Public Reason and Political Community

Andrew Lister

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Preface

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Public Reason in Practice and Theory

The ideal of public justification has been described as the 'theoretical foundation', 'moral lodestar' and 'abiding moral heart' of liberalism.[1] In particular, it has been the linchpin for one prominent form of egalitarian liberalism. On the one hand, if the social order must be justified to everyone, it must be justified to the least well-off. On the other hand, if reasonable persons in a democratic society will hold a wide range of religious, philosophical and moral doctrines, the social order ought to be justifiable to all such reasonable points of view – even minority points of view – arguing for individual freedoms of thought, conscience and association. The demand that social institutions be acceptable to each seems hardest to meet with respect to the worst-off, suggesting that inequalities should benefit them. Within any social position, however, libertarians may reasonably (if wrongly) reject egalitarian redistribution. Thus, it has been argued that public reason liberalism faces an 'anti-perfectionist dilemma'. If there is room for reasonable disagreement about distributive justice, as well as about human flourishing, liberals must either water down their standard of public justifiability, allowing some perfectionism, or 'bite the bullet' and sacrifice some justice-based policies.[2] One of the main purposes of this book is to determine whether this dilemma is real, and if so, how it might be avoided.

The book's main premise is that the principle of public justification can be specified in different ways, with different implications for policy, on the basis of different underlying concerns. The requirement of public justifiability in the sense that I will use the term involves a requirement of multi-perspectival acceptability, an idealized unanimity criterion. But what is it exactly that must be publicly justifiable, and what happens if none of the available options attains the requisite unanimity? Is it *coercive state action* that must be unanimously acceptable to the appropriately idealized public; otherwise, we default to not acting, that is, not having a law or policy? Or, is it our principles, that is, our *reasons for political decisions* that must meet the unanimity criterion; otherwise, we default to not including the reasons in the grounds of our deliberations? It is when framed as

a constraint on coercion directly that the principle gives rise to the worry about undermining social justice. When framed in terms of reasons for decisions, the principle simply reduces the range of considerations that come into play when we decide how much to rely on the market or the state, for example, or how high to set the levels of taxation. Yet, when framed as a constraint on reasons for decisions, the principle is not as strongly opposed to paternalism, nor is it as useful for defending the liberal policy on issues such as abortion.

The initial aim of this book is to sort out the relationships between the specification, justification and practical application of the principle, but ultimately, I want to argue for the reasons-for-decisions model, against the coercion model. Respect for persons as free and equal moral agents does not require that coercion must be invulnerable to reasonable rejection. In a pluralistic society, however, exclusion of reasonably contestable reasons from political decision-making establishes a relationship of mutual respect across deep moral differences. Thus, when framed as a constraint on reasons for decisions, public reason is a condition of civic friendship. This conception is communitarian, in a loose sense, because it grounds public reason in the value of community but does not assert any of the distinctive theses associated with the communitarian critique of liberalism.

The idea of public reason is not an invention of political philosophers, but an articulation of norms that exist in contemporary political culture. The first section of this chapter illustrates this claim by describing appeals to public reason in the Canadian debate over same-sex marriage. Section 2 provides a more formal definition of public reason, identifying a number of dimensions in which any principle of public justification must be specified. Section 3 explains the two main ways of framing the demand for public justification that are the concern of this study. Section 4 responds to some preliminary objections to the reasons-for-decisions version of the principle. Section 5 provides a map of the chapters to come.

1 Appeals to public reason in the debate about Same-sex marriage

During the 2003 hearings held by the Canadian House of Commons' Standing Committee on Justice and Human Rights, many opponents of same-sex marriage expressed frankly religious views. The institution of marriage, they argued, is not the

