

## CRITICAL STUDY

### PUBLIC REASON AND MORAL AUTHORITARIANISM

BY STEVEN WALL

In *The Order of Public Reasons*<sup>1</sup>, Gerald Gaus presents an important new statement of public reason liberalism, one that grounds the demands of public reason in the aspiration to avoid moral authoritarianism in social and political life.<sup>2</sup> Public reason liberalism is distinguished from other political theories by its commitment to a publicity condition<sup>3</sup> on the justified imposition of the demands of political morality. An account of public reason liberalism must characterise the publicity condition, specify the conditions under which it can be satisfied, and identify a rationale for insisting upon it. This critical notice argues that Gaus' characterisation of the publicity condition and his specification of the conditions under which it can be satisfied do not cohere well with the rationale he identifies for it. That rationale, as mentioned, is the aspiration to avoid moral authoritarianism.<sup>4</sup> My critique turns on the issue of whether the publicity condition must satisfy its own strictures. The claim that it must do so is the *reflexivity requirement* (RR). I argue that, given the rationale Gaus identifies for accepting the publicity condition, he should accept this requirement. I then explain how accepting RR generates trouble for his account of public reason liberalism.<sup>5</sup> Along the way, I aim to bring out how quixotic the quest to avoid moral authoritarianism in politics is, at least for those who live in the modern world.

<sup>1</sup> G.F. Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in A Diverse and Bounded World* (Cambridge UP, 2010). Henceforth, *OPR*.

<sup>2</sup> *OPR* is a wide ranging work. This critical notice concentrates on the underlying motivation for the account of public reason liberalism that the book defends.

<sup>3</sup> The term was introduced by J. Rawls, *A Theory of Justice* (Harvard UP, 1971).

<sup>4</sup> As explained below, moral authoritarianism is the denial of the claim that 'moral persons are all equally authoritative interpreters of the demands of morality.' *OPR* at p. 15.

<sup>5</sup> Henceforth, I use 'public reason liberalism' to refer to Gaus' statement of it. RR is independently interesting, and my discussion of it may bear on other versions of public reason liberalism. Here I focus exclusively on Gaus' statement of the view, however.

## I. PUBLIC REASON AND ITS RATIONALE

The publicity condition holds that authoritative political arrangements must be publicly justified, or at least publicly justifiable.<sup>6</sup> Different accounts of the publicity condition vary along several dimensions, two of which can be mentioned here. (1) They spell out the requirements of public justification differently and (2) they include different items in the set of political arrangements that stand in need of public justification.<sup>7</sup>

Gaus' articulation of the requirements of public justification is focused, in the first place, on the rules of social morality. These are rules 'that require or prohibit action, and so ground moral imperatives that we direct to each other to engage in, or refrain from, certain lines of conduct.'<sup>8</sup> He proposes the 'Basic Principle of Public Justification.'

(BPJ): A moral imperative ' $\phi$ !' in context C, based on rule L, is an authoritative requirement of social morality only if each normal moral agent has sufficient reasons to (a) internalise rule L, (b) hold that L requires  $\phi$ -type acts in circumstances C and (c) moral agents generally conform to L.<sup>9</sup>

BPJ states conditions for a demand of social morality to be authoritative. However, since a demand of social morality is not necessarily a demand of political morality, to move from publicly justified social morality to publicly justified political morality, it must be shown that publicly justified social morality itself requires the establishment of political authority. Gaus argues that political authority is necessary to resolve conflicts between the demands of social morality, to complete these demands, to enforce them, and to facilitate their reform in a range of circumstances.<sup>10</sup> From these claims and from BPJ, it follows that the exercise of political authority, and the procedures that entrust persons to exercise it, must be publicly justified.<sup>11</sup> From BPJ, therefore, we can derive the Political Public Justification Principle.<sup>12</sup>

(PPJ): A political arrangement is an authoritative requirement of political morality in context C only if each normal moral agent who is subject to it has sufficient reasons

<sup>6</sup> Authoritative political arrangements make demands on the conduct of persons and these demands impose obligations to obey, at least normally.

<sup>7</sup> 'Political arrangements' is a catch-all term that refers to constitutions, decision procedures, laws, and other political directives.

<sup>8</sup> *OPR* at p. 2.

<sup>9</sup> *ibid.*, at p. 263.

<sup>10</sup> See *OPR* at pp. 448–546.

<sup>11</sup> This follows since the exercise of political authority unavoidably makes moral demands that fall under the purview of BPJ.

