to regard autonomy or individuality as a comprehensive moral or philosophical ideal in the manner of Kant or Mill in order to think that the capacity to form, revise and rationally pursue conceptions of the good... is important in politics.”⁸⁹ Rawls is clear that his theory uses the concept of *political* autonomy, “the legal independence and assured political integrity of citizens and their sharing with other citizens equally in the exercise of political power,”⁹⁰ without invoking the broader idea of moral or ethical autonomy, “expressed in a certain mode of life and reflection that critically examines our deeper ends and ideals.”⁹¹ As Paul Weithman notes, political autonomy “is realised, not by persons in the whole of life, but by citizens in political life.”⁹² Political autonomy might be a necessary condition for personal autonomy, since the former secures the *capacity* for the latter. But Rawls does not say that the *exercise* of this capacity, actually living autonomously, is necessary for one to live a good life. Some theologians have recognised this. For example, Bretherton writes that Rawls “advocates a political form of toleration and autonomy that is not necessarily committed to a conception of the individual agent as a sceptical self-reflexive subject.”⁹³

⁸⁷ For example, see Novak, ‘Oliver O’Donovan’s Critique’.

⁸⁸ Swaine, ‘Deliberate and Free’, p. 185.

⁸⁹ Mulhall and Swift, *Liberals and Communitarians*, p. 175.

⁹⁰ Rawls, *Political Liberalism*, p. xlii.

⁹¹ *Ibid.*, pp. xlii-xliii.

⁹² Weithman, Paul, ‘Convergence and Political Autonomy’, *Public Affairs Quarterly* 25:4 (2011): 327-348, p. 327.

⁹³ Bretherton, ‘Translation, Conversation or Hospitality?’, p. 86.

Similarly, Gaus emphasises that justificatory liberalism does not rely upon an ideal of personal autonomy, understood as someone charting her own course, self-consciously choosing projects and commitments, and making her own life based on her own reflective understanding of value.⁹⁴

He distinguishes this 'self-authorship' from the more minimal 'perspective of agency' that justificatory liberalism presupposes. The latter is the idea that, given a recognition of the fact of reasonable pluralism of evaluative standards, an important part of each individual's self-conception is that he "sees his actions as following from his own deliberations."⁹⁵ These deliberations need not be highly reflective. An agent's actions can be superstitious, or involve following traditional rules simply because she has been brought up to do so. But even those who endorse a tradition in this way see it as a choice, an exercise of their agency. Pluralism means that all are aware of alternative viewpoints, and thus refusing to consider those and remaining within one's tradition is itself a choice. Similarly, one might base one's beliefs on the dictates of someone one considers to be an authority, even relatively uncritically, but one will still see this as a choice that one has made, in the face of the many available alternatives.

Gaus further acknowledges that not everyone places their status as an agent in this sense at the *core* of their self-understanding. Other self-understandings might be more fundamental for them. But the conception of oneself as an agent is nonetheless deeply embedded.

It is as agents in this basic sense that justificatory liberalism claims that individuals are morally free and equal, and thus that coercive interferences with another's agency must be openly justified to them. Free and equal moral agents have equal authority in discerning the moral obligations that apply to them, so coercion must be justified to them according to their own

⁹⁴ Gaus, *Order of Public Reason*, pp. 337-341.

⁹⁵ *Ibid.*, pp. 338-339. Elsewhere, Gaus calls this the "ultra-minimal conception of personal autonomy on which liberalism is founded." Gaus, Gerald, 'The Place of Autonomy within Liberalism', in Christman, John, and Joel Anderson, *Autonomy and the Challenges to Liberalism: New Essays* (Cambridge: Cambridge University Press, 2005): 272-306, p. 294.

understanding.

Even if it is true that justificatory liberalism is not based on upon a comprehensive ideal of personal autonomy, however, its conception of ‘equal moral authority as agents’ might itself be inconsistent with Christian theology. This understanding of moral freedom and equality could be incompatible with Christian understandings of the nature and value of freedom, such that Christians have decisive reason to reject the idea that individuals must be free from coercion that is not openly justified to them. To explore this possibility, I again turn to O’Donovan.

3.2. O’Donovan on Freedom

According to William Schweiker, much of O’Donovan’s political theology “is an attack on modern conceptions of freedom.”⁹⁶ O’Donovan writes:

“We discover we are free when we are commanded by that authority which commands us according to the law of our being, disclosing the secrets of the heart. There is no freedom except when what we are, and do, corresponds to what has been given us to be and to do. ‘Given to us’, because the law of our being does not assert itself spontaneously merely by virtue of our existing. We must receive ourselves from outside ourselves, addressed by a summons which evokes that correspondence of existence to being.”⁹⁷

O’Donovan distinguishes freedom from ‘spontaneity’, which is acting in ways that are entirely our own, or that no-one has laid upon us.⁹⁸ Freedom consists in living in accordance with the given moral order, the ‘law of our being’ that has been established independently of us, by One who is outside of us – God. Individual freedom involves the “discovery and pursuit of his or her vocation from God.”⁹⁹

Alongside this theological definition, O’Donovan develops a communitarian-style critique of

⁹⁶ Schweiker, ‘Freedom and Authority’, pp. 111-112. Similarly, Novak writes that O’Donovan’s most important contribution is “his critique of the notion of autonomy.” Novak, ‘Oliver O’Donovan’s Critique’, p. 328. I think Novak means ‘political autonomy’ here, rather than an ideal of personal autonomy.

⁹⁷ O’Donovan, *Desire of the Nations*, p. 252.

⁹⁸ O’Donovan, *Ways of Judgment*, p. 130.

⁹⁹ *Ibid.*, p. 72.

liberal ideas of freedom.¹⁰⁰ “Freedom is the self-realisation of the individual within social forms,”¹⁰¹ requiring individual participation within a particular community’s traditions. A society’s ‘tradition’ is its ‘way of life’ – its ongoing mode of functioning, which defines the common good of the collective.¹⁰² Individuals find freedom through participation in communications and cultural practices within a community whose traditions they identify with. “Social identity, then, is an important contributing element in the freedom of an individual.”¹⁰³

These two lines of critique – theological and communitarian – combine in O’Donovan’s view that participation in the traditions of one’s society is vital for individual freedom, but that all such traditions are open to evaluation and revision in light of the God-given moral order. A society’s way of life is not an ultimate good in itself, but must be appropriately related to moral truth. Thus, “society fails in wisdom above all when it fails to comprehend its own communicated goods in relation to the supreme good – God himself, and also the Word and Wisdom of God which gives form to the universe of beings.”¹⁰⁴ Freedom is found in participating in societal traditions with which one identifies *and* which cohere with the God-given moral order, such that “what we are, and do, corresponds to what has been given us to be and to do.”¹⁰⁵

This gives room for individuals to challenge society’s traditions, by the standards of the God-given order.¹⁰⁶ Society shapes individuals’ self-understandings, but individuals can also stand apart from their social system and evaluate it. This independent viewpoint on society, the individual conscience, must itself have a source beyond both society and the individual, in God Himself.

¹⁰⁰ O’Donovan is one of many theologians who have been influenced by communitarian ideas. See Fergusson, David, *Community, Liberalism and Christian Ethics* (Cambridge: Cambridge University Press, 1998). Williams, Rowan, *Faith in the Public Square* (London: Bloomsbury Continuum, 2012) largely focuses on ‘groups’ with a distinct identity.

¹⁰¹ O’Donovan, *Ways of Judgment*, p. 69.

¹⁰² *Ibid.*, pp. 70, 149-150.

¹⁰³ *Ibid.*, p. 71.

¹⁰⁴ *Ibid.*, p. 73. By “Word and Wisdom of God,” O’Donovan means Jesus Christ.

¹⁰⁵ O’Donovan, *Desire of the Nations*, p. 252.

¹⁰⁶ O’Donovan, *Ways of Judgment*, pp. 75-76.

Failing to recognise this moment of transcendence means failing to facilitate true freedom. O'Donovan states that "the loss of wisdom that we have to fear, as the prophets have always said, is idolatry, the refusal to acknowledge God as the sovereign authority of any human society."¹⁰⁷ This refusal can lead to community self-understandings being seen as ultimate in themselves, completely submerging individuals and leaving them unfree. Alternatively, this refusal can lead to individuals being seen as the ultimate source for all valid moral claims, replacing true freedom with a mistaken valorisation of autonomy. Both conservative communitarians and contemporary liberals thus prevent individuals from experiencing freedom.

O'Donovan's account of freedom, centred on the importance of community, sociality, and a right relation to the objective moral order, seems very distant from justificatory liberalism's emphasis on Rawls's second moral power and individuals' equal moral authority. It leads O'Donovan to affirm a very different account of political legitimacy. As we saw, O'Donovan sees the role of political authority as the defence of the common good, through the judging of wrong, which is defined by God's revealed moral truth, as mediated by the particular traditions of the people in question. The government 'represents' this people, by expressing "through its own continuous acts of public judgment, the moral identity of a people whose common good it has been providentially entrusted to defend."¹⁰⁸ Political authority enacts right, thus securing the common good, in which every individual participates. "The definition of the state, its founding rationale, is not the monopoly of violence but the monopoly of the community's right, its claim to be the last instance in a society's defence against wrongs."¹⁰⁹ The fulfilment of this role does not require that laws be justified to every citizen by reasons they can accept, and indeed such a restraint on the enactment of laws might well hamper a government's ability to fulfil its God-given function.

¹⁰⁷ Ibid., p. 77.

¹⁰⁸ Chaplin, 'Representing a People', p. 297. Chaplin is explaining O'Donovan's view.

¹⁰⁹ O'Donovan, *Ways of Judgment*, p. 141.

O'Donovan's account of political authority and legitimacy explains how governments can respect subjects' moral freedom and equality, given his view of freedom. Both the communitarian aspect of that view and his emphasis on right relations to God's order can be seen in the role he assigns to governments. We should be clear that O'Donovan is not a straightforward perfectionist; he does not believe that governments should promote the virtue of citizens or encourage individual piety. But his understanding of freedom does lead to a rejection of political liberal claims about legitimacy. This might suggest that Christianity's basic conception of freedom conflicts with the justificatory liberal interpretation of moral freedom and equality, such that Christians cannot be justificatory liberals.

The justificatory liberal response to this is similar to its response to moral realism. O'Donovan might be right about the nature of 'true freedom'. Perhaps we are only truly free when we "receive ourselves from outside ourselves,"¹¹⁰ and live in accordance with the God-given moral order, in response to His call upon our lives. The question is the extent to which this understanding of freedom can structure our *political* life, or be politically realised. Here, justificatory liberals again appeal to reasonable pluralism. Given reasonable disagreement about the objective moral order, it is unclear how governments can act upon O'Donovan's conception of freedom. If all citizens were Christians, the government could legitimately base laws, its public judgments, on Christian understandings of the right and the good.¹¹¹ Given pluralism, this is unacceptable, and fails to treat citizens as free and equal. Even if this means that many individuals fail to experience 'true freedom', this is a consequence of our respect for them as our moral equals. It is not the role of coercive political power to ensure that freedom.

Several theologians have in fact argued that O'Donovan cannot adequately deal with pluralism. Schweiker notes that modern societies must confront moral diversity, and states that

¹¹⁰ O'Donovan, *Desire of the Nations*, p. 252.

¹¹¹ This is true for justificatory liberalism, but not for many public reason liberal theories.

“O’Donovan’s form of political theology... seems poorly equipped to deal with this fact.”¹¹² Chaplin further develops this objection, observing that O’Donovan’s “argument proceeds on the assumption that a people, notwithstanding its great variety of practices, associations and ethnic or local cultures, displays sufficient internal cohesion and a sufficiently well-defined moral identity such that it can collectively envisage a coherent and determinate common good.”¹¹³ Citizens of modern liberal democracies might not be a ‘people’ in this “thick, organic sense.”¹¹⁴ This threatens O’Donovan’s theory of political legitimacy, since governments might not be able “to discern and implement anything that could be generally recognised as a ‘common enactment of right.’”¹¹⁵ O’Donovan’s account requires ‘representative judgment’, the rendering of judgment by a political authority that represents the moral identity of a people. Chaplin questions whether this idea can be sustained in the context of radically divergent conceptions of justice and the common good, echoing Rawls’s claim that a well-ordered democratic society is neither a community nor an association, since it has no shared comprehensive doctrine or final ends.¹¹⁶

O’Donovan responds to Chaplin by denying that a citizenry being fragmented and diverse means that it cannot be a ‘people’, in his sense.¹¹⁷ A ‘people’ need not agree on fundamental questions; traditions need not be cohesive in this way. A people must be able to envisage its common good, but this can be found in the intersection of a variety of viewpoints and perspectives, through “a discursive engagement... with other human thinkers on matters of common concern.”¹¹⁸ Different beliefs and practices can be reasonably accommodated through open dialogue. Democratic processes are important here. O’Donovan argues that given the loss of more traditional forms of representation – the government cannot represent the people by embodying a particular

¹¹² Schweiker, ‘Freedom and Authority’, p. 125.

¹¹³ Chaplin, ‘Representing a People’, p. 305.

¹¹⁴ Ibid., p. 306

¹¹⁵ Ibid., p. 307.

¹¹⁶ Rawls, *Political Liberalism*, pp. 40-43.

¹¹⁷ O’Donovan, ‘Judgment, Tradition and Reason’, p. 406.

¹¹⁸ Ibid., p. 409.

conception of the good – elections are a central way in which loyalty is maintained, and the identity of the people represented.¹¹⁹ Elections should be combined with high levels of government consultation and public deliberations on the common good, so that the community can recognise that the government is indeed acting to defend its common good. Ultimately, therefore, O'Donovan defends a deliberative democratic ideal.

It is now rather unclear, however, what the relationship between O'Donovan's understanding of freedom and his understanding of political authority is, within his own account. Governments should defend the common good of a people, by judging wrongs. This facilitates freedom, since all will participate in a community with which they identify, and share in its common good. But this 'common good' is now rather loosely defined, since a 'people' need not feature much cohesion or moral agreement. Further, it is unclear how this relates to the objective moral order. That order might still give a reference point for critique – for challenging the acts of government and society's understanding of its common good. Presumably individuals should appeal to their understanding of objective morality within society's 'discursive engagement'. This can cause changes in the people's self-understanding, which should then be reflected in the actions of its government. Whether any of this leads individuals to enjoy 'true freedom', however, seems to depend on the extent to which the views of individuals, the people, and their political authority in fact track God-given moral truth.

Justificatory liberalism is compatible with much of this. One could accept many of O'Donovan's views while also endorsing the justificatory liberal criteria for legitimacy. O'Donovan ends up with an account of legitimacy that is focused on widespread public deliberation and elected governments, combined with a theological account of the purpose of political authority as defending a people's common good through judging wrongs, and a role for individuals in seeking

¹¹⁹ O'Donovan, *Ways of Judgment*, pp. 174-180.

to persuade others of their views about morality and justice. All of these aspects of the theory are consistent with justificatory liberalism, as is O'Donovan's account of true freedom. The justificatory liberal simply adds that in order for citizens to be respected as morally free and equal within this system of deliberative democratic governance all coercive laws must be openly justified to them.

3.3. A Real Tension?

O'Donovan would still reject this justificatory liberal claim about legitimacy, however. He would consider its understanding of the moral individual to be deficient, and to undermine the authority of society's institutions. Justificatory liberalism does not claim that actions are right simply because individuals believe that they are. Individuals' moral judgments can be mistaken, such that they fail to act as they ought. But it nonetheless gives individuals a high level of moral authority, since it says that they cannot be coerced without open justification. An individual's beliefs on an issue might be completely misguided, yet justificatory liberalism still says that they cannot be coerced into doing what it right. O'Donovan would consider this to be an objectionable view of the status of the individual, and their conscience. He writes that "moral freedom can never be established on a basis of self-sufficiency and independence from the world. Freedom, if it is freedom to act within the world, must itself be of the world."¹²⁰ "Our *freedom* as agents depends upon our acting in accord with reality."¹²¹ In other words, only actions that accord with the truth of external reality can be free. Cutting the conscientious agent off from the objective moral order and permitting them to simply act on their own judgments, whatever they are, undermines freedom. In fact, it dissolves practical reason itself, since "the order of creation is the only point of reference to judge what it is good for created beings to do."¹²²

¹²⁰ O'Donovan, Oliver, *Resurrection and Moral Order: An Outline for Evangelical Ethics*, 2nd edition (Leicester: Apollos, 1994), p. 120.

¹²¹ Ibid., p. 109.

¹²² O'Donovan, *Ways of Judgment*, pp. 311-312.

The point here is no longer that ‘true freedom’ cannot be achieved by a political order that abides by justificatory liberal legitimacy constraints; I argued above that reasonable pluralism undermines the political pursuit of this kind of freedom, and that O’Donovan himself ultimately seems to admit this. The point is that justificatory liberal legitimacy constraints do not manifest respect for ‘free and equal moral agents’ in *any* normatively significant sense. Justificatory liberalism’s deference to individual conscience cannot be grounded in our status as free and equal, since it does not correctly reflect that status. Humans are free and equal *subjects* – to God, to the objective moral order, and to political authorities, who God authorises to judge wrongs, ideally on the basis of that objective order. Humans are not free and equal *sovereigns*, who can only be permissibly coerced when they consider this coercion preferable to the absence of coercion.

This is a real disagreement between justificatory liberalism and O’Donovan. Justificatory liberalism is rooted in a conception of persons as free and equal moral agents that O’Donovan rejects. He accepts the general claim that humans are morally free and equal, but rejects the specific understanding of this status that justificatory liberalism requires, in favour of an understanding that does not give individuals such moral inviolability. Some Christians would reject justificatory liberalism on this basis.

Nonetheless, one could endorse justificatory liberalism without radically departing from O’Donovan’s views. Justificatory liberals can accept that individuals are free and equal subjects, and that truly free action must be in ‘accord with reality’. They merely affirm that individuals have a moral authority that protects their own judgment of what is required of them as subjects, or by that reality. O’Donovan is less individualistic, assigning lesser moral authority to individuals, and less open to reasonable pluralism, so more optimistic about the possibility of the state’s commands conforming to societal traditions that rightly reflect the objective moral order. But a

justificatory liberal could accept O'Donovan's understanding of moral subjecthood, 'true freedom', and much of his account of the role of political authorities, including providentialism concerning the grounding of that authority. They would merely hold a different conception of moral freedom and equality to O'Donovan.

Further, not all theologians accept that aspect of O'Donovan's view. Some offer theological reasons to *affirm* political liberal understandings of the implications of moral freedom and equality. For example, Harlan Beckley argues that Christians should endorse a conception of 'love as equal regard', which requires them to "respect others' freedom out of reverence for their moral capacities."¹²³ For Beckley, this is a distinctively Christian understanding of love for others, grounded in the belief that God is love. It means that everyone's welfare should be given equal consideration and everyone's freedom to exercise their moral capacities should be respected. Christians should thus respect the moral freedom of those who reject Christianity, and avoid imposing distinctively Christian moral understandings upon them: "persons should not be bound by distinctive moral beliefs they do not share."¹²⁴ This does not mean that Christians must deny that their moral principles are universal, and in that sense lay a claim upon everybody; "it requires only that these principles be accepted voluntarily rather than being enforced by the basic institutions of society."¹²⁵ This has clear affinity with justificatory liberalism.¹²⁶

Beckley's view is itself controversial, and based on an understanding of Christian ethics that some, including O'Donovan, would reject. Nonetheless, it shows that we have not found conclusive biblical or theological reasons to reject justificatory liberalism. The tension that some, such as

¹²³ Beckley, Harlan R., 'A Christian Affirmation of Rawls's Idea of Justice as Fairness: Part II', *The Journal of Religious Ethics* 14:2 (1986): 229-246, pp. 236-237

¹²⁴ *Ibid.*, p. 236.

¹²⁵ *Ibid.*, p. 237

¹²⁶ Beckley uses 'love as equal regard' to argue that Christians should affirm Rawls's justice as fairness. If justificatory liberalism is a better philosophical understanding of the implications of moral freedom and equality than public reason liberalism, however, as I argued in Part I, then Beckley's arguments should lead Christians to accept justificatory liberalism instead.

O'Donovan, would identify between justificatory liberalism and Christianity is not rooted in core doctrines or ideas of Christian (political) theology. Instead, it concerns how we best understand the fact that humans are morally free and equal, made in the image of God and loved by Him. Justificatory liberalism rests upon a particular conception of this equal moral status. O'Donovan rejects this conception. But it is not incompatible with all theological accounts of political authority and legitimacy, or indeed with many of O'Donovan's own views. Some theologians interpret moral freedom and equality in a way that conflicts with justificatory liberalism, but not all do, or need to given their basic theological commitments. There is no inevitable incompatibility.

Since there is no necessary incompatibility between Christianity and political (particularly justificatory) liberalism, we should consider theological arguments *for* political liberalism. That is the task of the next two chapters. I will argue that some of these arguments fail, and none are decisive, but that they do identify considerations that suggest that Christians can indeed be justificatory liberals.

Chapter 7: Theo-ethical Equilibrium and Natural Law

We are exploring the relationship between political liberalism and Christian theology. In Chapter 5 I argued that a central issue is ‘conflicts of loyalty’ – cases where Christian citizens seemingly must choose to fulfil either the obligations placed upon them by political liberalism or those imposed by their faith. The idea that such conflicts can arise presupposes that Christians lack decisive reason to *reject* political liberalism. I defended this assumption in Chapter 6, arguing that there is no deep incompatibility between political (particularly justificatory) liberalism and Christian theology.

Conflicts of loyalty would also never arise if Christian theology decisively *supported* the obligations that political liberalism places upon citizens, such that political liberalism never asks Christians to do anything that they lack existing theological reasons to do. Some theorists have argued that this is the case with regard to the public reason liberal duty of restraint, since Christians have theological reasons to refrain from supporting laws for which their only reasons are religious. An example of this is ‘theo-ethical equilibrium’ argument,¹ which seeks to show that Christians’ confidence in religiously-grounded moral claims² for which they lack secular corroboration should be too low for them to be willing to impose those claims upon others. God’s nature is such that Christians³ should expect all important moral truths to have sound secular rationales. They should thus seek to achieve ‘theo-ethical equilibrium’, a reflective equilibrium that reconciles secular and religious sources of moral knowledge. Moral beliefs that are grounded in religious sources but lack any secular rationale, so are not within theo-ethical equilibrium, should be doubted. They therefore should not be the basis for coercive impositions. I explain this argument in more detail below.

¹ For other theological arguments for restraint, see Riordan, Patrick, ‘Permission to Speak: Religious Arguments in Public Reason’, *The Heythrop Journal* 45:2 (2004): 178-196, and the argument by Swan that I discuss in Chapter 8.

² In this chapter I follow Eberle in using ‘moral claim’ to refer to moral propositions, and ‘moral truth’ to refer to true moral propositions. Eberle, *Religious Conviction*, p. 397, fn. 3.

³ Audi directs his argument at all theists, but I focus exclusively on Christians.