creation of governments, or even religions, but of God himself. 'Governments and courts are not the authors of marriage', claimed Bruce Clemenger of the Evangelical Fellowship of Canada.[3] 'Marriage is the recognition of a structure that stems from nature', argued André Gaumond, of the Canadian Conference of Catholic Bishops. 'We believe that nature was bestowed upon us and that we can discern God's will through it. Recognizing marriage means recognizing God's role in the organization of society'.[4] Shabbir Aly, of the Islamic Council of Imams, reiterated this view of marriage as a universal and divine institution. 'Marriage within the Jewish, Christian, and Muslim tradition is the sacred institution given by God. It is not something that humans invent. So we do not make up the rules of it as we go along'.[5] '[N]either the church nor the state instituted marriage', claimed Ted Seres of the Pentecostal Assemblies of Canada, 'although our theological position would say that marriage was a provision by God, instituted by God, as a social consequence of the created order. Marriage was embraced by society as a universal construct'.[6] Proponents of this view argued that the definition of marriage could not legitimately be altered by parliament or courts.'Since marriage is a universal social institution that pre-dates human governments, courts, and religious traditions', argued Lois Mitchell of the Canadian Baptist Ministries, 'neither Canadian courts, parliaments, nor religious institutions have the authority to redefine it'.[7]

In response, some participants adopted what Michael Sandel calls the naive strategy of simply denying these religious claims.[8] For example, Choice Okoro, testifying on behalf of the United Church of Canada, asserted that 'human sexual orientations, whether heterosexual or homosexual, are a gift from God and part of the marvelous diversity of creation'.[9] Often, however, proponents of same-sex marriage employed the 'sophisticated' strategy of asserting that, whether true or false, religious views are not legitimate grounds for public policy in a pluralistic society. 'I find it striking that three groups that accept Jesus Christ as the Saviour have such diverse opinions on the value of marriage', responded Bloc Québécois MP Richard Marceau. 'We have the United Church on one side and on the other, your church, Mr. Clemenger. And then we have Msgr. Gaumond, who is against allowing same-sex couples to marry'. Faced with such disagreement, it would be inappropriate to define civil marriage in accordance with one or the other of these religious views, Marceau argued. 'Would that not be the best example of the fact that in a pluralistic society like Quebec and Canada, we should allow people whose opinions differ to have a relationship without involving the dogma of the Catholic Church, for example'?[10] Marceau was explicit that theological reasons are not a legitimate basis for a public institution.

> I am not a theologian so it is difficult for me to define the notion of essence. However I am a jurist and a legislator. That is why the kinds of social organization that I am familiar with and that I study are necessarily legal ones. So, with the greatest of respect for people who because of their religious beliefs do not accept homosexual marriages—and they are fully entitled to their opinion—the Justice Committee must not rely on theology to determine the essence of marriage. It is incumbent upon us to take a stand as legislators.[11]

Sheree Drummond made the same point in more general terms. 'The particular beliefs of one or more faith traditions should not form the basis for law-making in a country with a secular system of government'.[12]

For Nathalie Des Rosiers of the Law Commission of Canada, this need to bracket religious disagreement stemmed from a concern over unequal treatment of those belonging to different religions.

> We have multiple religions in Canada. One way of living together is to give space for religious organizations to do what they do best and to have a secular state. I think this battle is over creating a secular state that doesn't decide its rules of engagement or of exclusion based on religious concepts. Why would it favour some religions over others?[13]

For Marceau, it was a matter of freedom of conscience. 'A religion cannot impose its point of view on society as a whole', he stated.[14] Alexandra Raffé put the point in constitutional terms.

> It seems to us that many of those who object to equal marriage for same-sex couples do so on religious grounds. They should no more be permitted to dictate to those not of their faith than we are able to dictate beliefs to them. Freedom of religion is protected under our charter. Freedom to impose your views on others is not.[15]

Many also cited the fact of religious disestablishment. Bloc Québécois MP Réal Ménard pointed out, 'there is no state religion in Canada'.[16] 'Canada is a pluralistic democracy without an established religion, and one where church and state are separated', agreed Prof. Shari Brotman of the Centre for Applied Family Studies, McGill University.[17] 'We are not a Christian nation', argued Brad Tyler-West; 'we are a multicultural nation that honours all others'.[18] 'Government really shouldn't be dabbling in religion', concluded Liberal MP Hedy Fry.[19] Wayne Samuelson of the Ontario Federation of Labour explicitly linked religious disestablishment with the exclusion of religious reasons from decision-making about public policy. 'There is a separation of church and state in this country.