<sup>12</sup> PJP in the text is modelled on BJP and is intended to capture Gaus' views on the subject.

to (a) internalise rule L, (b) hold that L requires the political arrangement in circumstances C and (c) those moral agents who are subject to L generally conform to it.

If a normal moral agent can *rationally reject* a political arrangement in C, then it is not authoritative for him in those circumstances. The items in the set of political arrangements to which PPJ applies consist of constitutional structures as well as laws and other coercive measures passed in accord with these structures.

Notice that PJP, by itself, does not fully specify the conditions under which it can be satisfied with respect to any political arrangement. It does not tell us when moral agents have *sufficient*<sup>13</sup> reason to internalise rules that would require the political arrangements in question. Sufficient reasons for people to internalise rules requiring political arrangements need not be ones that they would ever acknowledge. There is sufficient reason for a political subject to internalise a rule that requires a political arrangement if, and only if, she would not reject the rule, if she were appropriately rational. More formally, and dropping the reference to rules:

A political subject, S, has a sufficient reason to accept a given political arrangement if and only if an idealised (appropriately rational) counterpart of S could not rationally reject the arrangement.

Gaus refers to such an idealised counterpart of S as a ‘Member of the Public’ (MOP). He cautions against excessive idealisation. MOPs ‘are idealised counterparts of actual members of the public, but they are not so idealised that their reasoning is inaccessible to their real-world counterparts.’<sup>14</sup> The reasons affirmed by the MOPs must be accessible to their non-idealised counterparts.<sup>15</sup> This constraint requires that we not attribute powers of reasoning to political subjects that they do not have and that we not require them to gather information or reflect on it beyond what it would be rational for them to do.

Further, and crucially, the idealisation must not efface evaluative diversity. MOPs are not so idealised that they converge on the same set of values or rank shared values similarly. Different political subjects, and correspondingly different MOPs, affirm different values and rank shared values differently. This is a genuine strength of Gaus’ account of the

<sup>13</sup> A sufficient reason is a complete reason to accept a political arrangement that is not defeated by other considerations.

<sup>14</sup> *OPR* at p. 276.

<sup>15</sup> A key reason for limiting the idealisation is that the emotions and practices associated with blaming and holding others accountable presuppose that the moral reasons that justify the rules of morality are reasons that real, cognitively limited, agents can appreciate without too much difficulty. See *OPR* at pp. 183–258.

publicity condition, for it forces the theorist to confront the evaluative diversity of modern societies rather than idealise it away. Yet confronting this evaluative diversity presents a formidable challenge for public reason liberalism. In the presence of all this disagreement, is it even possible to identify political arrangements that each MOP could affirm in the sense that each could recognise that she has sufficient reason to accept them?

Gaus develops a sustained argument to show that this is indeed possible. The argument appeals to the nature of actual social moralities, to their evolutionary development, and to a general test for determining when rules of social morality can be accepted by free and equal persons. It is not necessary to consider this argument here, however. Our concern is more fundamental. We are interested in the motivation that lies behind the argument. What rationale supports the search for political arrangements that could be publicly justified to each political subject and rationally rejected by none?

The deep appeal of public reason liberalism, Gaus contends, is that it alone fully respects the moral equality of political subjects. Among free and equal persons, claims to political authority require justification. But not just any kind of justification is consistent with the moral equality of persons. Attempts to justify imposing political demands on others by presenting what one takes to be a sound moral case for doing so may fail to be justifiable to them in terms that they could not rationally reject. If so, then those who put forward these justifications would be claiming, in effect, to be superior judges of the demands of political morality than these others, thereby denying that they have equal standing to interpret the demands of political morality.

The denial that others have equal standing to interpret the demands of political morality, and more generally the *demands* of social morality, is moral authoritarianism. And public reason liberalism is animated by the desire to avoid it. It thus renounces ‘the imperious private conscience, which sees the moral life in terms of fidelity to its own vision.’<sup>16</sup> Gaus asks:

How can we assume moral authority over others [and by extension political authority over others] without simply giving way to the authoritarian stance? The only good ground we have is confidence that our social morality conforms to the requirements of the Basic Principle of Public Justification [and by extension that our political arrangements conform to the requirements of the Political Public Justification Principle].<sup>17</sup>

<sup>16</sup> *ibid.*, p. 462.

<sup>17</sup> *ibid.*, p. 264.