If the theo-ethical equilibrium argument succeeds then Christians should support (a version of) public reason liberalism, a theory of legitimacy I reject. It is therefore important that I consider, and reject, it. That is the task of this chapter. I will argue that Christians should indeed seek theo-ethical equilibrium, but need not endorse the duty of restraint. In making this argument, I will consider the important theological concept of natural law, and point to further problems with public reason liberalism. This clears the way for an investigation of the theological reasons Christians might have for embracing justificatory liberalism, and of how we should handle conflicts of loyalty.⁴

1. The Theo-ethical Equilibrium Argument

Robert Audi and Michael Perry both argue that theists should doubt any religiously-grounded moral claim for which they can find no plausible secular rationale.⁵ Given their beliefs about God's nature, theists should expect the world to be structured such that there are secular paths to the discovery of all (important) moral truths. God is omniscient, omnipotent, and omnibenevolent. He knows all moral truths, and wants everyone, even the non-religious, to fulfil their moral obligations. Individuals can only fulfil their obligations (over the long term) if they know what those obligations are, so have access to sound arguments for the relevant moral truths. Since not everyone has access to *religious* sources of moral truth, there must thus be adequate *secular* grounds for moral truths – grounds that every individual has access to, so that are not dependent on any religious premises.⁶ Therefore, “we should expect there to be accessible, adequate, secular reasons for major moral principles,”⁷ and theists should doubt the truth of moral claims for which

⁴ These are the tasks of Chapters 8 and 9.

⁵ Audi, ‘Liberal Democracy’, pp. 9-24; Perry, Michael J., *Religion in Politics: Constitutional and Moral Perspectives* (Oxford: Oxford University Press, 1997), pp.72-82; Perry, Michael J., *Under God? Religious Faith and Liberal Democracy* (Cambridge: Cambridge University Press, 2003), pp. 55-85.

⁶ For discussion of what makes a reason or argument ‘religious’, see Audi, *Democratic Authority*, pp. 72-73; Bamforth, Nicholas C., and David A. J. Richards, *Patriarchal Religion, Sexuality, and Gender: A Critique of New Natural Law* (Cambridge: Cambridge University Press, 2008), pp. 46-52.

⁷ Audi, ‘Liberal Democracy’, p. 19. On p. 18, Audi suggests that we should *especially* expect this for moral truths necessary for living civilised lives together.

they cannot find such reasons, even those for which they have plausible religious grounds.

It is unclear precisely what is meant by the claim that not everyone has 'access' to religious sources of moral knowledge. In his interpretation of the argument, Eberle suggests that it refers to the fact that no sacred texts, the primary source of religious truth, are available to every human on earth.⁸ For each sacred text, there are some individuals who cannot access it, no matter how earnestly they try. God wants everyone to have access to moral truths, even people who lack access to Scripture, and thus those truths must have adequate secular grounds. A different way of interpreting the claim, which might be closer to Audi and Perry's intentions, is that *all* non-religious individuals lack 'access' to all religious sources of moral truth, because they do not accept the fundamental premises on which they are based. The issue is epistemic inaccessibility, rather than the physical inaccessibility of Scripture. Even those who have access to Scripture, since Bibles, Korans etc. are published in their language and are easily purchasable, do not have access to moral truths contained within those texts, because they do not accept their veracity or authority. Perry writes that "no religious argument about the requirements of human well-being is a persuasive basis of political choice for religious nonbelievers."⁹ God desires individuals who reject the authority of religious sources of moral insight to fulfil their moral obligations. This requires access to moral truths, so God will provide secular paths to those truths.

On either interpretation, the key point is that there will be adequate non-religious arguments for moral truths, meaning that "religiously grounded moral truths will likely be corroborable by adequate secular grounds."¹⁰ Given this, secular ethical considerations are relevant to discovering what God wants us to do. Religious citizens should therefore pay attention to them, and seek to harmonise religious and secular moral insights. As Audi puts it, "civic virtue on the part of the

⁸ Eberle, *Religious Conviction*, pp. 301-302.

⁹ Perry, *Religion in Politics*, p. 75.

¹⁰ Eberle, *Religious Conviction*, p. 302.

religious should embody a commitment to *theo-ethical equilibrium* – a rational integration between religious deliverances and insights and, on the other hand, secular ethical considerations.”¹¹ This can be understood as a kind of reflective equilibrium. One seeks to achieve a coherent set of beliefs (where this includes both general principles and judgments on concrete cases) based on all relevant evidence.¹²

Religious citizens should also be fallibilist about their understanding of their religiously-grounded moral obligations. A lack of secular corroboration for a religiously-grounded moral claim counts as evidence against it, since there is a presumption that plausible secular grounds can be found for moral truths. Religious citizens should doubt such claims, which are not within theo-ethical equilibrium. Precisely how much doubt this casts upon the claim – whether one should consider it refuted, or merely lower one’s confidence in it, and by what degree one should lower it – is not clear. What is clear, according to Audi and Perry, is that one’s confidence in the claim should now be lower than is necessary for one to be willing to coercively impose it upon others. Audi thus concludes that “a mature, conscientious theist... should be reluctant or unwilling to support coercive laws or public policies on a religious basis that cannot be placed in [theo-ethical] equilibrium.”¹³ Perry concurs: “no religious argument about the requirements of human well-being should be deemed sufficiently strong to ground a political choice, least of all a coercive political choice, unless a persuasive secular argument reaches the same conclusion.”¹⁴

This argument, if sound, gives Christians religious reasons to accept public reason liberalism’s duty of restraint. Audi and Perry both take it to support the view that every coercive law must have an

¹¹ Audi, ‘Liberal Democracy’, p. 21.

¹² Audi, *Democratic Authority*, pp. 20-25, connects theo-ethical and reflective equilibrium. This is not necessarily (although it could be) reflective equilibrium in the specifically Rawlsian sense of using a theoretical device like the original position to achieve coherence between a set of principles and one’s considered convictions.

¹³ Audi, ‘Liberal Democracy’, p. 21.

¹⁴ Perry, *Religion in Politics*, p. 73.

adequate secular rationale in order to be legitimate.¹⁵ Further, citizens should only support laws for which they have, and are willing to offer, plausible secular reasons. They should not support laws for which their only reasons are religious. The theo-ethical equilibrium argument shows that this principle of political self-restraint is grounded in theology, rather than arising independently of citizens' religious commitments. Audi emphasises that he is considering the "point of view of a morally upright religious citizen who wants to live in a free and democratic society."¹⁶

The argument also seeks to rebut the idea that public reason liberalism requires citizens to divide their beliefs into 'religious' and 'secular' perspectives, living their private lives on the basis of the former but acting politically only on the basis of the latter. Christians' religious beliefs themselves require that one seeks to unite religious and secular insights, and recognise that religiously-grounded moral claims that cannot be placed into theo-ethical equilibrium are suspect. This conclusion arises from premises about God and his nature. Abiding by the duty of restraint is itself a way to conform one's political actions to one's religious beliefs.

This means that conflicts of loyalty cannot arise. When a religious citizen believes, based on religious reasoning, that a particular law is morally required, but can find no secular rationale for this view, she appears to face a choice between displaying loyalty to God by supporting the law and displaying loyalty to public reason liberalism by withholding support. The theo-ethical equilibrium argument rejects this analysis. Such citizens have good *theological* reasons to doubt the relevant moral claim, and to refrain from seeking its coercive imposition through law. Loyalty to God itself mandates restraint, so the conflict of loyalty is merely apparent.

¹⁵ This is of course different from Rawls's view, since Rawls sees some *secular* reasons as 'non-public'. However, Audi does suggest in a footnote that some secular reasons might be excluded – Audi, 'Liberal Democracy', p. 57, fn. 14.

¹⁶ *Ibid.*, p. 9.

2. Initial Assessment

Many of the theo-ethical equilibrium argument's premises are plausible. Audi and Perry are correct to emphasise that Christian citizens should pay attention to secular moral arguments and theory. Christians believe that reason is a gift from God, and that when correctly used it can yield truths, including moral truths, about the world that God has created. Religiously-grounded moral claims should be subjected to critical scrutiny, one form of which is a consideration of whether secular moral sources provide support for them. It is important to emphasise that religious beliefs are (generally) not non-rational, or accepted simply based on the declarations of some authority. Christians have always held that their beliefs can survive critical examination. In other words, Christians should indeed be committed to achieving at least some measure of theo-ethical equilibrium. Finding secular corroboration for a moral claim one accepts for religious reasons can increase one's confidence in the claim, help clarify its meaning and implications, and provide extra motivation to abide by it.¹⁷

It is also plausible that the Christian view of God supports the idea that non-religious individuals should be able to live at least minimally moral lives. There is clear empirical support for this, since many atheists do live in ways that theists recognise as moral. It is also evident that many Christian moral principles do have secular rationales, and have been endorsed by non-religious individuals. The final six of the Ten Commandments are an obvious example.¹⁸ This overlap between secular and religious moral sources suggests Audi's and Perry's arguments have some plausibility.

A potential objection is that the theo-ethical equilibrium argument prioritises secular reason over religious sources of truth. Many Christians believe that the Bible is God's authoritative revelation to mankind, and contains no falsehoods. Christians should continue to accept the Bible's teaching

¹⁷ Ibid., pp. 13-14.

¹⁸ Honour your father and mother; do not murder; do not commit adultery; do not steal; do not bear false witness; do not covet.

even if it conflicts with secular sources of knowledge. They should not judge the veracity of that teaching using secular evidence and reasoning.

This objection is mistaken, since neither Audi nor Perry argue that secular sources of knowledge should be *prioritised* over religious ones, merely that the two should both be considered by believers, and each can help to illuminate the other. Secular arguments shed light on what the Bible teaches, and help believers to interpret Scripture correctly. One can accept the value of theo-ethical equilibrium without rejecting the accuracy of Scripture.

An analogy with scientific evidence is useful here. In Mark 4:31, Jesus says that the mustard seed “is the smallest of all the seeds on earth.” An individual who believes that the Bible contains no falsehoods and reads this passage might reasonably draw the conclusion that mustard seeds are the smallest seeds on earth. This is false, however. Orchid seeds, for instance, are much smaller. When alerted to this fact, the individual could have several responses. One would be to deny that orchid seeds can be smaller than mustard seeds, since the Bible says otherwise. This would clearly be irrational, especially if she has been presented with samples of both kinds of seed. A different response would be to change her view of the Bible, and conclude that it does contain falsehoods. A more reasonable response, however, would be to re-evaluate the Biblical evidence, by reconsidering her interpretation of the verse. Was Jesus really making the global botanical claim that there are no seeds in the whole world that are smaller than mustard seeds? Probably not. The mustard seed was the smallest seed sowed by first century Palestinian farmers, and it was to that audience that Jesus was speaking. He was speaking proverbially, using the example of mustard seeds to make a point about the kingdom of heaven, rather than stating a scientific thesis. One can therefore maintain that the Bible contains no falsehoods while also accepting that other seeds are smaller than mustard seeds. In the face of scientific evidence, Christians reconsider the Biblical text and interpret passages differently. Importantly, the claim is not that

the Bible ‘used to mean something else’ but modern science has changed its meaning. The claim is that the Bible was always consistent with scientific truth, but certain interpretations of it were mistaken.¹⁹ The believer here seeks a rational integration of secular and religious sources of knowledge. Audi and Perry are simply arguing that Christians should also do so in the domain of morality.

Christians should seek theo-ethical equilibrium, and should expect to find secular arguments supporting many of their religiously-grounded moral views. The various considerations in favour of this are insufficient to warrant Audi’s and Perry’s conclusion as to what a believer’s response should be when such secular corroboration is not forthcoming, however. These considerations do not guarantee that *all* moral truths have secular grounds, so do not justify the conclusion that Christians should doubt every religiously-grounded moral claim that lacks secular support. The elements of God’s character that Audi highlights do not mean that he *must* have ordered the world such that *every* moral truth can be affirmed by non-Christians. It might well be that there are some moral truths that can only be accessed through revelation. God’s desire for individuals to have access to moral truth, in order to fulfil their moral obligations, is consistent with Him desiring that they gain access to some of those truths by accepting a religious authority that they presently reject. God might even have made certain moral truths only accessible by theological reasoning as a form of apologetic, since this could cause non-believers to be attracted to Christianity, based on its ability to ground attractive moral claims that lack a secular rationale.

Believers can be justified in accepting moral claims despite a lack of secular corroboration. This is particularly so when the religious evidence is very strong, such as when religious sources of evidence are (relatively) univocal and there are no plausible alternative interpretations of relevant

¹⁹ Another example would be interpretations of the creation narrative in Genesis 1-3 that make it consistent with scientific theories like the big bang and evolution, by denying that the Bible asserts that the world was created in a literal six day period.

Scriptural passages. If there are no plausible secular arguments for a moral claim that one accepts based on religious evidence then one should reassess that evidence, and consider whether the claim is adequately supported by it. Sometimes, in a parallel to the mustard seed case, one might find that other plausible interpretations of Scripture, or of religious traditions, do not make the moral claim in question, and might therefore have good reason to change one's view of this claim.²⁰ When this is not the case, however, one can be warranted in still accepting the claim, and even in having a high degree of confidence in it, if one's religious evidence is strong enough. Sometimes theo-ethical equilibrium can involve continuing to hold a moral belief on religious grounds alone. Further, one's confidence in the belief can remain high enough that one is willing to act politically on the basis of it. To justify restraint, the theo-ethical equilibrium argument requires the premise that *whenever* secular corroboration for a moral claim is lacking one's degree of confidence in it should be lower than is necessary to justify imposing it upon others, since one lacks a sufficient level of rational justification. The considerations that Audi and Perry appeal to do not warrant this conclusion. Sometimes one's religious rationale can be sufficiently strong that one can rationally continue to endorse a moral claim with a high degree of confidence, even without secular corroboration.²¹

3. Eberle's objection

My rejection of the theo-ethical equilibrium argument for restraint depends on denying that *all* moral truths necessarily have secular grounds. Eberle claims that the argument would fail even if this is the case.²² Even if God has ordered the world such that there are sound secular arguments for all moral truths, this does not guarantee that all moral truths have secular grounds that are believed to be plausible within 'contemporary experience'²³ – arguments that we, here and now,

²⁰ This is reciprocal. Christians can justifiably adjudicate secular moral disputes using religious evidence.

²¹ These initial objections receive further support from the discussion in the rest of this chapter.

²² Eberle, *Religious Conviction*, pp. 307-322.

²³ This is Perry's phrase.

believe can persuade all “fully rational citizens in possession of the relevant facts.”²⁴ Some moral truths might have sound secular rationales that few (if any) individuals within *our* society accept, because they do not fit with other beliefs and values that most hold.

Eberle’s argument centres upon the fact that what can be rationally justified to one ineliminably relies on testimony. The testimony of others is a legitimate source of justified beliefs, and it is inevitable that many of one’s beliefs will be based on it. Most of our beliefs about history, science, and many other areas, are based upon the testimony of people we take to be competent authorities. Further, it is not possible to check every belief that one accepts based on testimony. We lack the time and epistemic resources to do this. Sometimes testimony evidence leads to false beliefs. One can reason flawlessly yet come to false beliefs because one’s starting premises were based on false testimony. Eberle offers Socrates’ belief that the sun orbits the earth as an example.²⁵ Socrates was rationally justified in believing this, given the scientific background beliefs of his culture. The testimony of competent authorities led him to a false view.

The same can be true for moral beliefs. Which secular moral arguments one perceives as plausible partly depends upon the testimony of others in one’s society. False testimony can therefore skew one’s evaluation, such that one fails to endorse what is in fact a sound secular rationale for a moral truth. As Eberle writes, “to counsel a citizen to doubt religious grounds for which she can’t discern adequate secular corroboration is to counsel her to doubt religious grounds for which she can’t discern corroboratory support by relying on the secular component of the culture into which she has been socialised.”²⁶ In some cases a culture’s moral beliefs on an issue will be distorted, so the reason that a religious citizen cannot find secular corroboration for a religiously-grounded moral truth is that her cognitive endowment, in particular the part that comes from others’

²⁴ Audi, ‘Liberal Democracy’, p. 16.

²⁵ Eberle, *Religious Conviction*, pp. 310-311.

²⁶ *Ibid.*, p. 314. This coheres with Gascoigne’s objections to the high view of natural law, discussed below.

testimony, inhibits her from discerning the secular justification that in fact exists.

Eberle gives several examples to illustrate this. One concerns a woman who grows up “in a society that consistently degrades members of the female gender.”²⁷ She believes on religious grounds that all humans are equally valuable, but there is no secular corroboration for this within the beliefs of her patriarchal society. Society’s hegemonic ideology valorises ‘masculine’ virtues, gives all positions of power and prestige to men, and socialises children from a young age to affirm women’s inherent inferiority. The “uniform and unambiguous testimony of the morally wise”²⁸ confirms this prejudice. Eberle argues that citizens in this cognitive environment would reasonably conclude on secular grounds that women are indeed less valuable than men, noting “that some women have found, and do find, themselves in such a situation.”²⁹ This is a case where (something we believe to be) a moral truth lacks secular grounds within a particular society, due to its cultural distortions. Since we cannot remove individuals’ reliance on testimony with regard to moral beliefs, citizens who sincerely and rationally attempt to find an adequate secular rationale for a religiously-grounded belief in moral equality will fail to find it, even if one in fact exists.

Sometimes, a religious citizen will be unable to find a plausible secular argument for a religiously-grounded moral claim because that claim is false. But at other times this will be due to cultural distortions. Individuals cannot know which possibility is actualised in each particular case. Since the latter is possible, an apparent lack of secular grounds is not an adequate reason to doubt a moral claim, if it has strong religious support. It may be that the claim is true, and a sound secular rationale exists, but misleading testimony from one’s culture causes the apparent lack of secular grounds.

²⁷ Ibid., p. 311.

²⁸ Ibid., p. 312.

²⁹ Ibid., p. 312.

A possible reply to both my and Eberle's lines of argument is suggested by Perry's version of the theo-ethical equilibrium argument in *Under God?*.³⁰ Perry accepts that when a moral claim is uncontroversial within one's religious community and tradition, a lack of secular corroboration need not cast doubt upon the claim, or at least not to the extent that it becomes impermissible to impose it upon others. But the secular evidence becomes important when there is disagreement *within* one's religious community, Perry argues. When faced with such disagreement, Christians should subject their beliefs to particularly careful critical scrutiny. A key source for this is contemporary secular experience and arguments. Christians are certain that the Bible's teaching is true, so the issue is one of interpretation. Given disagreement between Christians, secular sources are essential to one's adjudication. Thus, "this path uses contemporary experience as a helpmate in deciding what the Bible really teaches about the requirements of human well-being."³¹ If the secular evidence overwhelmingly contradicts one's religiously-grounded moral claim, and favours a contrary claim that some of one's co-religionists believe is actually supported by the religious evidence, then one should doubt one's view, and be "extremely wary about banning or otherwise disfavoured conduct on the basis of [that] claim."³² For Perry, restraint is only required when there are no plausible secular arguments for a moral claim *and* there is disagreement about that claim *within* the Christian community. When all Christians agree, one can reasonably conclude that contrary secular evidence is distorted or misleading. This is no longer reasonable when the religious evidence is itself contested, and some within one's religious community endorse interpretations of it that are more consonant with the secular evidence.

Given the diversity within Christianity, it is not clear how much difference Perry's addition to the theo-ethical equilibrium argument would make in practice. It might well be the case that Christianity includes a range of opinions on every moral issue relevant to legislation. Further, this

³⁰ Perry's argument in *Religion in Politics* is very similar to Audi's. The *Under God?* version adds the extra premise discussed here.

³¹ Perry, *Under God?*, p. 67.

³² *Ibid.*, p. 79.

is particularly likely in precisely those cases where plausible secular grounds for a moral claim seem lacking. It seems unlikely that there would be a moral claim that unites all of the Christian community, yet for which there are no secular grounds found in contemporary experience. The lack of secular grounds is likely to lead some Christians to question received interpretations of relevant Scriptural passages and religious traditions, leading to internal disagreement. Perry's extra premise probably does not reduce the number of cases where restraint is obligatory.

Further, while at first glance the extra premise regarding internal controversy seems to make the argument more acceptable to religious citizens, this is not necessarily so. Those who affirm traditional interpretations of relevant religious sources, such as Biblical passages, are likely to consider those who reject those interpretations as revisionists, who simply change their views in light of present-day secular moral beliefs, rather than staying faithful to religious truth. They might reasonably assert that there are always going to be such revisionists. Their presence is no reason to take the apparent lack of secular grounds as a greater challenge to one's religiously-grounded moral beliefs.

This highlights some ambiguity over what it means for there to be disagreement on a moral claim 'within the Christian community'. How large does the dissenting group have to be? If a few Christians deny a moral claim that all others accept, is this sufficient to produce an internal controversy? Presumably Perry would say that the disagreement needs to be 'significant' in some sense – perhaps that the dissenting view is endorsed by a large number of Christians, or by several religious authorities or scholars. A related question is what constitutes the 'Christian community'. There are many Christian denominations. Most of these recognise one another as Christian; few Presbyterians would deny that Anglicans or Baptists are Christians. But some denominations that claim to be Christian, such as Mormonism and Jehovah's Witnesses, are not recognised as such by other denominations. It is unclear where Perry would draw the borders of

the 'Christian community' for the purposes of his argument. Perhaps he would limit it to denominations holding to recognisably orthodox Christian beliefs, such as the Trinity, the deity of Jesus Christ, and the Bible being God's word. Even then, many in one denomination believe their Scriptural interpretations and doctrinal traditions to be superior to those of other denominations. Thus, if there is unanimity within Methodism on a moral claim, it is not clear to what extent disagreement within Anglicanism should cause a Methodist to reconsider her view and take secular arguments into account in a new way. Similarly, as I noted above, traditionalists will reject the idea that interpretations proposed by revisionists give them cause for such a reconsideration.

Even setting these complications aside, Perry's amendment to the theo-ethical equilibrium argument is insufficient to save it from Eberle's objection. It is true that disagreement on a moral issue within the Christian community should lead Christians on all sides to carefully consider their opponents' arguments and re-evaluate their own positions, as Perry claims. Further, they should take into account secular arguments as part of this process of reappraisal. Eberle himself accepts that secular sources should play a role in religious citizens' moral deliberations. But it is unclear why the fact of disagreement within Christianity should change an individual's attitude to the secular evidence. If she remains convinced of her Biblical interpretation, theological reasoning, endorsement of religious authorities, etc., then the fact that some Christians disagree with her does not in itself give any reason to assign more weight to the lack of favourable secular evidence than she does when there is Christian unanimity. She might reasonably believe that co-religionists who disagree with her have given *too much* weight to secular considerations, and allowed them to influence their Biblical interpretation such that they have reached false conclusions. If her best reasoning leads her to hold firm to her religiously-grounded moral claim then she can reasonably conclude that her dissenting co-religionists, and non-religious compatriots, are wrong.