The right to civil marriage is outside the religious question. The state does not direct the affairs of religious institutions, nor should some religious teachings direct or formulate Canadian social policy'.[20]

The claim that religious reasons are not a legitimate basis for decisions about public policy finds support in the writings of many legal and political theorists. For example, Robert Wintemute states that '[r]eligious doctrines must be deemed absolutely irrelevant in determining the content of secular laws'.[21] Similarly, Robert Audi has argued that the moral ideals underlying the institutional separation of church and state imply a rule of conduct for individual citizens, which he refers to as the principle of the secular rationale:

> [O]ne should not advocate or support any law or public policy that restricts human conduct unless one has, and is willing to offer, adequate secular reason for this advocacy or support. . . Thus, while one may be led to consider polygamy wrong because of religious scruples against adultery, one could support its legal prohibition only if one had adequate secular ground, say its danger to children.[22]

Opponents of same-sex marriage speaking from a religious perspective explicitly rejected this normative restriction of the grounds of decision-making. After quoting Wintemute's statement to the committee, Barry Bussey of the Seventh Day Adventist Church registered his objection:

> [T]he church and its members have every right, as does any other citizen, to express their views on matters of public policy. Some have suggested that laws are solely the domain of the secular, but we disagree. All law is an expression of society's morality of right and wrong. Discussions on morality without the views of religious groups would hardly be enlightened.[23]

From Bussey's perspective, the norm of excluding religious reasons from public debate is an undemocratic limitation of free speech.

It might be argued that Marceau *et al* are not fundamentally opposed to the use of religious ideas in public decision-making, but only to the use of views that deny some citizens equal concern and respect– views that, in this case, happen to be religious. According to this alternate interpretation, the salient feature of the views in question is not that they are religious but that they demean, degrade or insult the ways of life of others, and so, violate the principle that citizens must be treated as equals. As British Columbia teacher James Chamberlain put it, 'religious views *that deny equal recognition and respect to the members of a minority group* cannot be used to exclude the concerns of the minority group'.[24]

Chamberlain would presumably also object to non-religious views that deny equal respect. This interpretation could draw upon Ronald Dworkin's defence of liberal neutrality in terms of a right of moral independence. Government 'must impose no sacrifice or constraint on any citizen in virtue of an argument that the citizen could not accept without abandoning his sense of his equal worth'; '[p]eople have the right not to suffer disadvantage in the distribution of social goods and opportunities . . . just on the ground that their officials or fellow citizens think that their opinions about the right way for them to live their lives are ignoble or wrong'.[25] One of Dworkin's chief examples of a view violating moral independence has always been the view that homosexuality is sinful.[26] Yet, the objections cited earlier cannot easily be construed in this way – as objections to inherently discriminatory views that happen to be religious. Opponents of same-sex marriage typically claimed to be committed to the principle that all individuals are equally deserving of concern and respect.[27] It may be that opposition to same-sex marriage is, in fact, motivated by hatred and prejudice, rather than any plausible moral view committed to treating all persons with respect. However, if the objection was not to religious arguments in general but just to religious arguments that deny equal respect, the objection would only be convincing if one accepted not just the falsity but the unreasonableness of the views in question. Interpreted in this way, objections to religious arguments against same-sex marriage would lose the rhetorical benefit of truth-avoidance. Bloc Québécois MP Richard Marceau went out of his way not to deny the truth of religious doctrines, relying instead on the fact of religious disagreement. The advantage of this 'sophisticated' liberal response is that it sidesteps the question of who is right about whether or how God defined marriage, by arguing that we must bracket the disagreement, and exclude both answers. To make sense of the sophisticated response to conservative religious views, we need to appeal to a principle of public reason.

However, the idea of public reason raises a number of intellectual puzzles and, depending on how the principle is specified, may have counterintuitive practical implications. One immediate problem with the proposal to exclude religious views from political decision-making is that religious views have been used to defend laudable political goals, from the abolition of slavery to the elimination of poverty.[28] The rhetoric of appeals to public reason involves bracketing rather than denying religious truth claims, but perhaps the selective application of the principle belies this fact. Another problem is that we need some principled basis upon which we are to exclude all but only religious reasons from public