Without public justification, imposing the demands of political morality on others becomes an authoritarian exercise of ‘pushing [them] around in the name of morality.’<sup>18</sup>

## II. REJECTING REFLEXIVITY

My chief contention is that public reason liberalism does not live up to its own professions to avoid moral authoritarianism. To explain why, I turn now to RR.<sup>19</sup>

A full statement of a publicity condition, as mentioned, must specify the conditions under which it can be satisfied. A complete account of these conditions is a *test of public justification*, which includes at least both of the following<sup>20</sup>:

- i A description of the nature and degree of idealisation of MOPs
- ii A description of the criteria that MOPs appeal to in accepting/rejecting political arrangements<sup>21</sup>

Possibly, the members of a political society will disagree over some or all of the items implicated in (i) and (ii). As a result, they, and their idealised counterparts, will advocate different tests of public justification.

Is this imagined possibility genuine? Perhaps not, if the idealisation of the MOPs is sufficiently strong.<sup>22</sup> But if the idealisation leaves in place significant evaluative diversity, as Gaus’ account requires, then we should not expect MOPs to converge on a test of public justification. And, if they do not so converge, then RR has bite. This requirement, as I here construe it, holds that the idealised counterpart of each political subject must have sufficient reason to accept a test of public justification if that test is to be relied upon in specifying the conditions under which the publicity condition is satisfied with respect to the justification of the set of political arrangements to which it applies. If there is no convergence on a test of

<sup>18</sup> *ibid.*

<sup>19</sup> For a general discussion of RR see Fred D’Agostino, *Free Public Reason* (Oxford UP, 1996) pp. 73–88. For Gaus’ discussion of it see *OPR* at pp. 226–8 and *Justificatory Liberalism* (Oxford UP, 1996) pp. 175–80.

<sup>20</sup> It may include other descriptions as well, such as a specification of who is to be included as a MOP. See *OPR* at pp. 282–3.

<sup>21</sup> For example, Gaus suggests that a political arrangement must advance the interests of a political subject if that subject is to have sufficient reason to accept it.

<sup>22</sup> The denizens of Rawls’ original position could agree on a test of public justification, since differences in the evaluative standards of those they represent have been idealised away.

public justification, then an account of when the publicity condition has been satisfied must not appeal to it.

Now, in rejecting RR, Gaus claims that there is nothing incoherent about proposing a test for public justification that is not itself publicly justified. A test of public justification may be justified by an argument that appeals to the proponent's own first-person convictions about how public justification is supposed to work, even if these convictions can be rationally rejected by others.<sup>23</sup> While such a view is coherent, the question to ask is whether it is congruent with the rationale identified for insisting on the publicity condition in the first place. That rationale is the aspiration to avoid moral authoritarianism in politics. It is true, of course, that a test of public justification is not itself a political arrangement or a moral demand. For this reason, a proponent of a controversial test of public justification may reply that he is permitted to affirm rationally rejectable theoretical commitments about when the conditions of the publicity condition have been satisfied so long as he does not in practice subject others to political arrangements and moral demands that they can rationally reject. Yet this reply is compelling only if there is a clean separation between advocacy for tests of public justification and the activity of publicly justifying political arrangements. On inspection, there is no such clean separation. For an essential part of the public justification of a political arrangement is an account of the conditions that establish that the arrangement is publicly justified. This account is an essential part of the public justification of the arrangement since it is an indispensable component of the full explanation of why the arrangement is publicly justified. That is why the theoretical task of justifying tests of public justification unavoidably impinges on the practical task of publicly justifying political arrangements.

Consider an example to illustrate this key point. Imagine a world with two groups, the Reds and the Greens. Each group seeks to avoid moral authoritarianism in politics. The Reds favour a particular rule  $L$  that the Greens oppose; and the Reds affirm a test of public justification  $T$ , while the Greens affirm a rival test  $T^*$ . Next assume that  $L$  would meet the conditions for successful public justification specified by  $T$ , but not those specified by  $T^*$ . Suppose further that the Reds succeed in establishing a political arrangement  $P$  (and subjecting the Greens to it) that is authorised by  $L$ , but otherwise would not be publicly justified. The Greens appear to have a complaint. Why must they accept the Reds' test for successful public justification, given that they can rationally reject it? And if they do

<sup>23</sup> See *OPR* at p. 228.

not have to accept this test, then they can object that  $P$  has not been publicly justified to them.