4. Natural Law

Perry notes that his theo-ethical equilibrium argument will be especially plausible for those within the Thomist ‘natural law’ tradition, which is helpfully summed up by Basil Mitchell: “revelation does not require us to interpret the nature of man in ways for which there is otherwise no warrant but rather affords a deeper understanding of man as he essentially is.”³³ The idea that moral truth is discernible by those who do not accept Christian revelation has traditionally been expressed using the doctrine of natural law. Some Christians’ views of natural law would lead them to deny Eberle’s claim that it is possible for cultures to be so distorted that there are no plausible secular arguments for moral truths. Similarly, they would deny my claim that some moral truths might simply lack adequate secular grounds. My discussion thus far has assumed that secular and religious sources of moral claims are distinct. According to natural law doctrine, a central source of moral truth is religious, since it is based on God’s creative ordering of the universe, but is also secular, since it is accessible³⁴ to non-religious individuals. The doctrine could thus provide further theological support for the theo-ethical equilibrium argument for restraint. In this section I will therefore (briefly) examine Christian views of natural law.³⁵

The central claim of (traditional³⁶) natural law doctrine is that the “grounds and norms of moral obligation are built into human nature,”³⁷ so are available to be grasped by all. God has structured the world in such a way that there is a moral order “given in the nature of things,”³⁸ which can be apprehended by ‘natural reason’ – by rational reflection on the world and on humanity. Humans can, in principle at least, discover all moral truth through reflection on the order inherent in the

³³ Quoted in *ibid.*, p. 67, from Mitchell, Basil, ‘Should Law be Christian?’, *Law & Justice* 96/97 (1988): 12-22, p. 21.

³⁴ In some sense. Complications over precisely what this means will emerge below.

³⁵ For an overview of recent debates over natural law, see Pope, Stephen, ‘Reason and Natural Law’, in Meilaender, Gilbert, and William Werpehowski (eds.), *The Oxford Handbook of Theological Ethics* (Oxford: Oxford University Press, 2005): 148-167.

³⁶ The description in this paragraph does not apply to the ‘new natural law’ theory discussed in Section 5.

³⁷ Biggar, *Behaving in Public*, p. 29.

³⁸ *Ibid.*, p. 37.

created world. This includes truth about our moral obligations and about what things are good, valuable, and make for human flourishing. As Biggar puts it, “since the created world is ordered, it is therefore comprehensible by rational creatures... And since the created world is ordered for good, what is comprehensible includes goods or forms of flourishing.”³⁹

4.1. The High View of Natural Law

The strongest version of this doctrine holds that Christian revelation adds nothing to the knowledge of moral truth that can be attained through independent reasoning. Christianity merely provides a distinct motivation to seek to ascertain, and live by, this moral truth. The Christian faith gives fresh impetus to live a moral life, but without changing the content of such a life. Thus, “there is no such thing as a specifically Christian ethic.”⁴⁰ John Mahoney’s summary of Aquinas’s view reflect this: “Christian revelation contains in its moral teaching no substantial element over and above what is accessible to human reason without revelation.”⁴¹ “Revelation as such has nothing in matters of moral behaviour to add to the best of human thinking.”⁴² Mahoney notes a “persistent confidence of the [Catholic] Church’s moral tradition in the power of human reasoning to identify moral claims through a consideration of man’s nature.”⁴³

As Perry indicates, this view of natural law seems to bolster to the theo-ethical equilibrium argument for restraint.⁴⁴ Since moral truth is discernible independent of revelation, all truths relevant to public life will have plausible secular rationales. As Patrick Riordan states, the natural law tradition “conveys a confidence that appropriately non-religious arguments can be found”⁴⁵ whenever political coercion is required. Laws can be justified by appeal to those secular

³⁹ Ibid., p. 26.

⁴⁰ Ibid., p. 31.

⁴¹ Mahoney, John, *The Making of Moral Theology: A Study of the Roman Catholic Tradition* (New York: Oxford University Press, 1987), p. 107.

⁴² Ibid., p. 109.

⁴³ Ibid., p. 83.

⁴⁴ But see Section 5.

⁴⁵ Riordan, ‘Permission to Speak’, p. 191.

arguments, and citizens should not support laws for which their only arguments are religious. Indeed, they should be highly suspicious of *any* moral claims for which they lack secular grounds, since all moral truths have such grounds. Christian revelation does not change the content of morality, so it is likely that moral claims for which one has only religious support are false. When united with this understanding of natural law, the theo-ethical equilibrium argument does appear to provide sufficient reason for restraint.⁴⁶

However, this 'high view' of natural law can be challenged empirically, philosophically, and theologically. Empirically, it is not clear how it can explain the fact of reasonable pluralism. The idea that, under conditions of freedom, reasonable individuals will accept a diverse range of incompatible comprehensive doctrines is central to political liberalism. Yet if all moral truth is discernible by the right use of reason then it seems the correct explanation for pluralism is not the burdens of judgment, to which even the most reasonable are susceptible, but the moral blindness or bad reasoning of those who hold incorrect views.⁴⁷

Philosophically, the high view underestimates the extent to which an individual's present belief-value set shapes what appears reasonable and plausible to her. Many theologians have been influenced by communitarian thinkers on this point. Robert Gascoigne argues that the high view of natural law cannot explain the role that historical traditions and cultural interpretations of the meaning and purpose of human existence play in our ethics. "Practical reason makes normative judgments within the horizon of meaning drawn by the meanings and values characteristic of a

⁴⁶ I should note a slight complication here. This argument for restraint assumes that moral truths are accessible without any theological presuppositions at all. This is certainly the view of the 'new natural lawyers' (see Section 5), and some attribute it to Aquinas. Others, however, claim that Aquinas believed that while *revelation* is not needed in order to access moral truths, basic theological presuppositions about God and the nature of the world are. Natural law arguments will not be persuasive to atheists. If this is right, then it is not clear that natural law, even on the high view, is 'secular' in Audi's sense, or that it supports the theo-ethical equilibrium argument. In the main text I assume the former interpretation, however.

⁴⁷ Gascoigne, Robert, *The Public Forum and Christian Ethics* (Cambridge: Cambridge University Press, 2001), p. 169.

tradition.”⁴⁸ Reason never functions independently from foundational assumptions and insights formed within particular traditions. This is not to imply that individuals are bound to only accept claims that cohere with their tradition, but simply to point out that one’s worldview shapes the force and plausibility of claims. The high view struggles to accommodate this.⁴⁹

Those who are less persuaded of the pervasive effects of traditions on individuals’ moral reasoning might reject this objection. However, one need not accept Gascoigne’s communitarian-inspired statements in order to agree that rational justification is partly dependent upon an individual’s present beliefs and values, such that sound moral arguments might appear implausible to her due to her present evidential set. The perspectival nature of rational justification seems sufficient to cast doubt on the high view of natural law, and undergirds Eberle’s objection to the theo-ethical equilibrium argument.⁵⁰

Finally, theologically, the high view underestimates the effects of the fall. Christians believe that the world is corrupted due to sin. This includes the distortion of human moral understanding.⁵¹ Thus, contra the high view of natural law, “sin distorts moral cognition as well as moral motivation.”⁵² There are elements of moral duty that will not make sense to independent human reason. The most obvious of these are the religious or spiritual practices that the Bible sees as obligatory, and necessary for human flourishing. But Biggar claims that Christianity also “prescribes new norms of action, new duties of conduct”⁵³ more generally. For example, the high value placed upon forgiveness and compassion within the Bible might not be plausible (or as plausible) on a non-Biblical worldview. The same might apply to the Bible’s sexual ethics.

⁴⁸ Gascoigne, *Public Forum*, p. 172, fn. 5.

⁴⁹ This is not to say that advocates of the high view have no possible replies to this, or the previous, objection. However, convincing replies will likely lead to a more moderate view of natural law that does not support Perry’s theo-ethical equilibrium argument.

⁵⁰ Eberle explains his view of rational justification, which I broadly accept, in *Religious Conviction*, pp. 61-63.

⁵¹ Romans 1:18-25.

⁵² Biggar, *Behaving in Public*, p. 37.

⁵³ *Ibid.*, p. 38.

4.2. The Low View of Natural Law

An emphasis on the effects of the fall might lead one to a 'low view' of natural law. On this view, secular ethics is deeply distorted by sin and will have little, if anything, in common with Christian ethics, the morality discernible via Christian revelation. After all, secular ethics is based upon fundamentally mistaken worldviews. Sound moral reasoning must start with the facts of God's existence and His self-disclosure. Moral reflection and theories that do not endorse these premises will inevitably go wrong. Christians, are 'new creations' with 'renewed minds', according to Saint Paul.⁵⁴ They can know the mind of God, and understand moral truth in a way that non-believers simply cannot.

This account clearly rejects Audi's and Perry's claims with regard to theo-ethical equilibrium, since it has such a low view of secular moral reasoning. A lack of secular corroboration for a religiously-grounded moral claim provides no reason to doubt that claim. It is not clear what the political implications of this low view of natural law are, however. There are (at least) two possibilities.

First, the stress on the distinctiveness of Christian ethics might lead one to withdraw from public life.⁵⁵ Christian revelation only has meaning and force for those whose worldview and lives are comprehensively shaped by it, so cannot be made relevant or accessible to non-Christians. Public ethics can only be a perchance agreement among strangers, a minimal and fragile consensus on basic norms such as respect for security. This leads to 'restraint as withdrawal', a rather pessimistic version of the restraint requirement. Religious citizens should refrain from appeal to religious reasons to justify laws, but not due to an ideal of respect for their compatriots. Restraint is instead based on a belief in the impossibility of religious ethical understanding being intelligibly communicated to the non-religious, or of there being any secular paths to its conclusions. This interpretation of the political implications of the low view of natural law is in some senses

⁵⁴ 2 Corinthians 5:17; Romans 12:2.

⁵⁵ Gascoigne, *Public Forum*, pp. 173-176.

compatible with the public reason liberal restraint requirement, but is not *supportive* of it in the way the high view is. It is compatible in that Christians should not impose their religiously-grounded moral beliefs on others. But it does not encourage citizens to seek secular rationales for those beliefs, or to engage in constructive deliberation, so fails to support many aspects of public reason liberalism. For public reason liberals, the idea that arguments grounded in religious doctrines are inaccessible to non-believers leads to a call for citizens to engage with one another based on shared reasons, rather than to withdraw into enclaves formed around their comprehensive doctrines.⁵⁶

A different interpretation of the political implications of the low view is that Christians must be faithful to the moral truth that has been revealed to them. This sometimes includes seeking its enactment in law. They should seek to persuade others, but expect revealed moral truths to often appear implausible to non-Christians. In such cases, all Christians can do is stand up for truth and seek to enact laws that reflect it, even if many will lack reasons to accept those laws. This need not be an illiberal view, since it does not imply a rejection of basic rights and freedoms, or of democratic decision-procedures. But it is a rejection of public reason liberalism, since laws need not be justified to every citizen,⁵⁷ and citizens are not obligated to provide public reasons or to refrain from supporting laws when they cannot provide such reasons.

The low view of natural law appears implausible, however, and can also be challenged empirically, philosophically, and theologically. Empirically, it seems to miss the substantial consensus on moral truths that exists between different comprehensive doctrines.⁵⁸ As David Fergusson has noted, we

⁵⁶ At least this is true for existing public reason liberal theorists, who endorse a model of participatory deliberative democracy. ‘Enclave’ public reason liberalism, which encourages (some) citizens to withdraw from public life, is a possible position, but not one that is endorsed within the literature. Further, even that view’s similarity with the ‘Christian withdrawal’ view is accidental, rather than being due to shared values or goals.

⁵⁷ In any internalist sense.

⁵⁸ For example, some variant of the ‘golden rule’ is accepted within many cultures, traditions, and religions.

often find “common ground without common theory.”⁵⁹ While comprehensive doctrines vary greatly in their metaphysical and meta-ethical beliefs, they often overlap on many substantive moral claims.

Philosophically, several theorists, even theologians influenced by communitarianism, have argued that there can in fact be “genuine and substantive communication between traditions.”⁶⁰ Gascoigne argues that ‘mediating principles’, which originally arise from within a particular comprehensive doctrine, can gain relative independence from those doctrines and be intelligible to others.⁶¹ While the deepest grounds for such principles are found within a particular worldview, those who reject that worldview can nonetheless appreciate something of their force. Habermas similarly argues that religious insights can be “translated from the vocabulary of a particular religious community into a genuinely accessible language”⁶² – a language accessible to the non-religious.

Theologically, this account seems to underplay the effects of the fall upon *Christians*. Christians believe they *are* saved from sin, such that they will not face God’s judgment for their sins, but also that they are *being saved* from sin, by being empowered by God to live less sinful lives. This present-tense salvation, or sanctification, is ongoing. Christians are thus still susceptible to distortions in their moral cognition, mistaken Biblical interpretations, and the effects of hubris.

Further, Christians believe that God is at work outside the church as well as within it, such that they can learn from non-Christians, including in the domain of morality. As I have already noted, Christians can and do accept sound logical and philosophical argumentation, and are rightly

⁵⁹ Fergusson, *Community, Liberalism*, p. 158.

⁶⁰ Gascoigne, *Public Forum*, p. 178.

⁶¹ *Ibid.*, pp. 178-179.

⁶² Habermas, ‘Religion in the Public Square’, p. 10. See also Waldron’s arguments, discussed above on pp. 30-32.

influenced by secular moral reasoning. This is theologically warranted by the belief that the world, though fallen, still reflects God's creative ordering, and that the voice of the Spirit can speak from outside the church as well as within it.⁶³

Biggar expertly sums up these two theological points:

"The Christian ethicist should expect to find common ethical ground with others. Although sin undoubtedly clouds human apprehension of the moral order that inheres in the world of the one God's creating, its obfuscation outside the church is evidently not absolute. And its de facto sphere of influence inside the church has not yet been brought to an end."⁶⁴

Christians should reject the low view of natural law, and so listen to what non-Christians say about morality, and examine secular evidence and arguments.

4.3. The Moderate View of Natural Law

All of this points to a more nuanced and moderate view of natural law, which holds neither that *all* moral truth can be discerned through unaided secular reason nor that most moral truths are discernible *only* through revelation and lack any resonances with secular values. On this view, reflection on human nature can lead to some understanding of what makes for human flourishing, and all humans, despite their sinfulness, are somewhat capable of accurately grasping moral truths. But it is not the case that we can know completely what is good and right without the aid of revelation. Theology can both restate "ethical truths that are often obscured by sinful rationalisation,"⁶⁵ and reveal ethical truths that are not accessible to fallen natural reason. In the former case, secular arguments for the religiously-grounded moral claim may well be available, but those arguments may appear implausible within the present cultural context. In the latter case, there may simply be no secular arguments for the moral claim, but this is not a sure sign that the claim is false. Secular moral reasoning is useful in discerning moral truth, and individuals

⁶³ Biggar, *Behaving in Public*, p. 27.

⁶⁴ Ibid., p. 28.

⁶⁵ Ibid., p. 37.

should seek coherence between religiously-grounded moral claims and what they take to be the best secular arguments.⁶⁶ But individuals can be warranted in continuing to accept moral claims that only have religious justifications. Christians should expect to find areas of ethical agreement with others, but should not be surprised if sometimes no such agreement is possible.⁶⁷

This view of natural law seems to avoid the objections I levelled at the other two views. Empirically, it expects both areas of consensus and reasonable pluralism. Philosophically, it allows for the perspectival nature of rational justification and the effects of culture on what appears plausible, but also is optimistic about the possibility of communication across traditions and of moral insights from one worldview finding support from others. Theologically, it acknowledges the effects of the fall both inside and outside the church, and recognises the importance of revelation to ethical deliberation while also allowing for God's communication to, and through, non-believers.

There are clearly many gradations of 'strength' of natural law theory, rather than simply the three views I have outlined. But it is probably fair to say that most theologians affirm positions within the 'moderate' camp. For example, consider Karl Barth, one of the most prominent theologians of the twentieth century. Barth is known as a critic of 'natural theology'. One of his central objections was one I have already outlined. What is considered 'natural' is always culturally mediated and historically conditioned, so natural law will always at bottom be a cultural construct, offering no reliable basis for knowing what is right and wrong. "Barth rejected the idea of an unmediated and unconditioned moral law to which human beings have universal access, even in their fallen state."⁶⁸ Christian ethics "must begin with God's gracious action in the

⁶⁶ i.e. They should seek theo-ethical equilibrium.

⁶⁷ Versions of this 'moderate view' are endorsed in *ibid.*, pp. 41-42; Gascoigne, *Public Forum*, pp. 178-181.

⁶⁸ Hunsinger, George, 'Karl Barth', in Witte Jr., John, and Frank S. Alexander (eds.), *The Teachings of Modern Christianity on Law, Politics, and Human Nature, Vol. 1* (New York: Columbia University Press, 2006): 352-380, p. 374.

revelation of God's witness of the gospel and not in Christian virtue, human law, or natural theology."⁶⁹ We cannot achieve clear knowledge of moral truth, or of ourselves, independent of God's revelation of Himself and His grace in His Son, Jesus, and thus in Scripture.

Nonetheless, Barth believed that once we understand grace, we can recognise that it is operative outside the church, as well as within it. Moral perceptions that do not explicitly rely on grace are always profoundly ambiguous, but this does not mean they contain no truth or validity. In fact, Christian ethics should "be absolutely open to all that it can learn from general human ethical inquiry,"⁷⁰ because "all non-Christian viewpoints have the potential to be secular witnesses to God's grace, and the task of the Christian community is to listen to the witness of these other voices."⁷¹ Indeed, often "the Holy Spirit [speaks] the language of common sense."⁷² According to George Hunsinger, Barth thus "gave back with one hand much of what he took away with the other."⁷³ Christians can find moral and philosophical truths outside Scripture and the church. They should borrow, or 'annex', these truths, bringing them into their own theologically-grounded worldview. Christians can use whatever intellectual or social material "helps them in their task of showing how the world is rightly known only from the perspective of the Christian story."⁷⁴ It therefore seems that while Barth was an ardent critic of the high view of natural law, his own view was a moderate one.⁷⁵

The moderate view of natural law coheres with my earlier discussion of the theo-ethical equilibrium argument. Eberle's claim that there can be distortions within a culture's secular moral

⁶⁹ Haddorff, David, *Christian Ethics as Witness: Barth's Ethics for a World at Risk* (Eugene, Or.: Cascade Books, 2010), p. 106.

⁷⁰ Barth, Karl, *Church Dogmatics*, Vol. 2 Pt 2, eds. G. W. Bromiley and T.F. Torrance (Edinburgh: T&T Clark, 1957), p. 524.

⁷¹ Haddorff, *Christian Ethics*, pp. 10-11.

⁷² Barth, Karl, 'Political Decisions in the Unity of the Faith', in his *Against the Stream: Shorter Post-War Writings, 1946-52* (London: SCM Press, 1954): 147-164, p. 160.

⁷³ Hunsinger, 'Karl Barth', p. 375.

⁷⁴ Kaveny, Cathleen, 'Hauerwas and the Law: Framing a Productive Conversation', *Law and Contemporary Problems* 75:4 (2012): 135-160, p. 151.

⁷⁵ Although he was closer to the low view than some moderate views are.

perceptions, such that moral truths seemingly lack plausible secular grounds, would be denied by (some) advocates of the high view but affirmed by adherents of the moderate view. The moderate view also fits with my argument that while Christians should pursue theo-ethical equilibrium, they should not necessarily doubt moral claims that lack secular corroboration, if they have strong religious evidence.

Unfortunately for public reason liberalism, the best theological view of natural law fails to provide support for Audi's and Perry's theo-ethical equilibrium arguments. The moderate view certainly accepts the relevance of secular moral insights to Christians' discernment of moral truth, but also holds that one can have a religiously-based justification for a moral claim that is sufficiently strong that one can continue to affirm it with a high degree of confidence, even when no plausible secular grounds are forthcoming. Further, there is no reason to believe that this cannot be the case when there is disagreement on the claim in question within the Christian community, contra Perry's (later) version of the argument. A lack of secular grounds thus does not provide one with reason for restraint, in the way Audi and Perry claim.

5. Revisiting the High View and Restraint

I have argued that the most plausible view of the relationship between secular reasoning and revelation within Christianity does not support the theo-ethical argument for restraint. The high view of natural law has seen a renaissance in recent years, however, with the emergence of 'new natural law theory', which claims that the moral order is graspable through reflection about practical rationality.⁷⁶ The first principles of practical reason are known in themselves,⁷⁷ and can be used to identify intrinsically valuable basic goods, which form the basis of morality. New

⁷⁶ Key figures here include Germain Grisez, John Finnis, and Robert George. For an overview, see Pope, 'Reason and Natural Law', pp. 155-159.

⁷⁷ Which means that they are "comprehended immediately when their meaning and reference are understood, and indemonstrable." Ibid., p. 155.

natural law theory thus agrees with the traditional high view that moral norms are accessible to all, but has a different view of the way in which they are accessed.

In this section I therefore revisit the relationship between this view of natural law, theo-ethical equilibrium, and restraint. This will cast doubt on the coherence Perry suggests exists, and will highlight more general problems with public reason liberalism.

According to the high view of natural law, there is a sound secular argument for every moral truth.⁷⁸ To respond to Eberle's examples of cultural distortion, plausible versions of this view must accept that these sound arguments are not always 'obvious' or 'common sense'. Indeed, its advocates⁷⁹ have always accepted that unaided human reason will not in practice find all moral truths, given the distorting effects of sin. Christian revelation is necessary, to bring to light moral truths that otherwise go unnoticed. For example, Aquinas held both that "morality is essentially rational conduct, and as such it must be accessible, at least in principle, to human reason and wisdom,"⁸⁰ and that "not all the conclusions of natural law are universally known, and the more one descends from the general to the particular, the more possible it is for reason to be unduly influenced by the emotions, or by customs, or by fallen nature."⁸¹ Thus, as Mahoney explains, "the purpose of Revelation, so far as morality is concerned, appears to be essentially remedial, not absolutely necessary for man but in practice almost indispensable."⁸² Revelation corrects mistakes that reason would otherwise make, leading one to accept moral truths one would have rejected. One should always *then* be able to find secular, natural law, arguments for such truths. But those arguments might not appear particularly persuasive or plausible to non-Christians within one's cultural and social context. Perhaps the woman in Eberle's sexist society could come

⁷⁸ "Morality is a matter of what reasons require, and reasons are inherently intelligible, shared, common." Finnis, 'Is Natural Law Theory', p. 3.

⁷⁹ Of both the traditional and 'new' versions.

⁸⁰ Mahoney, *Making of Moral Theology*, p. 106.

⁸¹ *Ibid.*, pp. 105-106.

⁸² *Ibid.*, p. 107.

to accept a secular argument for female equality, such as that there are no relevant differences between women and men that could ground women's claimed inferiority. This could be a sound secular argument, despite not appearing plausible to her compatriots.