decision-making. The argument cannot be that religion is nonsense, for that would involve denying the truth of the views in question, rather than denying that they are admissible whether true or false. The claim might be that religious questions are subject to deep reasonable disagreement. However, if we justify public reason in this fashion, it seems that secular doctrines such as utilitarianism will have to be excluded too, Philip Quinn points out, because utilitarianism is also not beyond reasonable objection.[29] Thus, Rawls's conception of public reason counts secular moral doctrines such as Kantian autonomy or Millian individualism as reasonably contestable 'comprehensive doctrines', which we must consider to be non-public. Rawls's principle of public reason is, for this reason, fairer and more consistent than Audi's, Nicholas Wolterstorff contends.[30] Yet, Rawls's exclusion of reasonable moral controversy suggests that the principle may refute itself, because it is itself a controversial moral principle. A related problem, which I have already mentioned, is that if it turns out that there is room for reasonable disagreement about justice itself, and in particular about egalitarian plans for the redistribution of wealth and income, we may only be able to justify a very limited, night-watchman state. The idea of public reason is intuitively plausible, in some respects, and it is a norm citizens appeal to in real political debates, but it has some potentially unacceptable implications, and may not even be intellectually coherent.

2 The idea of public reason

The idea of public reason has been at the centre of recent theories of political or justificatory liberalism.[31] The term 'political liberalism' refers to a particular kind of liberal theory about politics – one distinguished by its scope and the manner of its justification. Moral views about the proper exercise of political authority will ordinarily be grounded in underlying religious, philosophical, or moral doctrine. A liberal doctrine about politics can thus be based on a liberal philosophy of life; Mill's celebration of individuality is usually cited as an example.[32] In contrast, a doctrine about politics will be political in the technical sense if it is one that is intended to be acceptable to all reasonable moral points of view. Political liberalism is thus a form of liberalism that accepts a constraint of reasonable acceptability on the exercise of political power. In Rawls's work, this condition finds its expression in the 'liberal principle of legitimacy' and the associated ideal of 'public reason'.[33] Rawls sometimes spoke of both together

under the rubric of reciprocity, and it is this formulation of the view that I prefer, for it provides his most general and least technical statement of the basic idea:

> By what ideals and principles, then, are citizens as sharing equally in ultimate political power to exercise that power so that each of them can reasonably justify their political decisions to each other? The answer is given by the 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 for those actions.[34]

The general idea of public reason is thus that we should exercise political power only in ways it is reasonable to expect everyone to accept, despite the fact reasonable people will inevitably disagree about many important religious, philosophical and ethical questions.

The idea of reasonableness has two main elements. The first is a threshold of cognitive capacity and moral disposition, which, following Charles Larmore, I will describe as the willingness and ability to reason sincerely with others about what is true, and good, and right.[35] Rawls also appeals to this minimal sense of reasonableness in saying that the 'burdens of judgment', or obstacles to agreement between reasonable persons, do not include self-interest, bias, or malice. The burdens of judgement are 'the many hazards involved in the correct (and conscientious) exercise of our powers of reason and judgement in the ordinary course of political life', and include complexity of evidence, multiplicity of relevant values that need to be weighted, conceptual vagueness and the influence of diverse life experiences.[36] These burdens give rise to the fact of 'reasonable pluralism'.[37] Reasonable pluralism is a thesis about the normal operation of human reason under conditions of liberty, when people have freedom to think, speak and associate as they please. For a broad range of philosophical and moral questions, because of the burdens of judgement, the views of reasonable people will either not converge, or not converge quickly enough, to make it possible that all reasonable citizens should ever agree on a particular comprehensive[38] doctrine. Barring the forcible imposition of one particular view, there will be a substantial degree of religious, philosophical and moral diversity in a democratic society simply because that is what the free but inevitably bounded exercise of human reason generates.

The second element of the reasonable is a set of substantive moral and epistemological propositions. Someone who is reasonable in the full sense recognizes the existence of burdens of judgement, and the fact of reasonable pluralism, and so, accepts that society is a cooperative venture between free and equal persons. The requirement that the exercise of political power be publicly

justifiable is supposed to follow from recognition of the burdens of judgement and the fact of reasonable pluralism, together with the democratic idea of free and equal citizenship in society conceived of as a cooperative scheme. A maximal conception of reasonableness would therefore also include acceptance of the idea of public reason. Whether or not we should adopt such a demanding conception of reasonableness is a question I will take up in Chapter 5.

