## 1 Introduction

The position under discussion:

> *Justificatory Liberalism* (JL): If a law or policy is legitimate, then it is publicly justifiable to each citizen. (Rawls, Nagel, Larmore, Gaus, Estlund, Quong)

Rawls's *Liberal Principle of Legitimacy*: "our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason." (PL 137)

One of the Main motivations for (JL): respect for persons

*The Basic Problem*: Reasonable Disagreement plus (JL) leads to anarchism.

## 2 Justificatory Liberalism

### 2.1 "law or policy"

Different objects: constitutional essentials, laws/policies, authority etc.

### 2.2 Legitimacy

Legitimacy = the moral permissibility of the government doing a certain (range of) action(s). This does *not* imply a duty to obey.

Reasons for speaking about legitimacy in this sense: (a) division of labour, (b) how justificatory liberals understand legitimacy, (c) Basic Problem would be less pressing otherwise.

### 2.3 Public Justification

If I successfully publicly justify some law L to X then, at the very least,

> (a) I engage X in some dialectical process of argument or deliberation, in which I give reasons for L to X,

> (b) reasons that X accepts,

> (c) and these are sufficient reasons, such that

> (d) X can regard L as "good enough".

### 2.4 Justifi*ability*

L is publicly justifiable = L could be publicly justified, if we attempted to do so, and certain counter-factual circumstances were given – in particular, if people fulfilled certain standards of reasonableness.

Externalist reading: Finnis, Raz, and Wall say that what's publicly justifiable is what is true.

However, justificatory liberals accept

> *Internalism*: what is publicly justifiable to X is in important and central ways connected to X's actual identity, values, beliefs, commitments, desires, and motivations.

The example of the Catholic.

## 3 The Basic Problem

A quasi-empirical fact:

> *Reasonable Disagreement* (RD). For any law (or: decision, principle, value, reason), reasonable disagreement among citizens in modern societies is to be strongly expected.

A plausible claim:

> *Connection* (CO). If there is reasonable disagreement about some law, then there is one reasonable citizen to whom that law is publicly justifiable, and one to whom it is not.

together yield

> For any law, we should strongly expect that it is not publicly justifiable.

Combined with (JL):

> (*A posteriori*) *Anarchism*. For any law, we should strongly expect that it is not legitimate.

Philosophical tastes will vary. Some will embrace Anarchism. Some will want to reject (JL).

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Ways to avoid the Basic Problem

(1) procedures/meta-agreement (Gaus, Klosko, Schwartzman, Rawls)

(2) asymmetries (Rawls, Barry, Nagel, Quong)

(3) "reasonableness" (Rawls, Quong, Estlund, Lecce, Nagel)

(4) comparisons (Gaus, Rawls)

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## 4    Procedures

Rough idea: We *can* agree on procedure, or some fall-back option, or some other higher-order solution.

Hard-nosed response: There's just as much disagreement on procedures/the second order.

Procedures might work, but mostly where

> (a) the stakes aren't high, or

> (b) all of the options that could be brought about through the procedure are themselves publicly justifiable to me.

## 5    Asymmetries

Rough idea: locally, reasonable disagreement is not a problem.

### 5.1 Quong's Argument

(1) *foundational* and *justificatory* disagreement. In foundational disagreement, *A* and *B* "disagree at the level of ultimate convictions or principles", that is, "about what the standard of justification [itself] should be" (Quong 2011, 205). In justificatory disagreement, we share ultimate premises.

(2) Every reasonable person ought to agree with some fundamental liberal ideas – "society as a fair system of social cooperation", plus "citizens as free and equal persons", and the ideal of a "well-ordered society". This is implied by the notion of reasonableness.

Thus, (3) (reasonable) disagreement in politics is always justificatory.

(4) If there is *justificatory* disagreement between A and B about L, then each could accept the other's position on L. That's because we accept the underlying values of the other person.

Thus, (5) While there is reasonable disagreement in politics, each reasonable person could always accept the political, liberal position of all other reasonable persons.

### 5.2 Criticism

(a) Liberalism is not an ultimate conviction. Thus, agreeing on liberalism does not make disagreement justificatory. People can still reasonably disagree with liberal views on the basis of non-shared premises.

(b) (4) and (2) can not be true at the same time. Rawls—Nozick example.

# 6 "Reasonableness"

Rough idea: Let the notion of reasonableness do most of the work.

A law L is publicly justifiable to X iff X could accept L, if X would fulfill some standard of reasonableness R.

By specifying R *narrowly*, (RD) becomes less pressing.

Four quick worries

(a) it seems ad hoc at best, question-begging at worst

(b) a direct specification: "reasonable people believe X, Y, Z, ..." lacks explanatory unity

(c) a procedural specification won't do the trick either

(d) at some point, reasonableness is doing all the work, not public justification. We switch to externalism.

# 7 Comparisons

Rough idea: We always have to choose.

7.1 Gaus's Argument

(1) There's reasonable disagreement. But there is a subset S out of the available options for which it is true that

> (a) S is optimal (i.e., any member of S is not Pareto-dominated by some other option),

> (b) every member of S is held by everyone to be better than anarchy, or no law on the matter in question.

Thus, (2) further agreement on the relative ranking of the members of S is not forthcoming.

(3) It would be unreasonable to reject one of the members of S, because it would be self-defeating: it would lead to outcomes everyone thinks worse.

Thus, (4) Everyone could reasonably accept each of the options in S.

7.2 An Analogy

*The Deciding Committee*. A committee meets to decide what should be done. The options are narrowed done to Pareto-optimal set S, but no further agreement is forthcoming. One participant argues:

> *Comparative Argument*. "We can debate forever and won't reach a conclusion. But of course, a decision needs to be made. It would be unreasonable – individually and collectively – not to accept one of the options still on the table. That's why *my* proposal – which you initially didn't like – is in fact justifiable to you."

7.3 Two Initial Observations

(a) Suddenly, we have an extremely permissive position

(b) The inference from "X is better than Y" to "X is good" is usually not valid.

7.4 Two Objections

(a) *Not About Justification*. Whatever happens in the Deciding Committee is not relevant to what is *justified to* the participants, but rather about what pragmatic attitudes they should have.

(b) *Question-Begging*. Imagine one of the participants in Deciding Committee saying,

> "Really, I don't understand what the problem here is. Why do we *need* to agree? – we really don't. At least, not in the sense that we 'need' to achieve consensus to make this a legitimate, or justified, or good decision. I think my proposal is a good one, and if need be, I'll pursue it even without your consent."

## Relevant Literature

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