Contemporary examples can also be given. 'Common sense' moral beliefs in our culture justify a (limited) right to abortion.⁸³ Many Christians believe, for religious reasons, that foetuses have full human moral status, and thus this is equivalent to granting a right to murder. Some have presented a secular argument for this conclusion, claiming that there is no (non-arbitrary) way to draw the bounds of when a foetus becomes human at any point after conception. If we believe that newly-born babies have full moral status then we must also believe this about embryos, and even zygotes.⁸⁴ Many citizens might find this secular argument unpersuasive, however.⁸⁵

An even more controversial example is John Finnis's argument that homosexual sexual conduct is immoral.⁸⁶ Finnis argues that marriage – the exclusive, permanent, union of a man and a woman – is a basic, intrinsic, human good, with the dual purpose of friendship and procreation. Sexual intercourse is central to marriage, because it "actualises, expresses and enables the spouses to experience, at all levels of their being, their marriage itself in each of its essential dimensions: friendship and openness to procreation."⁸⁷ Through it, the couple "experience the reality of their union as spouses,"⁸⁸ and their commitment to their marriage and its dual purpose. Non-marital sex, in contrast, realises no intelligible good. Further, it sets the wills of those who engage in it *against* the good of marriage, by denying that sex acts should be reserved to the marital kind.

⁸³ For example, see Rawls, *Political Liberalism*, p. 243, f. 32, and p. 479, fn. 80.

⁸⁴ Perry, *Religion in Politics*, pp. 70-71, attributes this argument to The Catholic Bishops of the United States' 1989 'Resolution on Abortion'.

⁸⁵ Perhaps due to cultural distortions.

⁸⁶ See 'Is Natural Law', pp. 12-17; Finnis, John, 'Marriage: A Basic and Exigent Good', *The Monist* 91:3-4 (2008): 388-406. The argument applies to all sexual conduct except uncontracepted coitus within marriage.

⁸⁷ Finnis, 'Marriage', p. 390.

⁸⁸ Lister, *Public Reason*, p. 143. Lister discusses Finnis's argument and its connection to public reason liberalism in some detail, on pp. 141-150.

Practical reason directs us to marriage, since it is a basic good. Choosing against it, by engaging in non-marital sex, is unreasonable and immoral.⁸⁹

This argument might seem implausible to many. But it is a good example of ‘new natural law’ argumentation. This demonstrates that those with a high view of natural law certainly do not believe that all moral truths are ‘obvious’ or ‘immediate’. All moral truths are accessible through secular reasoning, but that reasoning can be highly complex and sophisticated. Sometimes, that reasoning is not very ‘accessible’ to ordinary citizens at all.⁹⁰ The example also shows that natural law theorists offer secular moral arguments that few, if any, non-Christians accept. Some critics suggest that only those who already endorse the conclusions on religious grounds find new natural law arguments persuasive,⁹¹ or even that religious presuppositions are implicit within those arguments.⁹²

What are the implications of all of this for the theo-ethical equilibrium argument for restraint, and for public reason liberalism more generally? The answer largely turns on whether the kind of (new) natural law arguments I have discussed count as public reasons.

Natural law arguments are secular – they (purportedly) do not rely on religious premises or beliefs for their justificatory force. So they seemingly are public reasons on Audi’s view. However, Audi writes that coercive laws must be justified “in terms of considerations... that any rational adult citizen will find persuasive and can identify with.”⁹³ Many natural law arguments do not seem to

⁸⁹ Finnis, ‘Marriage’, pp. 392-393.

⁹⁰ According to Greenawalt, many find that Finnis’s position on sexuality is “not only unpersuasive on balance but that it appeals to an esoteric set of assumptions rather than any common reason.” Greenawalt, ‘Natural Law’, p. 545.

⁹¹ Greenawalt claims that Finnis’s “argument has resonance almost exclusively among people who happen to accept the conclusions on religious grounds.” Greenawalt, ‘What Are Public Reasons?’, p. 102.

⁹² Bamforth and Richards, *Patriarchal Religion*, Chapter 4. Their arguments for this conclusion actually strike me as rather weak and unpersuasive. They discuss sexual intercourse on pp. 94-115.

⁹³ Audi, ‘Liberal Democracy’, p. 16.

meet this criteria, since few find them persuasive. Perhaps Audi would rule out, as non-public, secular arguments that no non-religious citizens ‘identify with’, or recognise as having normative force. Similarly, Perry repeatedly mentions ‘contemporary experience’ as the source for secular public arguments. Given that most citizens reject natural law arguments, we might judge that they do not draw on ‘contemporary experience’ in the requisite way. Indeed, Perry contends that Finnis’s argument against homosexuality is implausible, so should not be the basis of political action.⁹⁴

If (many) natural law arguments are non-public, however, then Perry is wrong to claim that the high view coheres with his theo-ethical equilibrium argument. Proponents of that view believe that natural law arguments are both secular and sound, and ought to be presented, by both citizens and officials, as the justification for laws. While they might accept that citizens should not support laws for which their only arguments are religious, they believe that natural law arguments provide adequate secular grounds for political action.⁹⁵ They therefore believe that they are providing public, secular, reasons in cases where Audi and Perry might deny this. Natural law theorists’ understanding of appropriate restraint is different from Perry’s and Audi’s, so does not provide support for the public reason liberal restraint requirement.

Alternatively, we might hold that natural law arguments *do* provide public reasons. Despite not being persuasive to all, their advocates believe them to be plausible and adequate secular arguments, and this is sufficient for the public-reason-giving requirement to be fulfilled. Even if only Christian citizens, who also have religious grounds for the laws in question, are persuaded by natural law arguments, this does not prevent those arguments from providing public reasons.

⁹⁴ Perry, *Religion in Politics*, pp. 82-96. Macedo has argued that natural law arguments are inaccessible and/or unreasonable, so are non-public. For discussion, see George, Robert P., and Christopher Wolfe, ‘Natural Law and Public Reason’ in George, Robert P., and Christopher Wolfe (eds.), *Natural Law and Public Reason* (Washington, D.C.: Georgetown University Press, 2000): 51-74; Bamforth and Richards, *Patriarchal Religion*, pp. 31-45.

⁹⁵ See George and Wolfe, ‘Natural Law’; Finnis, ‘Is Natural Law’.

Audi hints at this position, in his more recent work, by denying that secular reasons need actually be shared by everyone.⁹⁶ Instead, “they need only be in a certain way accessible to rational adults: roughly, appraisable by them through natural reason in the light of facts to which they have access on the basis of exercising their natural rational capacities.”⁹⁷ Arguably, natural law arguments fulfil this criterion.⁹⁸

Further, all public reason arguments will be controversial and disputed. The aim of public reason liberalism is not to settle political debates, but to show what the currency of those debates should be – what reasons should be used to justify laws.⁹⁹ There will always be disagreement over the interpretation and relative weight of values, empirical evidence, and so on, but this is unproblematic as long as the right kind of reasons are used. Boettcher has recently claimed, in relation to abortion, that “most politically active and reflective citizens would seem to be able to identify what they take to be sufficient public reasons in support of legislation protecting... the unborn, regardless of whether their reasons are conclusive for their compatriots.”¹⁰⁰ Perhaps Boettcher has in mind the kind of argument I mentioned above.

On this approach, the high view of natural law does cohere with the public reason liberal restraint requirement. Natural law arguments provide public reasons, so both views agree that citizens should only support laws for which they have public reasons.¹⁰¹ This comes at a high cost, however, since public reason liberalism no longer achieves its aim of ensuring that laws are justified by reasons “whose force can be appreciated by all reasonable fellow citizens.”¹⁰² Non-

⁹⁶ I think there has been a shift in Audi’s views between ‘Liberal Democracy’ and *Democratic Authority*, but lack space to explore this here.

⁹⁷ Audi, *Democratic Authority*, p. 70.

⁹⁸ Audi discusses the relationship between ‘secular reasons’ and ‘natural reasons’ in *ibid*, pp. 76-86, and Audi, Robert, ‘Natural Reason, Natural Rights, and Governmental Neutrality Toward Religion’, *Religion and Human Rights* 4:2 (2009): 157-175.

⁹⁹ Rawls, *Political Liberalism*, pp. 474-476.

¹⁰⁰ Boettcher, ‘Moral Status’, p. 169.

¹⁰¹ Public reason liberalism obviously also includes public reasons that are not natural law arguments.

¹⁰² Klemp and Macedo, ‘The Christian Right’, p. 212.

religious citizens might not merely see natural law arguments as ‘inconclusive’, as Boettcher intimated, but as lacking any normative force whatsoever – as being completely implausible and unpersuasive.

This question of the status of natural law arguments, of whether they provide public reasons, points to a more general problem for public reason liberalism: how we define the content of public reason.¹⁰³ What reasons count as ‘accessible to’ or ‘acceptable to’ or ‘capable of being shared by’ all citizens? How do we identify which reasons have the relevant good-making property? Audi’s view that citizens should only support laws for which they have an adequate secular rationale is one attempt at answering this question. As we have seen, however, some Christians might believe that they have an adequate secular rationale from a natural law argument that few non-Christian citizens find plausible. Public reason liberalism’s main motivation, that laws be justified by reasons all can ‘find persuasive’ and ‘identify with’ is not fulfilled in this case. Many other attempts to define ‘public reasons’ according to their ‘accessibility’ or ‘acceptability’ to all citizens face similar problems, as Eberle has shown.¹⁰⁴ One response to this is to provide a stipulative definition of what reasons we can ‘*reasonably* expect all *reasonable* citizens to endorse’, as Rawls does. This approach has major shortcomings, however, as I discussed in earlier chapters.¹⁰⁵

This problem for public reason liberalism provides further reason to prefer justificatory liberalism, which does not require us to define the ‘right kind of reasons’ that can be used to justify laws, so avoids the difficulties involved in doing so.

¹⁰³ Greenawalt, ‘Natural Law’, p. 552, argues that considering the “status of natural law arguments shows that the boundaries of public reason are very hard to define.” See also Bamforth and Richards, *Patriarchal Religion*, pp. 31-45.

¹⁰⁴ Eberle, *Religious Conviction*, pp. 195-293, discusses this at length. See also Vallier, *Liberal Politics*, pp. 111-124. Eberle, ‘What Does Respect Require?’, pp. 184-189, discusses a further problem for theories involving radical idealisation: citizens can reasonably believe that their own current beliefs will be accepted by all radically idealised citizens.

¹⁰⁵ Particularly Chapter 3.

6. Conclusion

The theo-ethical equilibrium argument sought to show that Christian citizens have good reasons, internal to their religious worldview, to find secular corroboration for religiously-grounded moral claims, and to doubt claims that lack any secular rationale. They should therefore refrain from supporting laws for which they only have religious reasons. Public reason liberalism, or at least one major implication of it for citizens, should thus be accepted by Christians, for theological reasons. Loyalties to God and to public reason liberalism never conflict, because there will always be secular rationales for moral truths that Christians accept on religious grounds, and thus they should only support laws when they have such a rationale.

I have argued that this theological defence of the restraint requirement fails, for several reasons. First, while Christians should seek theo-ethical equilibrium, the considerations in favour of this are insufficient to support the conclusion that citizens should refrain from supporting laws for which their only justification is religious, since they do not show that *all* moral truths have a secular rationale. Second, even if all moral truths *do* have a sound secular rationale, this does not guarantee that this rationale appears plausible in one's current cultural context. Third, the most plausible view of natural law – the moderate view – does not support the argument for restraint, since it admits the possibility of there being no secular arguments for a religiously-grounded moral truth. Finally, even the high view of natural law does not necessarily cohere with public reason liberalism's restraint requirement. A definition of 'public reasons' which creates this coherence undermines the main motivation of public reason liberalism, since many natural law arguments appear unpersuasive to most citizens.

One of the central arguments for why Christians should support public reason liberalism therefore fails. This is encouraging for my project, since it helps show that Christians do not have decisive reason to accept a version of political liberalism that I earlier rejected. This opens the way for us

to look further at Christian arguments for liberalism, and whether these support justificatory liberalism in particular. That is the task of Chapter 8.

Chapter 8: Theological Support for (Political?) Liberalism

In previous chapters I showed that there is no deep incompatibility between Christianity and justificatory liberalism, and argued that a prominent argument for the idea that Christians should endorse public reason liberalism – the theo-ethical equilibrium argument – fails. In the present chapter I want to accomplish two tasks, to further our exploration of the compatibility between Christianity and political liberalism. First, I will consider an alternative argument for the claim that Christians should accept public reason liberalism. I argue that it is unsuccessful, but also that it points toward theological considerations that show that Christians should support liberalism, at least. Second, I go on to examine further theological resources that favour liberalism. These do not decisively show that Christians should accept *political* or *justificatory* liberalism. But they are at least suggestive of a compatibility between Christianity and these views. They show why Christians might well feel drawn to justificatory liberalism. As I noted earlier, if justificatory liberalism is also the best account of the reason-giving aspect of legitimacy within political philosophy then together with these theological considerations there is a strong case for Christians accepting it. By the end of this chapter I will thus have shown that Christians can be justificatory liberals, on theological as well as philosophical grounds. Chapter 9 will then directly consider the issue of conflicts of loyalty, which I introduced in Chapter 5, since my arguments in Chapters 6-8 show that such conflicts can indeed arise. They can arise because Christians can accept justificatory liberalism, but also lack decisive reason to give it priority in cases where their Christianity pulls in the opposite direction.

1. Swan's Biblical Argument for Public Reason Liberalism

Swan argues that the comments about political authorities we find in the New Testament show that Christians should be liberals, and indeed public reason liberals.¹ He starts by rightly noting

¹ Swan, Kyle, 'Can a Good Christian be a Good Liberal?', *Public Affairs Quarterly* 20:2 (2006): 163-173; Swan,

that Christians should only advocate the legal enforcement of distinctively Christian moral beliefs if the Bible reveals this to be part of the role that God has given to civil authorities.² Christians believe that rulers derive their authority from God, so must use their power in ways that God endorses. Swan argues that the New Testament shows that the state's God-given role is limited to protecting the peace, security and welfare of society, and does not include the coercive enforcement of divine law, or of distinctively Christian moral teachings. He bases this claim on Romans 13:1-7 and 1 Peter 2:14, where the apostles Paul and Peter (respectively) write that civil authorities' role is punishing evildoers, carrying out God's wrath on wrongdoers. Rulers are God's servants, or ministers, appointed by him to restrain evil and punish evil conduct.

Swan points out that Paul³ is explicitly talking about the Roman authorities of his day. It is they whom he declares to be God's ministers, and to be punishing evildoers. Yet Roman rulers clearly did not enforce distinctively Christian moral teachings. The 'evildoers' they punished were not those who violated Christian morality, but those who violated civil laws designed to protect persons and property from harm and interference. Nonetheless, these authorities were commended by the apostles, as God's servants. Paul considered them to be fulfilling the God-given mandate for their office, acting as they had been divinely authorised, despite not enforcing God's law. Swan concludes from this that "God's mandate to the civil authority is to provide protection from harm to persons and their worldly affairs, their projects and most central interests."⁴ This mandate does not extend to enforcing Christianity, or any specifically Christian morality. A state that enforced distinctively Christian moral beliefs would be straying beyond its God-given task. "Coercing Christianity or a distinctively Christian morality is impermissible since it involves the state in stepping beyond its divinely ordained functions of only punishing social evildoers who disrupt the social and national peace by intruding upon or harming others or their

Kyle, 'Law, Liberty, and Christian Morality', *Religious Studies* 43:4 (2007): 395-415.

² Or, at least, if the Bible does not clearly rule out this being part of governments' role.

³ And Peter. For simplicity's sake, I will usually only refer to Paul.

⁴ Swan, 'Can a Good Christian', p. 169.

property.”⁵

The implication of this for the conduct of Christian citizens, Swan argues, is that they should not advocate laws that enforce distinctively Christian moral teachings. They should only support laws that can be supported by arguments that do not appeal to the idea that certain conduct violates God’s law. They should therefore abide by both the public-reason-giving and restraint requirements.

Swan’s argument is unpersuasive. It crucially turns on two claims. First, that the fact Paul wrote that the Roman authorities were ‘God’s servants’ shows that the realm in which they acted, and their legislative purposes, are those that God has authorised. Second, that the Roman civil authority was “enforcing those rules that tend to provide protection from harm and other intrusions to persons and their property,”⁶ and therefore *this* is the God-given mandate for rulers, and enforcing distinctively Christian morality falls outside this mandate. Both of these claims are doubtful.

The first claim relies on the idea that the apostles’ statements that the Roman authorities were ‘sent by God’ and ‘God’s servant’ are *commendations* for those authorities’ actions, to the extent that their actions are normative for all rulers, and show the purposes for which states should legislate. This is an implausibly strong conclusion to draw. The Bible is clear that *all* authority and power is in some sense delegated from God, since God is sovereign over all things. It is also clear that God has authorised human rulers. But this does not mean that every reference to rulers as God’s servants is an expression of approval for their conduct, such that that conduct is normative for others.

⁵ Swan, ‘Law, Liberty’, p. 412.

⁶ Swan, ‘Law, Liberty’, pp. 406-407.

In the Old Testament, several kings of Israel's enemies, such as Assyria, Babylon, and Persia, are said to be God's servants, carrying out his will.⁷ Assyria and Babylon carry out God's will through their invasion and exile of the Jewish nation, which the Bible sees as a God-ordained judgment for Israel's apostasy and idolatry.⁸ But these nations, and their kings, are also condemned by God and punished for their actions – for their arrogance, self-reliance, rebellion against God, and the way they oppress other nations.⁹ The prophet Jeremiah directly links God's judgment on Babylon and Assyria to the fact that they exiled Israel, having earlier said that in doing so they were acting as God's servants.¹⁰ The vital point here is that the Bible can speak of people as God's servants, and their actions as authorised by him, but also be clear that this is not a commendation, or a mark of God's approval.

Indeed, the same is seen with regard to the Roman authorities. Paul explains that Christians should submit to them, recognising them as God's servants, but John, in the book of Revelation, shows that Rome will be judged for her idolatry and iniquity.¹¹ This has clear parallels with Jeremiah's message to the Israelite exiles in Babylon.¹² He tells them to settle, build houses, plant gardens, seek the welfare of the city they are in, and to pray for it. But he is also clear that ultimately they will be brought back from exile, returning to their own land, and God's judgment would fall upon Babylon.¹³ Similarly, the fact that the New Testament Christians were told to submit to the Roman authorities and that those authorities were God's servants does not show those authorities to be commendable, or that all (or even most) of their conduct was approved by God.

⁷ Jeremiah 25:9, 27:6, and 43:10 call Nebuchadnezzar, king of Babylon, God's "servant". Isaiah 44:28-45:7 calls Cyrus, king of Persia, God's "shepherd" and his "anointed".

⁸ Jeremiah 21:1-10, 25:1-11; Isaiah 8:1-10.

⁹ Isaiah 14:1-27; Jeremiah 25:12-14.

¹⁰ Jeremiah 50:17-18.

¹¹ Benne, Robert, 'Christians and Government', in Meilaender, Gilbert, and William Werpehowski (eds.), *The Oxford Handbook of Theological Ethics* (Oxford: Oxford University Press, 2005): 325-342, pp. 328-329.

¹² Jeremiah 29:1-23.

¹³ This return from exile was enabled by another of God's 'servants' – Cyrus, king of Persia. See Ezra 1.

A further reason to think that Paul was not commending the conduct of the Roman authorities is that those authorities practised many things that he, and we, would not approve of, and that Christians believe God condemns. The Romans imprisoned and persecuted Christians, promoted idolatry and false religion, and practised infanticide and slavery. Swan argues that Paul's statements about these authorities imply approval for their general conduct. This same argument could be applied to any of these specific areas: 'Paul said that the authorities were God's servants who punished evildoers, but they did not punish those who committed infanticide, and therefore infanticide is morally permissible'. All Christians would rightly reject this argument, but it is no less exegetically plausible than Swan's argument.

Swan is well aware of the failings of the Roman authorities, of course, and claims that his argument does not "whitewash the many serious shortcomings in the Roman political and legal scene."¹⁴ Instead, "Paul's commendation of the Roman civil authorities and confirmation of their standing as God's ministers in the way they were functioning suggests that they were competent enough in doing the sorts of things God authorises the civil authorities to do."¹⁵ They should have done better, Swan admits, but "there are no reasons to believe that the way for them to do better was to make the legal system conform to divine law morality."¹⁶ Instead, doing better would have involved better enforcing rules that protect their subjects' temporal interests – their person and property.

Swan's argument here seems to be that because Paul commended the Roman authorities, this means they must have met some minimal standard in doing the sorts of things that governments ought to do. And since they were not enforcing Christian morality, doing so cannot be something that governments ought to do. After all, if that was part of the remit of governmental authority

¹⁴ Swan, 'Law, Liberty', p. 409.

¹⁵ Ibid., p. 409.

¹⁶ Ibid., p. 409.

then rulers that were not doing it at all would not receive Paul's commendation.

As I have shown, Paul was not *commending* the Roman authorities. Even if he were, however, and Swan is right that this shows that the Roman authorities were "competent enough" to receive some divine approval, it does not follow that this is because of the domains in which they legislated. Even if there is some commendation involved, it is not clear that it involves an affirmation that the Roman authorities legislated in the area that God intends governments to, and thus that no government should enforce Christian morality. It seems equally plausible that Paul considered the enforcement of Christian morality to be ideal, but believed that governments can meet some minimal standard without this.

To be clear, I am not claiming that the enforcement of Christian morality *is* theologically permitted; I am merely claiming that Swan fails to show that it is not. The first claim his argument relies on – that Paul commended the Roman authorities and we can thus infer from their practice the areas in which governments are authorised to legislate – is tenuous at best. I have presented three objections to it. First, the apostles' statements do not amount to commendation of the Roman authorities or their conduct. Second, if the apostles were commending the Romans then Swan's argument implies that God approves of governments doing many things that we, and indeed Scripture, consider immoral. Third, if we avoid this by claiming that the commendation merely shows that the Roman authorities met some minimal standard then there is no good reason to interpret this as being because they legislated in the right areas and for the right kind of reasons, or to conclude that governments are not permitted to legislate in other areas.

Even if we grant Swan this first claim, however, so accept that the conduct of Roman rulers informs us as to the types of laws that God has authorised governments to enact, his conclusion that Christians should be *liberals* relies on the second claim I highlighted. This is that the Roman

authorities enforced rules that protected people from harm and interference with their person and property, so the fact their conduct is normative shows that the only divinely ordained function of government is “punishing social evildoers who disrupt the social and national peace by intruding upon or harming others or their property.”¹⁷ Swan presents little evidence for this claim. He refers to a few theologians who have made similar arguments from Romans 13,¹⁸ but also admits that many theologians have believed the government can enforce Christian morality.¹⁹

Swan’s second claim may well strike many as suspiciously liberal. Swan writes that good liberals endorse “freedom from state interference and tolerance of individuals to settle on their own notions of a good worthy to guide their efforts insofar as their doing so is compatible with relative peace and social order.”²⁰ He then takes the commendation of the Roman authorities to amount to a commendation of this liberal view. But the first century Roman empire clearly was not a liberal state. It was not democratic, did not practice social justice, and did not have much by way of a state welfare system. The Roman emperors encouraged a cult of personality and civil religion. They persecuted Christians, rather than protecting religious freedom. While it is true that the Roman authorities protected citizens and their property rights, they also did much beside this that modern liberals would condemn, including being involved in matters of religion. It is therefore unclear on what basis Swan draws the inference from the apostles’ (claimed) commendation of the Roman authorities to the conclusion that it is their protection of persons and property that is being praised, and that governments should only be involved in temporal matters. Swan’s claim that the normative thing about the Roman authorities is specifically their enforcement of liberal rights seems highly dubious.