At the heart of public reason, then, is what David Estlund calls a 'qualified acceptability requirement'.[39] A qualified acceptability requirement is a partly idealized unanimity requirement, and thus, a demand for multi-perspectival acceptability. Reasonableness is one possible standard of qualification; different conceptions of reasonableness yield different standards of qualification. It is an idealized requirement because the morally salient fact is that people who pass the cognitive/moral threshold in question (e.g., reasonableness) persist in disagreeing in deep ways, given liberty of thought, expression and association. It is only a partly idealized requirement, however, because someone might claim that perfectly rational and moral people, given unlimited opportunity to deliberate, would all ultimately accept the one true religious or philosophical doctrine. Even if this were so, it is not true that all ordinarily reasonable citizens in any actual society will agree, assuming they are free to disagree. The idealization involved in requiring acceptability only to reasonable or otherwise qualified points of view is essential to the normative force of the principle. Why should the objections of egoistic, vicious, or crazy people have any bearing on my decisions about what political decisions to support, when what I take to be important moral values are at stake?[40]

It is possible to formulate idealized unanimity requirements in either positive or negative terms, but the difference is merely one of presentation. Thomas Scanlon formulated his moral contractualism negatively, in terms of the impossibility of reasonable rejection, because of the phenomena of superogation. Even if I would be reasonable to reject some purported moral norm that imposed very heavy costs on me, I might, heroically, accept the norm, and my self-sacrifice need not be unreasonable. Thus, Scanlon's contractualist principle is cast in terms of rules no one can reasonably reject, rather than in terms of rules anyone could reasonably accept.[41] The analogue for political contractualism involves the reasonableness of philosophical conversion. I am reasonable in rejecting Catholicism, but I would presumably not be unreasonable to accept Catholicism. Therefore, if we define public justifiability positively, in terms of reasonable acceptability, we must hold constant the range of background doctrines we take to be reasonable. It is not sufficient, for a reason to be public, that it is a reason

that one could reasonably come to accept if one went through a religious or philosophical conversion. The requirement is rather that anyone could accept it without going through such a conversion. Once we have relativized the positive formulation to a fixed background of reasonable views, it is equivalent to the formulation in terms of invulnerability to reasonable rejection.

The idea of public justifiability as qualified acceptability needs to be distinguished from several related but distinct senses of publicity, which I will refer to as 'no higher authority', 'no necessarily hidden rationales', and 'no expert knowledge required'.

No Higher Authority: Public justifiability might first of all mean 'justifiability by reason alone, without appeal to authority'. According to Kant, private reasoning is reasoning directed to those who accept the authority of a particular person or institution, reasoning that is therefore constrained by the pronouncements of that authority. Such reasoning is guided by authority and not solely by the force of the better reason.[42] Public reasoning, in contrast, is reasoning that accepts no authority but that of reason itself, and is thus addressed to the body of citizens as a whole, if not all rational creatures. The Rawlsian idea of public reason is similar in that public reason is the reason of the whole body of citizens, not the reason of a subset of citizens belonging to a particular church. It is different in that Kant draws no limit on appeals to the truth, no matter how deep or reasonably contested. For example, Kant claimed that morality was grounded in rationality, properly understood. This claim is plausible but not uncontroversial among reasonable people. It is part of public reason, in Kant's sense, because it is a claim made based on general philosophical arguments that do not depend on any institutional authority. It is not part of public reason on Rawls's account because it is the subject of reasonable and foundational philosophical controversy.

No Necessarily Hidden Rationales: Public justifiability might also be interpreted as 'justifiability in public without untoward effects'. Reasons for a decision are public in this sense if they could be common knowledge without undermining the decision's objectives. This criterion rules out reasons for policies whose justification must necessarily be hidden from the population, for example, Plato's noble lie and government-house utilitarianism.[43] Of those doctrines whose justification *can* be aired in public without perverse effects, however, many will not pass the test of qualified acceptability.

No Expert Knowledge Required: Finally, public justifiability might be interpreted as 'justifiability in terms of ideas intelligible to ordinary citizens'.