¹⁷ Ibid., p. 412.

¹⁸ Ibid., pp. 407-409.

¹⁹ Swan, ‘Can a Good Christian’, p. 164. Spencer, Nick, *Freedom and Order: History, Politics and The English Bible* (London: Hodder & Stoughton, 2011) documents the range of interpretations of passages like Romans 13:1-7 and 1 Peter 2:14 over time.

²⁰ Swan, ‘Can a Good Christian’, p. 163.

Swan has not successfully shown that Christians should be liberals. Both the claim that the conduct of the Roman authorities is normative for all governments and the claim that this normativity is due to their protection of persons and property are implausible. This is not to deny that Christians should be liberals; there are many good theological arguments for why they should be, as I show below. My claim here is simply that Swan's argument fails.

One final aspect of Swan's argument is worth commenting on. He writes:

"This means that a strict and committed biblical Christian can and probably should be politically liberal in the sense that political liberals advocate freedom from state interference for individuals who peacefully pursue modes of living that answer to their own conceptions of the good. Freedom in such matters from interference implies that coercive laws that are pursued in terms of distinctively Christian values are not adequately justified. Christians should, in cases where these values alone argue in favour of the coercion, observe restraint."²¹

The first sentence in this quote restates the conclusion to Swan's biblical argument, which I have criticised at length. The second sentence claims that if the state should let people freely pursue their conceptions of the good then laws cannot be justified by distinctively Christian values or reasons. Instead, they must be justified by public reasons. Swan thus implies that all liberals should be public reason liberals.²² This is confirmed by Swan's next comment, which is that his conclusion is characteristic of 'justificatory liberalism' – a term he uses to refer to what I call public reason liberalism. Swan therefore appears to believe that liberal perfectionism and liberal right reasons views are not liberal positions at all. This is incorrect. While public reason liberals obviously believe that theirs is the *correct* liberal position, it is too strong to claim that perfectionists cannot be liberals.

It is unclear why Swan believes that the second sentence in the above quote follows from the first. Liberalism, as Swan defines it, says that individuals should generally be free to pursue their

²¹ Swan, 'Law, Liberty', p. 410.

²² Beckley, 'Christian Affirmation: Part I', pp. 210-212, makes a similar jump.

own conceptions of the good. Clearly there will be some restrictions on this, however. Conceptions of the good that involve harming others will not be permitted, for example. There will be limits on individual freedom, and these limits will require justification. Swan seems to immediately infer that those justifications must be in some sense acceptable to all, appealing to values or reasons all can accept, or appreciate as having normative force. But this does not follow. Laws restricting certain freedoms might be supported by their advocates using justifications some reject, such as religious or perfectionist justifications, without failing to give citizens extensive freedom to pursue their conceptions of the good. More generally, a state can protect a broad range of basic rights and freedoms while also enacting laws that are justified by appeal to non-public reasons. Such states remain liberal states, as long as basic liberal rights are not violated.²³ For example, a state might implement a radically egalitarian redistributive scheme, which is justified by its advocates by appeal to liberation theology. The scheme's supporters argue that God has a preference for the poor, and high levels of redistribution thus reflect his will. Or a state might enact a law designed to discourage the consumption of certain drugs, with those who support this law doing so on the basis of the claim that our bodies are temples of the Holy Spirit and we should therefore not take substances that seriously damage them. Such laws would not detract from the liberal nature of these states.²⁴

In other words, even if Swan is right that Christians should believe that political authorities should only have temporal concerns, this does not preclude them enforcing some distinctively Christian moral views. It precludes them enforcing *Christianity*, coercing citizens into following the Christian religion. But it does not prevent them from enforcing laws applying to temporal conduct that are justified by appeal to Christian beliefs. As Lister rightly argues, not all laws justified by distinctively

²³ For one defence of this claim, see De Marneffe, Peter, 'Liberalism, Liberty, and Neutrality', *Philosophy & Public Affairs* 19:3 (1990): 253-274.

²⁴ Indeed, perfectionists often argue that liberal autonomy concerns *justify* the state making perfectionist judgments. See Wall, Steven, *Liberalism, Perfectionism and Restraint* (Cambridge: Cambridge University Press, 1998). For a public reason liberal response, see Quong, *Liberalism Without Perfection*, pp. 45-72.

religious reasons are laws that seek to promote that religion or suppress other religions. “Designing a law or institution on the basis of some reason X does not necessarily imply forcing people to believe X, denying them the right to speak against X, or giving proponents of X more resources.”²⁵ “Not just any decision made on the basis of a religious reason involves the attempt to shift the distribution of belief in favour of this reason. Policies motivated by religious reasons may simply aim at what is right, in the eyes of those with the views in question.”²⁶ A defence of *liberalism*, with its set of basic rights and liberties, including freedom of religion, should not be conflated with a defence of *political* liberalism, with its distinctive claim about legitimacy.

Clearly there is some dispute about the extent to which perfectionism can be a truly liberal view.²⁷ Certainly a liberal perfectionism will be ‘moderate’, in the sense of only prohibiting certain bads and promoting certain goods, rather than enforcing a particular comprehensive doctrine, or seeking to maximise human excellence even if this means depriving some citizens of basic liberties.²⁸ Some theorists have argued that even such moderate perfectionism ultimately conflicts with liberal principles, on closer examination.²⁹ At the very least, however, we should recognise that it is not obvious that liberalism rules out perfectionism. Swan’s straightforward inference from the freedom to pursue conceptions of the good to the need for laws to be justified by public reasons is unjustified.³⁰

2. Wolterstorff on Romans 13 and Violations of Persons

The failure of Swan’s Biblical argument for liberalism was rooted in his reading too much into

²⁵ Lister, *Public Reason*, p. 32.

²⁶ Ibid. p. 33.

²⁷ For a sophisticated discussion of the relationship between perfectionism and liberalism, see De Marneffe, Peter, ‘Liberalism and Perfectionism’, *The American Journal of Jurisprudence* 43:1 (1998): 99-116.

²⁸ For one theological account that fits this ‘liberal perfectionism’ description, see Adams, Robert Merrihew, *Finite and Infinite Goods: A Framework for Ethics* (New York: Oxford University Press, 1999), pp. 318-350.

²⁹ See Quong, *Liberalism Without Perfection*, Chapters 2-4.

³⁰ Further, the Roman state was not anti-perfectionist and yet Paul purportedly commended it as God’s servant. Swan’s own argument suggests that the Bible permits perfectionism.

political authorities being called God's 'ministers' in Romans 13. Others have made more plausible arguments for liberalism based on this passage, however. Wolterstorff argues that Romans 13 shows that "the God-assigned task of government is to exercise governance over the public for the purpose of curbing wrongdoing."³¹ God has authorised governments to perform a specific and limited task: protecting people from wrongdoing, by deterring and punishing it. Wolterstorff draws out two important implications of this. First, if the task of governments is to curb wrongdoing then it is vital that governments must not become wrongdoers themselves. God has not authorised governments to perform wrongful actions. Thus, the state must be rights-honouring and rights-limited. "The authority of the state is limited by the rights of the members of the public."³² States that perpetuate injustice act outside their sphere of legitimate authority. They are rogue states, issuing directives they are not morally permitted to issue, and which thus do not obligate obedience. Second, Wolterstorff highlights the fact that Paul does not say that the role of the state is to provide a good life for all, or to promote the virtue of its citizens. "The God-given task of government is not to pressure citizens into becoming virtuous and pious; its God-given task is instead to pressure citizens into not perpetrating injustice."³³ "God authorises and enjoins the state to be a rights-protecting institution,"³⁴ not a virtue-promoting one.³⁵ Christians look elsewhere for a social institution with the role of enabling people to live good, God-pleasing, lives – to the church. The state, meanwhile, is "limited in exactly the sort of way that our liberal democracies are limited."³⁶

This argument that Christians should be liberals, and perhaps even anti-perfectionist liberals,

³¹ Wolterstorff, *Mighty and The Almighty*, p. 90.

³² *Ibid.*, p. 93.

³³ *Ibid.*, pp. 98-99.

³⁴ *Ibid.*, p. 99.

³⁵ It is important to note that Wolterstorff does not think this means the liberal state is 'neutral'. See *ibid.*, p. 155.

³⁶ *Ibid.*, p. 150.

coheres with the views of many contemporary Christian theologians.³⁷ Rather than mistakenly focusing on the significance of Paul calling the Roman authorities God's 'ministers', Wolterstorff directs our attention to what Paul says those authorities should *do*. This avoids the need to infer their role from the conduct of the Romans, and makes Wolterstorff's argument more exegetically plausible than Swan's.

Wolterstorff's argument crucially turns, however, on a particular interpretation of the key term that Paul uses to describe governments' role: 'wrongdoing'. Wolterstorff takes this to mean wronging another person by "depriving her of something to which she has a right, a legitimate claim."³⁸ He thus identifies wrongdoing with *injustice*. This is how he infers that governments must be rights-limited, and that their central role is preventing injustice. Acts which are immoral or vicious but do not violate anyone's rights are thus excluded from the government's purview; they are not 'wrongs', on Wolterstorff's reading. This interpretation may be correct, but is not required by the text. Paul does not expand on what he takes 'wrongdoing' to be. Nor does Peter, when he writes that governors are sent by God "to punish those who do evil."³⁹ Elsewhere, in 1 Corinthians 6:9-10, Paul writes that "wrongdoers"⁴⁰ will not inherit the kingdom of God, and then lists such people as including the sexually immoral, the greedy, and drunkards. It seems implausible to say that such people are violating others' rights, yet Paul lists them as wrongdoers. This might suggest that Paul has a more expansive notion of 'wrongdoing' in Romans 13 than Wolterstorff allows, and thus that Paul permits governments a role in preventing *immorality*, rather than merely *injustice*. Wolterstorff's reading of 'wrongs' as 'rights-violations' seems to follow more from his own understanding of this term than from its meaning within the text.⁴¹

³⁷ As we will see later in this chapter.

³⁸ Ibid., p. 90.

³⁹ 1 Peter 2:14.

⁴⁰ New International Version. English Standard Version has this as an alternative translation to its preferred "the unrighteous."

⁴¹ For Wolterstorff's general theory of rights see his *Justice: Rights and Wrongs*.

Nonetheless, Wolterstorff's general point that Romans 13 shows governments to have a specific purpose and limited domain certainly holds. The question is whether this limited domain matches that of contemporary liberal democratic states as closely as he claims. Perhaps the best way of answering this is to show that other theological arguments justify liberalism. Wolterstorff himself presents such an argument, which dovetails with his reading of Romans 13.⁴² That argument centres on the great evil of violating a person. Humans are God's image-bearers and are loved by him, and thus have great worth and dignity. Violating a person fails to acknowledge this dignity, and thus wrongs them. According to Wolterstorff, a person's normative identity is tied up with their physical body, their inner lives, their deeply held religious and moral convictions, and their cares, concerns, and attachments – their deep investments in the world.⁴³ Violations of any of these things violate the person. The civil liberties protected within liberal regimes are justified by the fact that they prevent such violations.⁴⁴ Liberal polities are committed to protecting people from egregious violations of personhood. Christians should be strong supporters of liberal rights and freedoms, on this basis.⁴⁵

This argument could be used to support political liberalism. One might argue that subjection to laws that cannot be justified to one violates one's personhood, so use Wolterstorff's argument to justify PJP. More specifically, one might argue that being forced to act against one's conscience, so to follow moral demands that one rejects, is a violation of personhood. Laws respect my personhood only if I consider them better than having no law at all, such that they do not force me to act against my conscience. Justificatory liberalism is thus necessary to prevent government coercion that violates persons.

⁴² Wolterstorff, 'Do Christians Have Good Reasons for Supporting Liberal Democracy?', in his *Understanding Liberal Democracy*: 305-328.

⁴³ *Ibid.*, pp. 321-324.

⁴⁴ *Ibid.*, pp. 325-328. Adams, *Finite and Infinite Goods*, pp. 324-340, makes a similar argument.

⁴⁵ Wolterstorff defends the *democratic* aspect of liberal democracy in 'Liberal Democracy as Equal Political Voice', in his *Understanding Liberal Democracy*: 113-142.

Wolterstorff would reject this argument, on the grounds that one can be coerced in ways that violate PJP without having one's personhood violated. In his view, one's personhood is respected as long as basic civil liberties are protected and laws are enacted through deliberative democratic procedures. Only coercion that constrains deep commitments or attachments, such as constraints on religious liberty, violates persons. This kind of coercion is prevented by the protection of basic rights; no further reason-based conditions on legitimacy are necessary. Wolterstorff thus defends liberalism, but does not follow Swan's jump from liberalism to political liberalism. Wolterstorff's state could not permissibly enforce Christianity, but could enforce laws that can only be supported by distinctively Christian principles, if those laws were democratically enacted. Ultimately, the implications of his argument depend on one's understanding of what constitutes a violation of personhood. Political liberals can construct an argument for PJP on this basis, but it is not decisive – Wolterstorff, for one, would reject it.

In Section 3 I present several other theological considerations in favour of liberalism, drawn from a range of political theologians. Many of these considerations amplify points we have already encountered in Wolterstorff's arguments.⁴⁶ As in Wolterstorff's case, I will ultimately argue that these considerations can be used in support of political liberalism, but do not decisively endorse it.

3. Further Considerations in Favour of Liberalism

3.1. The Classical Case for Toleration

Fergusson explains how a theological case for toleration emerged in the 16th and 17th centuries, when many Christians argued that the state should not enforce one religion, and should instead

⁴⁶ As Quinn discusses, Wolterstorff considers his argument an *alternative* to certain other accounts, but these can actually be combined. Quinn, Philip L., 'Can Good Christians Be Good Liberals?', in Dole, Andrew, and Andrew Chignell (eds.), *God and the Ethics of Belief: New Essays in Philosophy of Religion* (Cambridge: Cambridge University Press, 2005): 248-276.

permit religious and moral pluralism. This case for toleration was

“based on a cluster of related arguments – the example of Christ and the early Church, the limits of state power, the irrationality of coercion, the sanctity of each person’s faith commitment, the need for peace and social cohesion and the promotion of conversation and debate among those who differ for the sake of a greater approximation to God’s truth.”⁴⁷

Jesus and the apostles, who set the model for the contemporary church, used persuasion, and not coercion, to convert people to Christianity. In any case, coercion of belief is futile, and perhaps even counter-productive, in terms of producing genuine conversion and piety.⁴⁸ Further, individual freedom with regard to religion is good in itself, since “we have a personal responsibility for our faith.”⁴⁹ Indeed, the violation of this freedom is a greater evil than that which occurs when this freedom is exercised in incorrect judgments. Toleration also allows for productive and respectful dialogue, through which individuals can learn from one another, and have their opinions shaped in ways that bring them closer to the truth. Finally, there is a pragmatic argument that toleration is necessary for the sake of peace. According to Fergusson, this argument gained force due to increasing contact with other cultures and the beginnings of world trade, which made tolerance an economic necessity.⁵⁰

The rest of the considerations I detail in this section all pick up on one or more of the arguments contained in this early theological case for toleration.

3.2. The Limits of State Power

Many theologians have argued that Christianity desacralises politics, by revealing that there are limits on what can be achieved through earthly political authority. Hollenbach argues on this basis

⁴⁷ Fergusson, David, ‘The Reformed Tradition and the Virtue of Tolerance’, in Storrar, William F., and Andrew R. Morton (eds.), *Public Theology for the 21st Century* (New York: T&T Clark, 2004): 107-121, p. 116. Fergusson cites Erasmus and Castellio as the central figures here.

⁴⁸ This argument is familiar from Locke, John, ‘A Letter Concerning Toleration’, in Wootton, David (ed.), *John Locke: Political Writings* (Harmondsworth: Penguin Books, 1993): 390-436.

⁴⁹ Fergusson, *Church, State*, p. 115.

⁵⁰ Fergusson, ‘The Reformed Tradition’, pp. 115-116.

that Christianity is fully consistent with a pluralistic liberal polity. Christianity's vision of the good should not be "identified with an agenda for the whole of public life," and thus Christian convictions do not give believers reason to seek the reorganisation of "all of society around a single integrating value scheme."⁵¹ The highest good and full justice will only be realised in the eschatological reality of the City of God. While Christians do seek to "work for the transformation of social life into a more fitting reflection of the good that is their ultimate hope,"⁵² they do not believe that state power should be used to implement the eschatological Kingdom of God.⁵³ There are objective standards of justice and the good, and society should conform to them as closely as possible. But there are limits to the extent to which this can be realised before Christ returns, and Christians should accept those limits.⁵⁴ Indeed, they "are required by their faith to reject any attempt to achieve the full common good, as it is understood theologically, by political means."⁵⁵ The Christian vision of politics is thus thoroughly anti-authoritarian. Hollenbach comments that these principled restrictions on government power "are unambiguously supported only by constitutional forms of government."⁵⁶

Fergusson makes a very similar argument, writing that "the kingdom of God is ultimately an eschatological reality not to be confused with any penultimate political state."⁵⁷ The state's central role is "protecting its citizens from abuses,"⁵⁸ not trying to implement the full common good. Imposing particular comprehensive doctrines on society always does more harm than good. Indeed, according to Christopher Insole, it conflates the invisible and the visible church.⁵⁹ The

⁵¹ Hollenbach, *Common Good*, p. 115.

⁵² *Ibid.*, p. 134.

⁵³ Arguably, this idea goes back to Augustine. See Meilaender, Peter C., 'The Problem of Having Only One City: An Augustinian Response to Rawls', *Faith and Philosophy* 20:2 (2003): 170-188.

⁵⁴ "Christians are called to contribute to transforming their society from lesser approximations of the heavenly city to ones that come nearer to the good that is their ultimate hope," but do so based on "careful discernment of the possibilities opened up by historical circumstances." Hollenbach, *Common Good*, p. 128.

⁵⁵ *Ibid.*, p. 132.

⁵⁶ *Ibid.*, p. 132.

⁵⁷ Fergusson, *Community, Liberalism*, p.158.

⁵⁸ *Ibid.*, p. 158.

⁵⁹ Insole, *Politics of Human Frailty*, pp. 52-63. Insole here draws on arguments made by 16th century

visible church is the concrete historical Church, while the invisible church is the eschatological gathering of all of the saints in glory. It is a mistake to believe that the former can be reformed and regenerated now in order to turn it into the latter, and in particular to believe that this can be done through the use of political power. We cannot purge the earth of evil or create a new world through our efforts. In fact, the “heart of the theological defence of... liberalism is a sense of the danger and hubris involved in such projects, which inevitably arise from and provoke a conflation of the invisible and the visible church.”⁶⁰ We should recognise the inherent limits to what can be achieved through coercive power in this age.

The very fact that the state’s power is coercive is another reason for these limits. As Nick Spencer points out, the symbol for the state in the New Testament is ‘the sword’, whereas the kingdom of God is said to come through the word – i.e. through persuasion. “It is the word, rather than the sword, which is to be deployed in determining religious loyalties.”⁶¹ Coercing people with regard to religion does not lie within the state’s proper remit, precisely because of the coercive nature of its authority and actions. In David Little’s words, “membership in the new community must, in order to be valid, rest upon a personal and voluntary determination and commitment for which each individual is ultimately responsible.”⁶² Christian theology shares political liberalism’s wariness about coercion and what it can achieve.

Arguably, Christianity *better* enables us to accept the limits of politics than any secular theory can. Peter Meilaender argues that a belief in a Heavenly City where true justice will be achieved means that Christians can be more content with having a limited politics than can those who lack this

Anglican theologian Richard Hooker. See also Shadd, ‘A Better Framework’, pp. 180-182.

⁶⁰ Insole, *Politics of Human Frailty*, p. 59.

⁶¹ Spencer, Nick, *How to Think About Religious Freedom* (London: Theos, 2014), p. 17. See also Fergusson, *Community, Liberalism*, pp. 156-157.

⁶² Little, David, ‘Conscientious Individualism: A Christian Perspective on Ethical Pluralism’, in Coleman, John A. (ed.), *Christian Political Ethics* (Princeton, N.J.: Princeton University Press, 2008): 113-140, p. 115.

hope.⁶³ Knowing that this life is not all that there is, so the measure of justice and goodness achieved here is not the best we will ever know, puts politics into perspective, and ensures that we do not invest too many hopes within it. “To value politics appropriately for the very real goods it provides, while asking of it no more than it can actually offer – which is, after all, the balance liberalism seeks to strike – is a task which may well require that we have another, truer City.”⁶⁴ Without this, as Duncan Forrester puts it, “people look to politics for what it cannot on its own deliver: a sense of meaning, of belonging, of significance.”⁶⁵

3.3. Individual Frailty, Dignity, and Equality

For Insole, the limits on what politics can achieve derive from the fact of our human frailty – our creatureliness. Christians believe that humans have a dignity and worth bestowed upon them by God, but also that we are vulnerable creatures, and are all complicit in sin. A sensitivity to our own sin and to others’ frailty causes an aversion to coercion, and especially to coercion that aims to achieve moral regeneration and the realisation of full justice or goodness. This is particularly so because the fallen nature of humanity and the world means that truths about justice and goodness are often difficult to discern. The natural moral order is obscured. While we should desire laws that fit with the eternal God-given moral order, we should also recognise our limitations in apprehending that order.⁶⁶ An appreciation of our creatureliness leads to political moderation. “From a sense of humility and fellowship in sin, we are called to show love to our neighbour by exemplifying self-restraint, self-examination and charity.”⁶⁷ We should therefore not impose our conception of the good on others. Seeking to do so “tramples upon the frailty and vulnerability of our shared human condition, all of us complicit in sin, and dependent upon the

⁶³ This is the central argument of Meilaender, ‘The Problem’. While very insightful, I think Meilaender fundamentally misunderstands Rawls’s project and theory.

⁶⁴ Ibid., p. 184.

⁶⁵ Forrester, Duncan B., *Beliefs, Values and Policies: Conviction Politics in a Secular Age* (Oxford: Clarendon Press, 1989), pp. 81-82.

⁶⁶ Insole, *Politics of Human Frailty*, pp. 47-48, explicitly comments on the similarity of this to Rawls’s burdens of judgment.

⁶⁷ Ibid., p. 63.

grace of God.”⁶⁸ The combined effect of the insights that humans have both a “created dignity which bestows us with freedom and the use of reason” *and* a “frailty and vulnerability”⁶⁹ is support for liberalism.

Insole’s argument emphasises human frailty and weakness as a source of aversion to coercion.⁷⁰

Other theologians make a more positive case to the same effect, by emphasising human dignity.

An example of this is *Dignitatis Humanae*, the Declaration of Religious Freedom written during the Second Vatican Council (1965).⁷¹ This declaration proclaims the idea “that men should act on their own judgment, enjoying and making use of a responsible freedom... to be greatly in accord with truth and justice” and insists that “this right of the human person to religious freedom is to be recognised in the constitutional law whereby society is governed and thus it is to become a civil right.” This right “has its foundation in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself.” Our dignity means that we are “endowed with reason and free will,” so bear personal responsibility for discerning and acting on truth. We are naturally obligated to seek after truth, but can only do so in a way that is in keeping with our nature if we are immune from coercion in religious matters. “Injury therefore is done to the human person and to the very order established by God for human life, if the free exercise of religion is denied in society, provided just public order is observed.”

Clearly Christians will believe that some of their compatriots’ actions, especially in religious affairs, amount to wronging God. But they also believe that “those others have the political right

⁶⁸ Ibid., p. 63.

⁶⁹ Ibid., p. 60.

⁷⁰ Though Insole does not make the connection, this resonates with Shklar’s ‘liberalism of fear’ – protecting fragile individuals from one another and from the terrible power of the state. Shklar, Judith, ‘The Liberalism of Fear’, in Rosenblum, Nancy (ed.), *Liberalism and the Moral Life* (London: Harvard University Press, 1989): 21-38. Quinn, ‘Can Good Christians’, pp. 263-267, points out that the same is true of Wolterstorff’s argument.

⁷¹ Available at http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html. According to Mitchell, ‘Should Law be Christian?’, p. 17, The Declaration represents an attempt to “found a liberal political theory upon Christian principles” – centrally upon a doctrine of human dignity.

to wrong God in those ways,”⁷² as Wolterstorff puts it. There are some incidents of wrongdoing that the state should not curb, since it would then be a perpetrator of wrongdoing itself.

Shadd also presents a positive case for an aversion to coercion. It is a central tenet of political theology within the Reformed tradition that “people are naturally free and equal, naturally subject to no other human being and ultimately accountable only to God.”⁷³ This means that none have a natural right to rule over others, and coercion can never be taken as a brute fact – all instances of coercion must be appropriately justified. “Freedom *qua* the absence of unjustified coercion is the default.”⁷⁴ Of course, this “is a freedom circumscribed by God's moral law. It is a freedom not *from* God but *under* God; similarly, it is a freedom not *from* the moral law, but *under* the moral law.”⁷⁵ But all have an equal right to this freedom, as morally responsible, free and equal individuals.⁷⁶

3.4. The Nature and Role of the Church

As I noted above, Wolterstorff argues that it is the church, not the state, that has the role of encouraging piety and virtue. The church must therefore remain separate from the state. In Hollenbach's words, Christians should not seek “the subordination of all life to the church.”⁷⁷ Indeed, Wolterstorff points out that the existence of the church *creates* pluralism and religious fissure within societies where it emerges, since the church never includes every individual within the nation. This means that “the state cannot express the shared religious identity of the people, since there is no such identity.”⁷⁸ Historically, the church has sometimes sought to use coercion to prevent pluralism, but this is to act contrary to its own nature as a creator of pluralism.

⁷² Wolterstorff, *Mighty and The Almighty*, p. 127.

⁷³ Shadd, ‘A Better Framework’, p. 171.

⁷⁴ *Ibid.*, p. 173. See also Fergusson, *Community, Liberalism*, p. 157.

⁷⁵ Shadd, ‘A Better Framework’, pp. 173-174.

⁷⁶ See also Little, ‘Conscientious Individualism’.

⁷⁷ Hollenbach, *Common Good*, p. 116.

⁷⁸ Wolterstorff, *Mighty and The Almighty*, p. 123.

Wolterstorff comments that it is strange that Christian conservatives sometimes lament the fact that liberal states do not express a shared national religio-moral vision, given that the church itself *destroys* religious unity in societies, by causing some to endorse the Christian faith, which involves renouncing all other religious affiliations.

Barth makes the same point, noting that the civil community will always include Christians and non-Christians. Its members do not share a “common awareness of their relationship to God,” and thus “such an awareness cannot be an element in the legal system established by the civil community.”⁷⁹ Tolerance must be the state’s ultimate wisdom in the religious sphere. “There is therefore no such thing as a Christian state corresponding to the Christian church.”⁸⁰

The church’s nature and role also has implications for the kind of state Christians seek.⁸¹ They will seek institutional autonomy for the church – freedom from state interference in its governance and constitutive activities. They will insist on freedom to proselytise, and for new members to join the church. They will claim freedom to engage in activities that are central to Christian life, such as attending assemblies, baptising, and so on, and will also insist that the state does not force them to do anything that they regard as compromising their declaration of Christ as Lord and Saviour. In other words, Christians will defend high levels of freedom of religious belief and association. Indeed, they believe that the state *lacks authority* to violate these freedoms; doing so falls outside its God-given remit. Thus, Wolterstorff writes, “the nature and existence of the church drastically limit the scope of government authority.”⁸²

Other theologians focus on the mission of the church requiring ‘social space’ to make similar

⁷⁹ Barth, ‘Christian Community’, p. 267.

⁸⁰ Ibid., p. 274.

⁸¹ Wolterstorff, *Mighty and The Almighty*, pp. 124-125.

⁸² Ibid., p. 129.

points.⁸³ The church can only fulfil its mandate of being a growing community of followers of Jesus, contributing to the common good through its life and ministries, if individual and associational freedom are ensured. The liberal state provides this.⁸⁴ The state's role is to provide the background conditions for citizens to do good works and live good lives, by giving space for the church, and other voluntary associations, to flourish. Nicholas Townsend writes that "the Christian polity [i.e. the church] is the primary mode by which God wishes to bring into being good relations among people, the common good" but that "there are social preconditions of this happening, conditions of the possibility of the common good."⁸⁵ It is the role of the state to provide these. Political authority thus exists "to secure the social conditions necessary for the possibility of the common good."⁸⁶ These conditions include basic rights and freedoms, the provision of public goods, and all having access to food, shelter, and healthcare. The functional differentiation of the roles of the church and of political authority thus justifies the modern liberal state.⁸⁷

Spencer extends this argument to all forms of voluntary association.⁸⁸ Since the common good is realised through relationships between citizens, which provide a sense of meaning and identity, Christian theology provides a general argument for associational freedom, not merely for the freedom of the church or religious institutions. Indeed, the church itself engages in much social activity that is not narrowly 'religious', such as caring for the poor and needy. One prominent way that this defence of associational freedoms has been explicated is through Abraham Kuyper's concept of 'sphere sovereignty'.⁸⁹ There are various spheres of social life – economic, religious,

⁸³ See O'Donovan, *Desire of the Nations*, p. 146.

⁸⁴ Barth talks about the civil community giving "time for the preaching of the gospel; time for repentance; time for faith." Barth, 'Christian Community', p. 271.

⁸⁵ Townsend, Nicholas, 'Government and Social Infrastructure', in Spencer, Nick, and Jonathan Chaplin (eds.), *God and Government* (London: SPCK, 2009): 108-133, p. 120.

⁸⁶ *Ibid.*, p. 121.

⁸⁷ See also Wannenwetsch, 'Soul Citizens', p. 381; Barth, 'Christian Community', pp. 270-274.

⁸⁸ Spencer, *How to Think*, pp. 18-20.

⁸⁹ See Wolterstorff, *Mighty and The Almighty*, pp. 159-162; Shadd, 'A Better Framework', pp. 190-194. See also Skillen, James W., 'Pluralism as a Matter of Principle', in Coleman, John A. (ed.), *Christian Political Ethics*

scientific, artistic, and so on – which have a certain degree of ‘sovereignty’. Their existence and authority do not derive from that of the state, but from individuals’ exercise of associational freedoms. While the state has a proper role in regulating these various spheres, especially when they interfere with one another, it must also respect their autonomy and must not prevent citizens from establishing these social entities. In Kuyper’s words, “the state may never become an octopus, which stifles the whole of life.”⁹⁰

3.5. Deliberation and the Common Good

The nature of the individual, role of the church, and limits of state power combine to make a powerful theological case for liberalism – for basic rights and liberties, tolerance of pluralism, and the state not enforcing any particular conception of the good. One recurring theme here has been the idea of the ‘common good’. For some, this concept is central to understanding the state’s purpose.

Hollenbach, for example, argues that the state’s role is to help secure “the common good of a community of freedom.”⁹¹ Politics should aim to create and sustain social goods that can only be realised through communal action, and to ensure that no-one is excluded from access to those goods. Democracy, and in particular deliberative engagement, is central to this picture. A primary way that humans achieve well-being is through mutual cooperative relationships. This can be “realised in the political sphere when people govern themselves together in freedom as fellow citizens.”⁹² For Hollenbach, this requires more than simply the election of governments. It requires active citizenship, in a spirit of ‘intellectual solidarity’, or deliberative civility.⁹³ Citizens should deliberatively engage with one another, including with one another’s comprehensive

(Princeton, N.J.: Princeton University Press, 2008): 141-152.

⁹⁰ Quoted in Wolterstorff, *Mighty and The Almighty*, p. 162.

⁹¹ Hollenbach, *Common Good*, p. 136.

⁹² *Ibid.*, p. 82.

⁹³ *Ibid.*, pp. 137-146.

doctrines, in order to understand both their disagreements and their points of agreement. The aim of this is to discover how to live well together – what the common good for this pluralistic society looks like. Our common humanity means that we can have solidarity across religious boundaries and discover goods that we can share and realise together. Christians should be active participants in this mutually respectful deliberation, because the “pursuit of the common good in a pluralistic context should be an integral part of a Christian religious self-understanding.”⁹⁴ Religious communities are important participants in civic and public life, in the ongoing conversation over what policies are in the public good, but are institutionally separated from state power, and should not seek the imposition of their particular comprehensive doctrine on the rest of society.

There are two central themes here: the importance of deliberation, and the belief that Christians will often be able to find common ground with others in their joint pursuit of the common good. These themes are also seen in Fergusson’s work, which emphasises the Walzerian idea that “different thick moralities may share thin precepts, there being common moral ground in the absence of common moral theory.”⁹⁵ Similarly, Gascoigne argues that it is possible to have “genuine and substantive communication between traditions,” creating a common culture that is sustained and enriched “by drawing on the communicative potential of particular traditions.”⁹⁶ He claims that adherents of different comprehensive doctrines can communicate with one another by means of ‘mediating principles’. These are principles that arise from a particular conception of the good, and have their fullest grounding and meaning within that conception, but can also be presented independently, so are accessible and intelligible to those who reject their deeper foundations. Both of these theologians argue that this social consensus on shareable ethical principles and values should be the central basis for the state’s actions.

⁹⁴ Ibid., p. 113.

⁹⁵ Fergusson, *Community, Liberalism*, p. 162.

⁹⁶ Gascoigne, *Public Forum*, p. 178.

Several other theologians I have mentioned also emphasise deliberation. For example, Wolterstorff presents a defence of deliberative democracy, and Biggar discusses various deliberative virtues.⁹⁷ In Chapter 6, we also saw this emphasis in O'Donovan's work.

3.6. Endorsing Liberalism

Fergusson writes of the 'incipient liberalism' within Christian theology, claiming that "values of tolerance, respect, equality, and freedom are part of the Christian moral tradition that can be given theological legitimation."⁹⁸ The current section has borne out this claim. Eberhard Jüngel goes further, arguing that many liberal values were originally defended by Christians, on theological grounds. The church should be "thankful that its spiritual goods now exist in secular form."⁹⁹ Jüngel cites freedom of conscience, inviolable human dignity, and the commitment to protect handicapped human life as examples of these goods. He claims that these and "many other achievements of the modern constitutional state are secularised church treasures."¹⁰⁰

It is also noteworthy that the theologians I have drawn on represent a broad theological spectrum. For example, Gascoigne and Hollenbach are Catholic, Fergusson and Wolterstorff are Reformed, Insole and Spencer are Anglican, and Jüngel is Lutheran. These theorists differ in many of their beliefs, including in their specific political theologies. For example, some are more comfortable than others using the language of the 'common good' or of 'individual rights'. They differ in their understandings of precisely what states ought, and ought not, to do, and of the role of ordinary citizens within political life. They also diverge in their levels of confidence in the possibility of deep and productive ethical dialogue between Christians and non-Christians. Nonetheless, it is striking that all of these theologians converge on supporting liberal democratic

⁹⁷ Wolterstorff, 'Liberal Democracy'; Biggar, *Behaving in Public*, pp. 71-76.

⁹⁸ Fergusson, *Community, Liberalism*, p. 164.

⁹⁹ Jüngel, Eberhard, 'The Gospel and the Protestant Churches of Europe: Christian Responsibility for Europe from a Protestant Perspective', *Religion, State and Society* 21:2 (1993): 137-149, p. 141.

¹⁰⁰ *Ibid.*, p. 142.

political institutions, each drawing in their own way upon the various considerations I have outlined. This in itself is further evidence for the fact that there are strong Biblical and theological reasons for Christians to be liberals.

4. Support for Political Liberalism?

Do the considerations I have outlined also mean that Christians should endorse *political* liberalism? The theologians I have discussed disagree on this. Some give a firmly negative answer. Wolterstorff is a prominent critic of political liberalism, and explicitly presents his understanding of liberal democracy as an alternative to it.¹⁰¹ Shadd similarly rejects political liberalism, arguing that it is incompatible with our central considered convictions about legitimacy, and presents an alternative theory of legitimacy based on Reformed theology.¹⁰² As we saw in Chapter 6, O'Donovan's political theology also conflicts with political liberalism.

Others take their arguments to support political liberalism, however. It is not difficult to see why. The considerations I outlined in Section 3 can fairly easily be marshalled in support of either type of political liberalism. Christians should affirm that citizens are free and equal, accept reasonable pluralism, believe in the need for coercion to be justified, and reject the coercive imposition of any particular conception of the good. Political liberalism is one view of the implication of these things for the legitimate exercise of state power. Since Rawls is the best known political liberal, theologians who accept political liberalism typically express this by endorsing Rawls's views. They thus explicitly accept public reason liberalism, in particular. Indeed, none have noticed the difference between public reason and justificatory liberalism.¹⁰³

¹⁰¹ This is a central theme of Wolterstorff, *Understanding Liberal Democracy*. See also his 'Role of Religion' and 'Paradoxical Role'.

¹⁰² Shadd, 'A Better Framework'.

¹⁰³ Wolterstorff, *Understanding Liberal Democracy*, includes a chapter discussing Gaus's views (pp. 53-75). Wolterstorff recognises that Gaus's arguments differ from Rawls's, but does not see the fundamental differences between their views.

Hollenbach, Insole and Gascoigne each claim to endorse Rawlsian public reason liberalism. I will sketch their arguments here, before showing that they are not decisive, and indeed could equally be used to support justificatory liberalism.

Hollenbach claims that “Rawls’s recent approach to the social role of religion is generally compatible”¹⁰⁴ with his own position. He explicitly endorses Rawls’s proviso, so accepts the basic principle that religious arguments alone are insufficient to justify coercive laws. “Reciprocal respect for the equal rights of citizens”¹⁰⁵ requires non-religious arguments to be presented alongside religious ones. The difference between Hollenbach’s and Rawls’s views seems to be that the former has a greater confidence in the possibility that arguments grounded in religious worldviews can be accessible, and even acceptable, to others. Hollenbach argues that religious discourse, especially in civil society and the background culture, can have “a significant impact on what citizens at large judge they can reasonably affirm.”¹⁰⁶ Ongoing debates about precisely what justice, human rights, equality, etc. mean will be influenced by religious arguments, which will thus shape the public understanding of what makes for a good society, and of what all can accept. Hollenbach has a more flexible and dynamic understanding of ‘public reasons’ than public reason liberals tend to, but nonetheless accepts the basic point that laws must be justified by reasons that are in some sense acceptable to all.

Insole presents his arguments as supporting Rawlsian political liberalism, and endorses Rawls’s claim that reciprocity requires that laws be justified by reasons that all can accept.¹⁰⁷ We would not want to be coerced by others on the basis of appeals to a religious authority or conception of the good that we reject, so should not coerce others on such a basis. “Or more succinctly, citizens

¹⁰⁴ Hollenbach, *Common Good*, p. 167.

¹⁰⁵ *Ibid.*, p. 167.

¹⁰⁶ *Ibid.*, p. 167.

¹⁰⁷ Insole, *Politics of Human Frailty*, pp. 60-61.

should do as they would be done to.”¹⁰⁸ Laws therefore cannot be permissibly justified by sole appeal to “distinctively and irreducibly religious reasons, reasons that arise from a special authority supposed to derive from scripture, a particular tradition or inspiration, and which cannot be assented to by someone who does not assent to this authority.”¹⁰⁹

It is notable, however, that while Insole takes himself to be supporting Rawls’s views, he interprets Rawls in a way that makes him more permissive with regard to religious reasons than he actually is. For example, when explaining Rawls’s proviso, Insole claims that in some cases public reasons will never need to be offered, so citizens need not move beyond their religious reasons and offer reasons acceptable to others. The proviso only requires the presentation of public reasons “in the case of a stand-off between citizens using their comprehensive conceptions of the good.”¹¹⁰ We only need appeal to shared values when we irreconcilably disagree on the basis of our comprehensive doctrines. While this is a mistaken interpretation of Rawls, Insole does agree that Christians should seek non-religious reason for laws, and refrain from supporting laws for which their only reasons are religious and which others lack reasons to endorse. This is “an act of witness”¹¹¹ – a sign of humility and of respect for others.

Finally, Gascoigne states that citizens should exercise restraint whenever their only reasons for laws are religious.¹¹² Doing so demonstrates respect for the freedom and equality of other citizens, and in particular for their freedom of conscience. Public political life is about shared political values, and if a law cannot be defended in these terms then one should not support it. Restraint is a Christian witness, demonstrating love for one’s neighbour. Christians should strive

¹⁰⁸ Ibid., p. 61. Audi also appeals to the Golden Rule as supporting public reason liberalism. See his *Democratic Authority*, p. 88.

¹⁰⁹ Insole, *Politics of Human Frailty*, p. 62.

¹¹⁰ Ibid., p. 47.

¹¹¹ Ibid., p. 63.

¹¹² Gascoigne, Robert, ‘Christian Hope and Public Reason’, in Biggar, Nigel, and Linda Hogan (eds.), *Religious Voices in Public Places* (New York: Oxford University Press, 2009): 131-148, pp. 131-132.

to express their religiously-based views in ways that evoke shared values and experiences, through mediating principles, but should exercise restraint in cases where this is not possible. Gascoigne therefore endorses something like Rawls's view of public reason.

I do not think that these arguments are decisive in establishing theological support for public reason liberalism, however, for three reasons. First, all three theologians are very vague as to what they consider 'public reasons' to be, so what reasons must be used to justify laws. While they all consider appeals to 'political values' and ideas of the 'common good' as necessary, it is unclear whether they are really endorsing a Rawlsian understanding of 'public reasons', or indeed the more general political liberal claim that laws must be justified to every citizen in order to be legitimate.¹¹³

Second, it is not clear that the theological considerations marshalled here secure the conclusion that Christian citizens should not, ultimately, act politically on the basis of specifically religious arguments and values. As I noted above, there is a distinction between imposing *Christianity* on others and forcing others to comply with *moral truth* for which one's only justifying reasons are Christian. The strong theological arguments for religious liberty show the former to be impermissible. Matters are less clear with regard to the latter, however. The theological arguments show that such coercion should not be undertaken lightly, and that Christians should deliberatively engage with others and seek to find areas of common ground and mutual understanding, which will ideally be the basis for law. But if after such deliberation a citizen still has a deep conviction that a certain policy is morally required, even though she can only justify it by appeal to Christianity, then it is unclear whether she should refrain from supporting that policy. An individual might admit her own complicity in sin and dependence on God's grace while still believing that a certain law she supports for religious reasons is required by justice and

¹¹³ Chaplin, *Talking God*, agrees that political arguments should focus on the 'public good', but explicitly rejects public reason liberalism.

necessary for the good of society. Her awareness of her frailty should cause her to approach the issue with humility, and to ensure that she has a strong justification for her view. Her respect for others' dignity should lead her to engage deliberatively with them and seek to persuade them of her position. But it is not clear that she 'tramples upon others' frailty', to use Insole's term, if she continues to advocate for a law for which the only plausible justification is religious. If one strongly believes that a law serves the common good or justice, then pursuing its enactment might itself be seen as an act of love for others, even if the law cannot be justified to them.

Insole's own wording in his defence of Rawls's requirement of reciprocity confirms this. Insole states that due to their love for their neighbours Christian citizens should not seek to impose "coercive programmes of a salvationist or perfectionist nature, when they themselves would resist any coercive measures taken against them as part of a salvationist programme to which they themselves could not assent."¹¹⁴ This might well be a sound argument when it comes to 'salvationist' programmes, which I take to be policies enforcing a certain religious practice or understanding of salvation, and 'perfectionist' programmes, which I take to be policies seeking to make people fully virtuous. Christians should not try to use the law to save souls or make people morally pure. But not all religiously-grounded political advocacy is of this form. For example, Matt, who I introduced in Chapter 5, has strong religious reasons to support the legal prohibition of stem-cell research.¹¹⁵ Doing so would violate the public reason liberal restraint requirement (I supposed), but would not involve seeking to impose a 'salvationist' or 'perfectionist' programme upon his compatriots.

Third, Gascoigne, and to some extent Insole, ultimately rely on an assumption that the Rawlsian explanation of the implications of respect for citizens as free and equal is correct. They present theological arguments for the claim that Christians should respect their compatriots as free and

¹¹⁴ Insole, *Politics of Human Frailty*, p. 61.

¹¹⁵ See pp. 155.

equal, and then conclude that Christians should endorse Rawlsian public reason liberalism. This conclusion follows only if public reason liberalism is the correct understanding of the implications of moral freedom and equality for the reason-giving aspect of legitimacy. I argued in Chapter 1-4 that this is not the case, and that justificatory liberalism is the best philosophical account. To the extent that my arguments were successful, Gascoigne and Insole's arguments for respect for persons should lead Christians to accept justificatory liberalism, rather than public reason liberalism.

More generally, the theological considerations that have been used to support public reason liberalism can also motivate support for justificatory liberalism. Respect for others' dignity, a recognition of one's own sin and fallibility in discerning moral truth, a belief in the institutional autonomy of the church, a wariness of coercion and awareness of the limits of state power, and a belief in the importance of democratic deliberation can all be used as part of a theological case for justificatory liberalism. Indeed, the kind of deliberation that theologians specifically endorse – engagement with others' comprehensive doctrines and deep understandings – is encouraged by justificatory liberalism more than by public reason liberalism, since the former permits laws to be justified to citizens on the basis of their comprehensive doctrines. Insole, for one, seems to accept the legitimacy of convergence justifications, and others' arguments also seem to favour them. Such justifications are permitted by justificatory liberalism but ruled out by public reason liberalism. The justificatory liberal view of legitimacy seems to cohere with the theological understanding of the role and limits of the state that we have encountered in this chapter.

However, just as Hollenbach, Gascoigne, and Insole's arguments do not *decisively* secure theological endorsement of the public reason liberal restraint requirement, they also do not decisively support the justificatory liberal requirement that laws be openly justified to all citizens. There will be cases where some citizens have conclusive reasons to reject laws that Christian

citizens believe to be required by justice or the common good. In some such cases, many of the theologians we have considered would hold that these laws ought to be (democratically) enacted, despite being illegitimate according to justificatory liberalism. In other words, conflicts of loyalty between Christianity and justificatory liberalism can occur.

The theological considerations I have outlined in this chapter give decisive support for liberalism. They also can lend support to political liberalism, including to justificatory liberalism. They show why Christians can be theologically drawn to justificatory liberalism, so have theological reasons for endorsing it, alongside the philosophical reasons I presented in Part I. This is the central claim I wanted to establish in this chapter. We have also seen, however, that the theological arguments for justificatory liberalism are not decisive, and thus conflicts of loyalty might arise. Chapter 9 considers how justificatory liberals should respond to this.

Chapter 9: Conflicts of Loyalty

1. Introduction

According to Christian political theology, the state has been authorised by God, and has a God-given task to fulfil. As we saw in Chapter 8, that task is best fulfilled by a liberal democratic state. This does not necessarily mean that no other state ever has been, or can be, authoritative, but various theological arguments support the claim that governments should protect, and are limited by, the rights and liberties typical of liberal regimes. These arguments can also be used to support political liberalism. But their support for that specific theory of legitimacy is not decisive. Some of the theological arguments are fairly anti-perfectionist, and all theologians agree that the church has a distinct authority and role that must be neither usurped nor unduly restricted by the state. The implications of these arguments and of political liberalism, in terms of the (il)legitimacy of various state actions, overlap in certain ways. But none of the arguments show that Christians should accept political liberalism, on theological grounds alone. Some theologians have endorsed political liberalism, while others strongly reject it.

Nonetheless, Christians certainly *can* accept political liberalism, and justificatory liberalism in particular. I argued in Chapter 6 that there is no deep incompatibility between Christianity and justificatory liberalism, and some of the theological considerations I presented in Chapter 8 can be used to endorse it. Justificatory liberalism is also the theory best supported by independent political philosophy, I have argued.

Christians' ultimate, and primary, loyalty, will always be to God, and to their beliefs about the nature of God, humanity, and the world. This raises the possibility of conflicts between what political liberalism says that a citizen ought to do in a certain situation and what she believes that she ought to do on the basis of her faith. I introduced this possibility in Chapter 5, and now finally

turn to consider it directly. Importantly, the conflicts of loyalty I consider here do not occur at the level of fundamental principle. I have argued that there is no fundamental incompatibility between political (particularly justificatory) liberalism and Christianity. I am instead concerned with conflicts that occur at the level of concrete cases, particular occasions when the demands of political liberalism and Christianity appear to conflict. The citizen has a general commitment to political liberalism, but finds that this clashes with her theological commitments in the case at hand.¹

As I noted in Chapter 5, such conflicts most obviously arise with public reason liberalism, given the clearer obligations that it places upon citizens. These obligations can conflict with actions that citizens believe they are theologically committed to. In particular, a Christian might believe that she ought to violate the restraint requirement in certain cases, because she has a religious obligation to support (or oppose) a particular law, despite not finding public reasons for (or against) it.²

Conflicts of loyalty are less obviously a problem for justificatory liberalism, since it imposes less straightforward and immediate obligations upon ordinary citizens.³ Citizens are not under an obligation to provide particular kinds of reasons in their political advocacy. They are permitted to support any law they choose, offering any reasons they wish, subject only to the minimal duty of proposal-restraint. This duty is likely to only create binding obligations for officials and representatives, so only they will face cases where they believe themselves to be theologically obligated to violate a restraint requirement.

¹ As Sadurski, 'Legitimacy of Law', p. 12, notes, citizens can reject the resolution of a particular issue by public reason without rejecting political liberalism in general.

² Eberle uses this fact to construct a 'strains of commitment' argument against the Rawlsian duty of civility. Parties in the original position will want to avoid conflicts of loyalty, so will reject Rawls's liberal principle of legitimacy. See Eberle, *Religious Conviction*, pp.143-148. For discussion, see Chandler, 'Religious Reasons', pp. 147-150.

³ See pp. 148-152.

Nonetheless, an ordinary Christian citizen who endorses justificatory liberalism can find herself with strong religious reasons for believing that a law ought to be enacted, while also knowing that the law violates PJP. Such a citizen faces a conflict of loyalty. Her allegiance to justificatory liberalism conflicts with her allegiance to her religious commitments. Her religion says that the law ought to be enacted, but she recognises that its enactment would coerce some of her compatriots in a way that is not openly justified to them. Justificatory liberals should have something to say about these kinds of cases – about how the citizen should resolve the conflict of loyalty, both in terms of what she believes and how she acts, and about how she should be viewed if she violates this prescription.

For example, we might think that the citizen should always favour justificatory liberalism in these cases. She can continue to believe that the law is morally ideal, but she should conclude that it should not be enacted in her polity, since it does not fulfil PJP. Prioritising her religious commitments, by believing that the law ought to be enacted despite violating PJP, would show a willingness for her compatriots to be coerced in a way that treats them as less than free and equal, so display a disrespectful attitude toward them. The mere fact that she believes the law ought to be enacted does not mean that anyone is wrongly coerced, and she does not violate the duty of proposal-restraint by advocating for the law. But nonetheless, she is morally criticisable for holding and acting on the belief that her compatriots should be coerced in a way that is not openly justified to them. She displays insufficient respect for her compatriots. Of course, this would not mean that she should be interfered with or punished. The question is what we *think* about and *say* to such citizens, not what we *do* with them.⁴

Conflicts of loyalty are not only caused by citizens' religious commitments, although that is my focus. A non-religious citizen can believe that legitimacy conflicts with the demands of justice or

⁴ At least for ordinary citizens. For those in certain offices or positions, such as judges, there might also be a question of what we do with them. I lack space to consider this complication here.

some other moral good, based on her comprehensive understandings of the right and the good. She recognises that a law cannot be openly justified to all citizens, so there is a great moral cost to its enactment – some citizens would not be treated as morally free and equal. But she also believes that this cost might be outweighed by the law's moral benefits, such that the law ought to be enacted despite violating PJP.

We should also note the similarity of this to how justificatory liberalism itself responds to those who are not good-willed moral agents. The justificatory liberal recognises that coercing such agents in ways that cannot be openly justified to them means that they are not treated as free and equal, but considers this moral cost to be outweighed by the moral importance of whatever good is served by the coercion. This is a case where justificatory liberalism itself faces a conflict of loyalty, and sides with coercion.⁵

In the cases we are considering in this chapter, however, the citizen facing the conflict of loyalty does not believe her compatriots who reject the law are not good-willed moral agents. She recognises them as reasonable in this sense, but considers them deeply mistaken about a particular issue. Respecting them as free and equal would thus come at a high moral cost. This cost might be so high that the citizen believes that the truth of the matter, as she sees it, should be imposed. Her loyalties cannot be harmonised, and she believes that she must favour her comprehensive view. Our question is what justificatory liberalism, as a theory, should say about this.

In many such cases, the conflict within the citizen's belief-value set is actually between different aspects of what she believes is required in order to treat her compatriots as free and equal. PJP is grounded in respect for others' freedom and equality, but this value can also be what motivates a

⁵ See Gaus, 'The Good, the Bad', pp. 569-574, and the quotes from that article on p. 94, fn. 54.

citizen to endorse laws that violate PJP.⁶ This is true with regard to abortion, for example. Many citizens believe, often based on religious commitments, that the 177,016 abortions that took place in England and Wales in 2013⁷ amount to 177,016 murders. It is respect for human life that causes some to believe that abortion should be legally prohibited, despite such a law (we assume) not being openly justified to all citizens. The value conflicting with respect for the freedom and equality of those citizens to whom the law cannot be justified is respect for the freedom and equality of the unborn children whose lives are at risk. The same is true for Matt, who I introduced in Chapter 5.⁸ Matt opposes stem cell research due to his respect for the moral worth of embryos.⁹ Matthew Clayton and David Stevens present a more absurd example.¹⁰ Erica believes that unless everyone in her polity has a shaven head, the world will end. She thus advocates a law requiring all citizens to have their heads shaved. Erica might well claim that it is respect for the freedom and equality of her compatriots, which includes a desire for them not to die unnecessarily, that underlies her support for the law. While the law would subject many to coercion that is not openly justified to them, it would be even more disrespectful of her to allow the world to end.¹¹

To be clear, I have two types of conflict of loyalty case in mind in this chapter. First, there are

⁶ Lott, 'Restraint on Reasons'; Eberle, 'Basic Human Worth'.

⁷ The last year for which full official statistics are available. <https://www.gov.uk/government/statistical-data-sets/abortion-statistics-england-and-wales-2013>

⁸ See p. 155.

⁹ Gaus has recently argued that these kind of cases involve citizens having different 'social ontologies' – disagreements over what kinds of 'things' we are dealing with, rather than merely value-conflicts. Some see the foetus as an ensouled being, others as a bundle of cells, others as a source of stem cells, etc. Citizens could endorse the same values, and even the same weighting, yet disagree on this issue due to their different social ontologies. Gaus claims that justificatory liberalism can successfully deal with these kinds of disagreements. Gaus, Gerald, 'Is Public Reason a Normalisation Project? Deep Diversity and the Open Society', working paper. Available at <http://gaus.biz/PublicReasonNormalization.pdf>. See also Muldoon, Ryan, 'Perspective-Dependent Harm', working paper. Available at <http://www.sas.upenn.edu/~rmuldoon/papers/harms.pdf>.

¹⁰ Clayton and Stevens, 'When God Commands Disobedience', p. 78.

¹¹ This connects to discussions of whether political liberalism can successfully handle the existence of comprehensively-driven factual disputes. Erica's disagreement with her compatriots concerns an empirical issue, but is rooted in their differing religious beliefs. See Matravers and Mendus, 'Reasonableness of Pluralism', pp. 43-47.

cases where an ordinary citizen who is not bound by the duty of proposal-restraint has strong comprehensive reasons to believe that a law that violates PJP ought to be enacted, and to support it on this basis. Second, there are cases where a citizen who *is* bound by the duty of proposal-restraint, such as a legislator, is in this situation. The difference concerns whether the individual's support for the law is likely to causally contribute to its enactment. As I explained in Chapter 5, the duty of proposal-restraint derives from the requirement that enacted laws fulfil PJP, so only binds upon citizens whose actions have a substantial causal impact upon legislative outcomes. For those citizens, favouring their comprehensive beliefs in a conflict of loyalty case would involve violating their duty of proposal-restraint. In the 'ordinary' case, however, citizens who favour their comprehensive beliefs in this way are not violating that duty. Nonetheless, they might be criticisable on different grounds, such as that they display inadequate respect for their compatriots, as I suggested above. In this chapter I mainly focus on this case, so assume that the citizens I am discussing are not officials or legislators. I return to the more difficult case, where the citizens concerned are bound by the duty of proposal-restraint, toward the end of the chapter.

2. Failed Responses

How should justificatory liberal theorists respond to these cases? Clayton and Stevens argue that we must say that citizens who believe that their comprehensive beliefs win out in a conflict of loyalty are *wrong* – their comprehensive beliefs are false. Although Clayton and Stevens are discussing public reason liberalism, this response is open to justificatory liberals, so worth considering. Rawls admits that “in affirming a political conception of justice we may eventually have to assert at least certain aspects of our own comprehensive or philosophical doctrine,”¹² and thus deny the truth of competing doctrines. Rawls's example is when an individual claims that the salvation of the nation depends on an issue being settled in a particular way. This is obviously similar to Erica's claim. In such cases, Clayton and Stevens argue, public reason liberalism

¹² Rawls, *Political Liberalism*, p. 152.

confronts a citizen as a partially comprehensive doctrine, and one that is incompatible with her comprehensively-based beliefs about an issue, so that says that she is mistaken. The citizen's co-religionists should seek to persuade her that she has got the requirements of their religion wrong.¹³ Reasonable citizens who share Erica's religion¹⁴ should try to show her that she is wrong to believe that universal head-shaving is a necessity.

The idea that political liberalism sometimes confronts citizens as a partially comprehensive doctrine might not seem like much of a concession in Erica's case, but is much more problematic for issues like abortion or stem-cell research. Clayton and Stevens explicitly state that public reason liberals must deny the truth of the claim that the value of a foetus's life is such that abortion is tantamount to murder.¹⁵ Citizens who believe that abortion should be legally prohibited are wrong; the comprehensive considerations that lead them to this conclusion are false.¹⁶ Justificatory liberals could say the same thing: any comprehensive beliefs that lead citizens to believe that laws that violate PJP should nonetheless be enacted are false. Whenever citizens who face conflicts of loyalty believe their religious beliefs override PJP, they are wrong about the demands of the gods, and should change their religious views.

This would be a troubling result, however. Political liberalism seeks to show how citizens who subscribe to diverse comprehensive doctrines can nonetheless live together under laws that are acceptable to all. It seeks to do this in part by remaining above the comprehensive fray. If political liberals must often say that citizens' comprehensive views are mistaken, that they are wrong about the demands of their own religion, then this claim to neutrality is lost, and political liberalism only 'succeeds' by ignoring many important disagreements. This confirms precisely

¹³ Clayton and Stevens, 'When God Commands Disobedience', pp. 80-82.

¹⁴ Assuming that there are any!

¹⁵ *Ibid.*, p. 79.

¹⁶ Gaus would argue that this shows that Clayton and Stevens require everyone to have the same 'social ontology'. All must share a (secularised) account of the social world. Gaus, 'Is Public Reason', rightly argues that this is a fundamental problem.

what many critics of political liberalism claim. Religious citizens are ultimately told: “reinterpret what your authority commands, and you will see that there is no conflict of loyalty.”¹⁷ This is an unsatisfactory outcome, suggesting that political liberalism implicitly imposes a particular, secularised, view of the world upon all citizens, rather than truly accommodating diversity.¹⁸

This response would also make political liberalism unacceptable to many religious citizens. As theologians repeatedly emphasise, Christians’ ultimate allegiance is to God, and “if a secular understanding of the public role of religion makes demands that Christians cannot accept on their own terms, Christians will not be able to accept these demands.”¹⁹ On Clayton and Stevens account, political liberalism demands that citizens reinterpret their comprehensive commitments whenever they face a conflict of loyalty. As Neal states, Christians “cannot grant this much authority to political liberalism without denying the ultimate authority of God.”²⁰

This is especially troubling because the citizens we are imagining facing conflicts of loyalty seem to be reasonable, good-willed, moral agents. They believe that they ought to respect their compatriots as free and equal, and that this requires that laws fulfil PJP. They simply believe that this requirement is sometimes overridden by countervailing values. These countervailing values are often themselves part of treating others as free and equal. Political liberalism becomes less attractive if it simply tells citizens in these situations that their comprehensive views are false.

An alternative response would be to claim that, despite appearances, these citizens are being *unreasonable*, by believing that their comprehensive beliefs take precedence over PJP. This is Quong’s approach. He argues that in order to be reasonable a citizen must give political values

¹⁷ Perry, *Pretenses of Loyalty*, p. 33. See also Waldron, ‘Toleration and Reasonableness’, pp. 31-33.

¹⁸ See my discussion of Gaus’s recent work in fns. 9 and 16, above.

¹⁹ Hollenbach, *Common Good*, p. 114.

²⁰ Neal, ‘Political Liberalism’, p. 183. In other words, Eberle’s strains of commitment objection (see fn. 2, above) would be successful if this was our response to conflicts of loyalty. I do not think it is successful against the response I endorse below.

deliberative priority, such that she never (or very rarely) considers comprehensive values to outweigh them.²¹ If she can find no public reasons for a law then she will not support it, despite having weighty comprehensive reasons for it, since she recognises the priority of political values. All-things-considered reasoners, citizens who weigh up all of their reasons in deciding what laws to support, are unreasonable. Again, justificatory liberals could make a similar claim: citizens who side with their religion in conflicts of loyalty are unreasonable.²²

Clayton and Stevens rightly point out that this response is often implausible. If a citizen truly believes that the world will end if everyone's heads are not shaved, or that abortion is murder, then it is not unreasonable to believe that this outweighs the demands of political liberalism, and that the relevant law should be enacted despite violating PJP. After all, "preserving life is more important than the protection of individual freedom to choose how to dress one's head."²³ The fact that we cannot call such citizens unreasonable is why Clayton and Stevens believe that we must instead say that they are mistaken.

Further, in Chapter 3 I objected to the thick conception of reasonableness required by public reason liberalism. The key normative work is done by this conception, invalidating the claim to accommodate citizens' diverse comprehensive doctrines, and revealing that public reason liberalism is a version of the right reasons view. That objection also applies to requiring the absolute prioritisation of political values as part of reasonableness. Justificatory liberals therefore cannot respond to conflicts of loyalty in this way. Part of why justificatory liberalism is superior to public reason liberalism, on my view, is precisely that it allows citizens to be all-things-considered reasoners.

²¹ Quong, *'Liberalism Without Perfection: Replies'*, pp. 54-55. See also Rawls, *Political Liberalism*, pp. 139, 157.

²² Again, for justificatory liberalism, 'ordinary' citizens do no wrong by advocating the law in question. Instead, the charge of unreasonableness is levelled at the fact that they are willing for their compatriots to be coerced despite lacking open justification.

²³ Clayton and Stevens, *'When God Commands Disobedience'*, p. 78.

This is also ultimately why I reject Clayton and Stevens' proposal that we say that citizens' comprehensive beliefs in conflict of loyalty cases are false. This proposal again shows public reason liberalism to be a version of the right reasons view. Clayton and Stevens seem happy to accept this result, but justificatory liberals cannot do so.

3. A Better Response

In my view, justificatory liberals should acknowledge that citizens can reasonably believe that their comprehensive views win out in conflict of loyalty cases, such that the citizen does nothing wrong by believing that a law ought to be enacted despite violating PJP, nor by acting on this belief. Justificatory liberals cannot say that the citizen's comprehensive view is mistaken, or that she is being unreasonable. Instead, we must accept that citizens can permissibly believe that comprehensive considerations outweigh PJP, in certain cases. This is especially likely to be true for religious citizens, due to the often totalising and overriding nature of religious obligation.²⁴

Citizens can permissibly favour their comprehensive belief within a conflict of loyalty only if certain conditions are fulfilled, however. First, the relevant belief must be openly justified, so one that would be endorsed under moderate idealisation. If this is not the case, then the citizen has failed to take seriously enough the moral cost of laws that violate PJP being imposed upon others. Coercing others in ways that cannot be justified to them involves a great moral cost, so should not be endorsed lightly. Further, citizens should recognise this, and thus ought to carefully examine the relevant belief, to ensure that their comprehensive doctrine really does require it, and that it is weighty enough to justify their support for the law.

In some cases, a citizen would cease to hold the relevant belief if she undertook a respectable amount of good reasoning. This might well be true of Erica. A moderately idealised version of

²⁴ See pp. 154-155.

Erica might not believe that polity-wide head-shaving is necessary in order to postpone the end of the world. It is hard to imagine an individual being openly justified in holding such a belief. In other cases, the citizen would continue to hold the relevant belief, but would no longer believe it weighty enough to override the demands of respect embodied in PJP. She would therefore cease to believe that the law in question should be enacted. If either of these possibilities are realised in a particular case, but the citizen continues to believe that the law should be enacted, due to failing to undertake a respectable amount of good reasoning, then she is criticisable. Her lack of adequate reasoning displays a lack of respect for her compatriots' freedom and equality.

The reasoning required in these cases has two components. First, the citizen should consult her religious sources, to ensure that she understands them correctly. She should engage with co-religionists who disagree with her on this matter, study relevant texts of Scripture, consider church traditions and the teachings of religious authorities, and so on. This is necessary in order to both validate the relevant comprehensive belief and ascertain its weight. Second, the citizen should engage in good-faith deliberation with her compatriots. She should carefully consider others' views and arguments, including their relevant comprehensive reasons, and should be willing for this deliberation to cause changes in her views. This is necessary in order to assess the weight of competing considerations, and to ensure that her reasons in favour of the law are sufficiently strong to justify her support for it, despite others' objections and the fact that it does not fulfil PJP.²⁵

If a citizen accepts justificatory liberalism, so believes that laws must fulfil PJP, but in a particular case her moderately idealised belief-value set gives her decisive reason to believe that a law that violates PJP should be enacted, and to act on this basis, then she is not criticisable, as long as she has engaged in sufficient reasoning and deliberation, as demanded by respect for others' freedom

²⁵ In other words, she must ensure that the relevant belief is in a stable theo-ethical equilibrium.

and equality. Justificatory liberals should accept that citizens can permissibly favour comprehensive beliefs within conflicts of loyalty. This will always be tinged with regret for the citizen, however, since she recognises the moral cost involved. She recognises that some of her compatriots will not be treated as free and equal if the law is enacted.

Some public reason liberals take a similar approach to conflicts of loyalty. Kyla Ebels-Duggan endorses the Rawlsian duty of civility, but recognises that citizens sometimes disagree on what justice requires to the extent that refraining from advocating laws for which they have only non-public reasons amounts to giving up on justice. In such cases, she argues, citizens can reasonably consider justice to outweigh competing values. “Reasonable people may opt for coercion,”²⁶ while regretting that this is the best they can do. Lister concurs, arguing that citizens can sometimes justifiably trade off civility for justice, if no political conception of justice supports the policy that they consider truly just.²⁷ When citizens face severe conflicts of loyalty they can permissibly pursue true justice.²⁸

Micah Lott claims that these cases will often occur, such that public reason liberalism’s duty of restraint loses all force.²⁹ Lott does not offer any evidence for this claim, however, and I see little reason to accept it. Ebels-Duggan and Lister believe that public reason liberalism realises important values that cannot be easily outweighed. Specifically, they both argue that citizens’ following the duty of civility is necessary for the realisation of ‘civic friendship’. Each ought to accept the moral cost involved in setting aside comprehensive considerations and only appealing to public reasons, for the sake of achieving this valuable kind of relationship with their compatriots. This obligation can sometimes be overridden, but is forceful nonetheless. As Lister

²⁶ Ebels-Duggan, Kyla, ‘The Beginning of Community: Politics in the Face of Disagreement’, *The Philosophical Quarterly* 60:238 (2010): 50-71, p. 71.

²⁷ Lister, *Public Reason*, pp. 128-129.

²⁸ Audi states his principle of secular rationale, which I outlined on pp. 16-17, as a *prima facie* duty, which suggests that he might offer a similar response to conflicts of loyalty.

²⁹ Lott, ‘Restraint on Reasons’. See also Wolterstorff, *Understanding Liberal Democracy*, pp. 98-103.

argues, the fact that citizens can sometimes permissibly side with their comprehensive understanding of justice does not undermine his general justification for public reason.³⁰

The same applies to justificatory liberalism. The fact that citizens can sometimes permissibly consider PJP to be outweighed does not render it impotent. The strength of the value grounding PJP – respect for others as morally free and equal – means that such cases will not be common. Indeed, the strength of this value might lead one to doubt whether citizens can ever permissibly side with their comprehensive doctrine when faced with conflicts of loyalty. Ebels-Duggan and Lister ground public reason in civic friendship, which seems a weaker value than the requirement to treat others as free and equal.³¹ The former grounding might thus allow for my preferred response to conflicts of loyalty in a way that my grounding for PJP does not.

Respect for one's compatriots as free and equal can be overridden in some cases, however. Most plausibly, this occurs when the competing value is itself centred on respect for others, as I have noted. PJP expresses one aspect of what is required if all citizens are to be respected as free and equal. Citizens can permissibly consider it to be outweighed when it competes with other such aspects, or with other similarly weighty values.

This response to conflicts of loyalty fits with justificatory liberalism's (practical) internalism.³² Respect for persons involves respect for their own beliefs and values, in the face of reasonable pluralism. When citizens' comprehensive beliefs give them decisive reason to believe that a law that violates PJP nonetheless ought to be enacted, because a very important competing value is at stake, justificatory liberalism rightly accepts this, and considers those citizens to not be morally

³⁰ Lister, *Public Reason*, p. 129.

³¹ Lister explicitly argues against the respect-based argument for PJP, and against Gaus's view in particular. *Ibid.*, pp. 59-79.

³² And with the centrality of the first-person perspective, as Gaus puts it. Gaus, *Order of Public Reason*, pp. 225-228.

criticisable. Matt might well be in this situation. His religiously-grounded opposition to stem-cell research might lead him to believe that a law prohibiting such research ought to be enacted, despite violating PJP. If his belief is sufficiently justified and he has engaged in good-faith deliberation within his compatriots then he is not criticisable.

My approach to conflicts of loyalty also helps justificatory liberalism to be consistent with committed Christian belief. As Neal argues, many Christians can never have wholehearted allegiance to a political theory that might sometimes require them to act against their Christian beliefs.³³ All political principles must be checked against the theological standard of moral truth, and loyalty to God will always take precedence. Christians who accept justificatory liberalism will believe that exceptions to PJP are possible. The same is probably true for many other comprehensive doctrines. Justificatory liberals ought to recognise and accept this.

4. Objections, and Alternative Justificatory Liberal Responses

In order to further clarify my response to conflicts of loyalty, I will consider several potential objections to it.

First, a critic might wonder whether justificatory liberals must respond in the same way to those who completely reject PJP, believing that it is not demanded by respect for others' freedom and equality. If justificatory liberalism allows citizens to side with comprehensive considerations within conflicts of loyalty, then must it not also refrain from criticising those who reject justificatory liberalism entirely? This would be an embarrassing admission. It would mean that justificatory liberalism has no real practical purchase.

I do not think that this is an implication of my argument. It is possible to give respect for others'

³³ Neal, 'Is Political Liberalism', p. 174.

moral freedom and equality proper weight while believing that PJP is sometimes overridden. This is what those who favour their comprehensive beliefs within conflicts of loyalty do. They accept PJP, and so believe that laws must generally be openly justified to all, while also believing that there exist certain exceptions to this. This is in contrast to citizens who reject PJP, so do not believe that laws must generally be openly justified to all. Such citizens fail to respect their compatriots' moral freedom and equality, and are thus morally criticisable.³⁴

Further, my response to conflicts of loyalty does not mean that laws that violate PJP can be legitimate. PJP remains a necessary condition for the legitimacy of laws. Those who face a conflict of loyalty do nothing wrong by believing that a law that fails to fulfil PJP ought to be enacted, but the law would still be illegitimate if it was enacted. Some citizens would be impermissibly coerced – coerced in ways that cannot be openly justified to them.

This highlights two further objections to my approach, however. First, that its apparent appeal to those who face conflicts of loyalty is illusory. Second, that it is incoherent. I will consider these in turn.

The claim that laws that violate PJP are always illegitimate, even when some who support them do so on the basis of a good-faith belief that PJP is outweighed by decisive comprehensive reasons in this particular case, might seem to undermine the appeal of my response to those facing the conflict of loyalty. Matt is told that he does nothing wrong by believing that a law prohibiting stem-cell research, L, ought to be enacted, and by acting on this belief. He can permissibly believe that comprehensive considerations outweigh PJP in this case. But he is also told that L would be illegitimate if it were enacted. Some of his compatriots would be wronged, even if he has not acted wrongly. *He* believes, however, that L is required by respect for human

³⁴ This does not mean that such citizens are excluded from the constituency of justification. Enacted laws still need to be openly justified to them.

life, and would object to the idea that L would be illegitimate.

Justificatory liberalism, as a theory, cannot endorse the claim that L is required for comprehensive reasons. It should accept that Matt is acting reasonably and in good faith, and does not criticise his willingness for PJP to be violated in this case. But it cannot accept that PJP in fact ought to be violated, since it does not endorse any particular comprehensive doctrine. I do not think that this undermines the appeal of my response, however. Matt can recognise that while his adherence to PJP is (partially) rooted in his comprehensive beliefs, justificatory liberalism itself does not endorse those beliefs, so cannot endorse the claim that PJP is overridden by his comprehensive reasons. He can continue to accept justificatory liberalism despite it considering L illegitimate. After all, justificatory liberalism accepts that he is not doing wrong in this case, and is not morally criticisable.

The more troubling objection is that my response to conflicts of loyalty is incoherent. I claim that enacted laws that violate PJP impermissibly coerce, and so wrong, those to whom they are not openly justified, and are thus illegitimate. I also claim that citizens who endorse PJP can sometimes believe that a law that violates PJP ought to be enacted, and act on this belief, without being morally criticisable. Such citizens believe that a law ought be enacted that would wrong some of their compatriots, and support that law, and yet do no wrong.

I do not believe that this is incoherent. I accept that there is a tension here, but believe that this reflects the reality of the tension within conflict of loyalty cases. The central feature of these cases is that the requirements of justificatory liberalism conflict with a citizen's firmly-held comprehensive beliefs. The views that I rejected in Section 2 avoided this tension by holding that the political liberal side of the conflict always wins out; citizens who favour the comprehensive side are always wrong or unreasonable. I believe that justificatory liberals should instead

recognise that the tension contained in conflict of loyalty cases will remain in the response that we give to them.

From the citizen's perspective, PJP is outweighed. She reasonably believes that the law's enactment is the lesser of two evils. Justificatory liberalism, as a theory, cannot endorse this claim, since it does not endorse (or deny) her comprehensive beliefs. It cannot accept that PJP ought to be violated. But it can recognise that this is a reasonable judgment from the citizen's perspective, and thus hold that she is not doing wrong, and is not morally criticisable. Some of her compatriots would be wronged if the law was enacted. But she is not criticisable for believing that it should be enacted, or for supporting it, given her reasonable all-things-considered judgment.

In light of this tension within my view, however, some justificatory liberals might seek an alternative response to conflict of loyalty cases. I will briefly consider two such alternatives, and explain why I reject them. My arguments here are not decisive, however. Other justificatory liberals might well favour these alternatives.

One alternative is to argue that while citizens can reasonably believe that their comprehensive beliefs outweigh PJP, they are still morally criticisable for believing that the law ought to be enacted (and for acting on that belief). On the basis of their own reasons, citizens can make a reasonable all-things-considered judgment that PJP is outweighed. But they are nonetheless rightly criticisable. They commit a wrong even in doing what they reasonably consider to be the all-things-considered right thing. We might call this the 'Dirty Hands' approach, in contrast to my 'Clean Hands' approach.³⁵

³⁵ The term 'dirty hands' is usually used to refer to cases where pressing consequentialist considerations conflict with deontological requirements, especially in so-called 'supreme emergencies'. My usage differs from this, but similarly captures the idea that the agent does the all-things-considered right thing, but is somehow sullied and open to criticism. See Coady, C.A.J., 'The Problem of Dirty Hands', in Zalta, Edward N. (ed.), *The Stanford Encyclopedia of Philosophy* (Spring 2014 Edition).

While the Dirty Hands view avoids the tension within Clean Hands, it contains a tension of its own, which I believe to be more problematic. It says that a citizen can be considered to be doing the right thing, and yet still face moral criticism. This criticism cannot be directed at the fact that she believes that a law that violates PJP ought to be enacted, since Dirty Hands accepts that she reasonably holds that view. I am therefore not sure what the basis for criticism is. Certainly, the citizen should feel *regret* that the law that she has compelling reason to believe ought to be enacted is not openly justified to some of her compatriots. But that is not the same as saying that she should face *criticism*.

Another alternative response is to say that conflicts of loyalty are cases of moral tragedy, where citizens cannot avoid doing wrong.³⁶ This approach avoids the tensions within both the Clean Hands and Dirty Hands approaches, by holding that there is no 'right' in conflict of loyalty cases. Believing that a law ought to be enacted despite knowing that it violates PJP is wrongful. But it is also wrongful to deny that the law ought to be enacted, when it is mandated by one's comprehensive doctrine. There is an irreducible conflict of values, and it is wrong to prioritise either side. Yet citizens must make a choice. It is up to the citizen to decide which wrong to commit; they must plump for one side or the other.

My main reason for rejecting this 'Moral Tragedy' response to conflicts of loyalty is a belief (or hope) that real moral tragedies, where one cannot help but act wrongly, are rare. There is usually an all-things-considered right answer, on the basis of a citizen's own reasons. If that answer is that PJP should be violated in this case, then although justificatory liberals cannot endorse that claim, we also should not believe the citizen to be morally criticisable.

<http://plato.stanford.edu/archives/spr2014/entries/dirty-hands/>.

³⁶ For discussion of moral dilemmas in ethics, see McConnell, Terrance, 'Moral Dilemmas', in Zalta, Edward N. (ed.), *The Stanford Encyclopedia of Philosophy* (Fall 2014 Edition).
<http://plato.stanford.edu/archives/fall2014/entries/moral-dilemmas/>.

A further consideration here is that Clean Hands appears more acceptable to citizens facing conflicts of loyalty than either Dirty Hands or Moral Tragedy. As I noted above, Christians who accept justificatory liberalism will always believe that exceptions to PJP are possible, and the same is probably true for many other comprehensive doctrines. Clean Hands accepts this, and says that citizens are not criticisable in these cases.

I distinguished earlier between two types of conflict of loyalty case within justificatory liberalism: those where the citizen concerned is bound by the duty of proposal-restraint and those where they are not. One might think that my Clean Hands approach is more plausible as a response to the latter than to the former. An ordinary citizen can believe that a law that violates PJP ought to be enacted, and support that law, without this greatly increasing the chance of the law actually being enacted. Certainly, the citizen should display adequate respect for her compatriots, which is why such belief and action is only permissible if she truly has decisive comprehensive reasons in favour of the law, which can reasonably be judged to override PJP in this case. Assuming this is the case, and given that her action is unlikely to cause the law to be enacted, she is not criticisable. Perhaps matters are different when the individual concerned is a legislator or official, and so has a direct causal impact upon what laws are enacted. If such an individual supports a law that violates PJP then they violate their duty of proposal-restraint, and increase the likelihood of citizens being coerced in ways that are not justified to them. This gives them extra reason not to support such laws, such that the correct response to a conflict of loyalty in their case is either Dirty Hands or Moral Tragedy.

In my view, the Clean Hands response does still apply to those bound by the duty of proposal-restraint, however. Certainly, legislators and officials should recognise that the extra influence they have over political outcomes brings extra responsibility.³⁷ Perhaps they should be even more

³⁷ Legislators also might also have specific obligations toward their constituents. I lack space to explore the

sure that a law that violates PJP is necessary, according to their comprehensive understanding of morality or justice, before supporting it. But if they are sure about this, so face a compelling conflict of loyalty, then I think they too are exempt from moral criticism, from the perspective of justificatory liberalism. They can reasonably believe that their duty of proposal-restraint is overridden in this case, and so do not act wrongly by supporting the law. I am less certain about this than about the case of 'ordinary' citizens, however.

Again, this does not mean that laws that violate PJP can be legitimate. If enacted, such a law still wrongs those to whom it is not openly justified. Further, it is likely that many of those responsible for its enactment will have acted wrongly, by violating their duties of proposal-restraint without facing a compelling conflict of loyalty. Those individuals are certainly morally criticisable. If some legislators have supported the law on the basis of a reasonable all-things-considered judgment in the face of a conflict of loyalty, however, then they are exempt from criticism.

To recap, I have argued that 'Clean Hands' is the best justificatory liberal response to conflicts of loyalty, but have also acknowledged the possibility that some justificatory liberals will prefer the 'Dirty Hands' or 'Moral Tragedy' responses. Certainly, my arguments in favour of Clean Hands are not decisive, and there are tensions within the view that I have not fully resolved.

There is one final objection that must be considered here. This is that my response to conflicts of loyalty creates a 'loophole' that in practice would undermine PJP. Citizens might frequently see their comprehensive doctrines as giving them strict obligations to endorse certain laws, such that they consistently believe that laws that violate PJP ought to be enacted, and act on this belief.

Several things can be said in response to this worry. First, as I emphasised above, citizens can

questions this raises here.

permissibly favour their comprehensive beliefs within a conflict of loyalty only if they have engaged in a respectable amount of good reasoning, taking into account all relevant reasons – including the moral cost of violating PJP. The citizens we are considering here endorse PJP, and recognise that it is grounded in the requirements of treating their compatriots as free and equal. They recognise the great moral cost in PJP being overridden. They therefore would not frequently believe that it should be violated. Cases where citizens can reasonably make that judgment will be rare. Second, if citizens favour their comprehensive beliefs where they would not do so under moderate idealisation, or without engaging the necessary deliberation, then they are criticisable, since they fail to show adequate respect for their compatriots.

These first two replies could be seen as missing the point of the loophole objection. They emphasise the fact that PJP is a weighty moral principle, such that cases where citizens can reasonably side with their comprehensive beliefs within conflicts of loyalty should be rare. But the loophole objection can instead be understood in a more predictive way than this. Even if the Clean Hands view *in theory* does not open the floodgates for citizens to frequently believe that PJP can be violated, it would have this effect *in practice*, because it gives citizens a ready excuse for disregarding PJP. Such abuse of the conflict of loyalty provision is hard to monitor, and if it becomes rife then it could destroy any ethos of respect for PJP.

The main thing that can be said in reply to this is that similar worries apply to all views of legitimacy and ethics of citizenship. Public reason liberalism cannot ensure that citizens do not use public reasons as ‘puppets’ for their comprehensive doctrine.³⁸ Theorists who believe that all public arguments should be about the requirements of the common good cannot prevent some from using such arguments as a cover for sectional agendas. I do not think that this kind of practical concern applies in any special way to justificatory liberalism, even given my response to

³⁸ See Rawls, *Political Liberalism*, p. 454.

conflicts of loyalty. We should seek to spot and criticise disrespectful conduct, and encourage adherence to PJP. But all theories of legitimacy are ultimately dependent on the reasonableness of citizens.

Further, justificatory liberalism's main focus is on preventing illegitimate coercion. Even if some (ordinary) citizens regularly disregard PJP, this is unlikely to lead to much, if any, illegitimate coercion, given individual citizens' limited causal influence on law.³⁹ This does not make wrongful attitudes and actions permissible, of course. If citizens fail to give adequate weight to respect for others' freedom and equality when faced with conflicts of loyalty, so favour comprehensive beliefs more frequently than they ought, then they are open to moral criticism. Citizens should recognise the responsibilities that come with being a democratic citizen. Nonetheless, it is still true that some citizens failing to do this some of the time is unlikely to lead to others being wrongly coerced. Even if there is some truth in the practical 'loophole' concern, it does not undermine PJP.

5. Conclusion

According to justificatory liberalism, laws must be conclusively openly justified to every citizen in order to be legitimate. Each citizen must have sufficient reason from within her own belief-value set, moderately idealised, to accept each law as preferable to having no law in the relevant policy area. Laws that fail to satisfy this criterion coerce some citizens in ways that cannot be justified to them, and thus fail to treat them as morally free and equal. The equal moral authority of these citizens is denied, as the views of other citizens are imposed upon them.

Justificatory liberals should also recognise, however, that there are times when citizens' belief-

³⁹ It is more of a worry if officials and legislators ignore PJP and disregard their duty of proposal-restraint. But such abuse is also easier to spot and criticise, so the practical worry can also be defused here.

value sets give them strong, and even overriding, reason to believe that coercive laws that they know are not justified to some of their compatriots should nonetheless be enacted. Citizens can accept PJP, and desire to treat their compatriots as free and equal, and yet find that this commitment conflicts with a firm comprehensive belief,⁴⁰ such that they believe that a law should be enacted despite violating PJP.

It is not possible to say in the abstract how often genuine conflicts of loyalty will occur. In many cases, citizens who endorse justificatory liberalism will accept that ideal morality cannot be coercively imposed, since their most-preferred law cannot be justified to others. There will also be many cases where a citizen's most-preferred law is considered sub-optimal by others, but is nonetheless within the socially eligible set. All prefer the law to having no such law at all, even though many support alternatives to it. Problematic conflicts of loyalty occur when a citizen believes that a law ought to be enacted despite falling outside the socially eligible set. When these occur, the best that justificatory liberalism can do is say that the law would be illegitimate if enacted, but that those who endorse the law in the face of a conflict of loyalty are not morally criticisable.

A recent comment by Gaus can be understood in this light:

"The possibility that one can live on terms that my conscience allows without violating the consciences of others turns on the deeper question of whether the most outrageous moral wrongs – those that in conscience I simply cannot permit to occur – may be approved of by other reasonable moral agents who (in my view) have exercised all due care in forming their judgments."⁴¹

In other words, the question of the success of justificatory liberalism at creating a polity acceptable to all, where laws are conclusively justified to every citizen, depends on whether

⁴⁰ And one that they continue to hold after a respectable amount of good-faith deliberation, including deliberation with their fellow-citizens who reject the law.

⁴¹ Gaus, 'Private and Public Conscience', p. 27.

citizens agree on what actions are beyond the moral pale. Conflicts of loyalty occur when this is not the case. Some citizens consider certain acts morally permissible, so a law prohibiting them is not justified to all. Others consider those acts morally outrageous, such that they cannot in good conscience permit anyone to commit them, and thus face a conflict of loyalty.

How common such cases are thus depends on just how deep diversity is. As I have argued throughout this thesis, justificatory liberalism's superiority to public reason liberalism is rooted in the fact that it better deals with pluralism. The justificatory liberal response to conflicts of loyalty must be to insist that laws violating PJP are illegitimate, since they fail to respect the moral equality of some citizens. But at the same time, justificatory liberals should accept that the citizens who believe that such laws should be enacted despite not fulfilling PJP, do not act wrongly and are not morally criticisable, since they have made a reasonable judgment, in good conscience, that in this instance the competing values at stake outweigh the respect embodied in PJP. This is not a fully satisfactory solution, but I believe that it is the best response possible in light of justificatory liberalism's foundational commitments.⁴² This response also strengthens my claim that justificatory liberalism is compatible with Christian political theology and can be acceptable to Christian citizens.

⁴² I thus agree with Perry, *Pretenses of Loyalty*, that loyalties cannot be completely harmonised, and with May that "conflicts of moral conscience between reasonable citizens are not... eliminable." May, Simon Căbulea, 'Religious Democracy and the Liberal Principle of Legitimacy', *Philosophy & Public Affairs* 37:2 (2009): 136-170, p. 167. However, I reject the claim that this means that political liberalism should be rejected.

Conclusion

I have covered a large amount of ground in this thesis, but my central conclusions can be summarised fairly briefly. Laws must be openly justified to all (good-willed) citizens in order to be legitimate. This means that every citizen must have sufficient reason, from their own moderately idealised belief-value set, to prefer the law to having no law in the relevant policy area. This is a condition of legitimacy because coercion that violates it fails to respect citizens' moral freedom and equality. I developed and defended this idea in Chapters 1-4, arguing that this justificatory liberal view was superior to both the public reason liberal and right reasons view understandings of the reason-giving aspect of legitimacy.

My version of justificatory liberalism has several significant differences from those defended by theorists such as Gaus and Vallier. I will highlight four here. First, I do not believe that PJP applies to all moral demands, but only to coercion. Second, my version includes an important proviso, according to which laws that prevent uncontroversial cases of private coercion are presumptively legitimate. While this is a proviso to PJP, I argued that it was motivated by the same concerns. Third, I argued that the self-defeat objection cannot be dismissed as easily as Gaus believes, and offered a new response to it. Finally, I argued that justificatory liberals should accept that citizens can sometimes have overriding reasons to believe that laws that do not fulfil PJP ought to be enacted, and that such citizens are not criticisable. All four of these changes arose from examining important objections to alternative versions of justificatory liberalism. The fourth change arose as a result of considering 'conflict of loyalty' cases, which are central to the challenge that religious citizens present to political liberal theories of all forms.

As I noted several times, the idea that 'conflicts of loyalty' arise for religious citizens assumes that those citizens can have some loyalty to political liberalism, but that their reasons for endorsing it are not decisive. In other words, it assumes that political liberalism is compatible with their

religion but not decisively entailed by it. The main focus in Part II of this thesis was establishing that this is the case with regard to Christianity and justificatory liberalism. I argued that Christianity is not incompatible with justificatory liberalism (Chapter 6), that Christianity did not decisively support public reason liberalism (Chapters 7 and 8), and that there are some theological considerations that can be used in favour of justificatory liberalism, showing it to be compatible with Christian belief (Chapter 8). Christians can accept justificatory liberalism, and particularly my version of the view. This strengthens my claim that justificatory liberalism is the best theory of legitimacy for pluralistic societies like ours, and shows that the common objections to political liberalism offered by theorists sympathetic to religion can be defused.

Justificatory liberalism says little about what laws ought to be enacted within societies. It is not a theory of justice, and does not rule on specific areas of public policy. For most issues, there will be a range of prospective laws that are within the socially eligible set, and thus eligible for enactment. Which precise laws end up being enacted is a matter for democratic processes. Citizens should deliberatively engage with one another to seek to persuade others to support their preferred policies. There is an important role here for political philosophers, in engaging in these disputes and seeking to establish what laws best promote justice and the common good. Indeed, the socially eligible set is not a fixed entity. Given that it is determined by the belief-value sets of citizens, it will be changed through deliberative processes that reshape citizens' views. Justificatory liberalism should therefore not deter us from casting visions for the ideal society, or from seeking to persuade people with fundamentally different perspectives that they are wrong and ought to adopt our evaluative standards.

What justificatory liberalism does do is show the limits to permissible coercion, and the way in which citizens' evaluative standards constrain state action. Laws that some citizens have decisive reason to reject, such that they rank them below having no law on the relevant issue, are

illegitimate. They coerce citizens in ways that cannot be justified to them, and thus fail to treat them as morally free and equal. Of course, this in itself gives further reason to seek to persuade others of the merits of such laws, such that they cease to reject them in this way. But laws cannot be permissibly enacted while some remain unpersuaded. Respect for citizens as free and equal requires that laws be conclusively justified to them, as I have argued at length in this thesis.

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