The Reds could retort that they are simply correct about  $T$  and that they are the authorities on how public justification works. Less presumptuously, they could say that in imposing  $P$  on the Greens, they have satisfied their own conscience. In their own minds, they have publicly justified the arrangement to the Greens. But in saying either of these things, the Reds would be adopting the authoritarian stance and presuming that they were better judges of the nature of public justification, and hence of authoritative political arrangements, than the Greens. They would be insisting that while the Greens could rationally reject their views about the correctness of  $T$ , they nonetheless would be bound by the arrangements that these views play an indispensable role in justifying.

In response, it might be said that we should distinguish two claims.<sup>24</sup>

- (A) The Reds justifiably believe that  $P$  has been publicly justified to the Greens.
- (B) The Reds have publicly justified to the Greens that they have publicly justified  $P$  to the Greens.

Since (A) does not imply (B), it would be a mistake – ‘perhaps the result of a quest to ground our justified beliefs in something outside of our own beliefs systems’<sup>25</sup> – to hold that one is justified in affirming (A) only if one is justified in affirming (B). For instance, in publicly justifying  $P$  to the Greens, the Reds might appeal to an epistemic norm that the Greens can rationally reject. If so, the Greens could claim that the Reds have failed to publicly justify to the Greens that they have publicly justified  $P$  to them. But the Reds still will have succeeded in publicly justifying  $P$  to the Greens if the epistemic norm that they appeal to is sound. The Greens may protest that the Reds are adopting the authoritarian stance with respect to epistemic norms (since the Reds must claim to be better judges of these norms than the Greens), but authoritarianism of this sort, if that is what it is, is not moral authoritarianism.

The case we are imagining, however, has a different structure. Rival views about the test of public justification are views with clear moral content. If the Reds claim to be the authorities on this matter, then they are adopting the authoritarian stance with respect to morality. They are claiming that it is their private conscience that gets to fix the content of publicly justified morality. The failure of the Reds to publicly justify  $T$  to

<sup>24</sup> See *Justificatory Liberalism*, pp. 177–8.

<sup>25</sup> *ibid.*, p. 178.

the Greens, accordingly, calls into question their claim that they have publicly justified  $P$  to the Greens.

The awkwardness of the Reds' position can be further highlighted by attending to the fact that, on the Reds' own view, the Greens should not be subjected to a political arrangement that the Greens do not have sufficient reason to accept. Yet one way in which people can fail to have sufficient reason to accept an arrangement that applies to them is that they can have a defeater that undermines the reason that otherwise would be sufficient to justify the arrangement to them. The Reds' justification of the political arrangement that they impose on the Greens appeals to considerations that, given the truth of  $T$ , establish that the Greens – or more precisely the idealised counterparts of the Greens – have sufficient reason to accept the arrangement. But in our example the Greens can rationally reject  $T$  in favour of  $T^*$ , and we have been assuming that if  $T^*$  were taken to be the correct test of public justification, then the considerations that the Reds adduce in support of the political arrangement they impose on the Greens would not be sufficient to justify the arrangement to the Greens. Thus, irrespective of whether  $T$  is the correct test of public justification, the Greens can rationally reject it; and since they can rationally reject it, they have a defeater for the justificatory considerations advanced in favour of  $P$  by the Reds.

Suppose now that the Greens offer a counterproposal. No political arrangements should be imposed unless the arrangements can be justified by rules that are underwritten by both  $T$  and  $T^*$ .<sup>26</sup> This counterproposal is less authoritarian than the Reds' position, for it does not require privileging one rationally eligible interpretation of the test of public justification over another. The Greens can say that if the Reds continue to insist on imposing their favoured political arrangement on them, rather than a political arrangement that was underwritten by both  $T$  and  $T^*$ , then they are, in effect, pushing the Greens around in the name of publicly justified morality.

### III. AFFIRMING REFLEXIVITY

The rejection of RR has brought moral authoritarianism back into the picture. This is problematic for public reason liberalism because the considerations that speak in favour of not pushing others around in the

<sup>26</sup> A test of public justification underwrites a political arrangement, in circumstances  $C$ , if the test is part of the explanation for why a rule that requires the arrangement in  $C$  is publicly justified.

name of morality, if sound, also speak against doing so in the name of publicly justified morality. Accordingly, those sympathetic to public reason liberalism might decide to break ranks with Gaus and affirm RR. I now consider the consequences of doing so. In the simple example involving the Reds and the Greens, if one affirmed RR, then one could hold that the test for public justification is conjunctive – to be publicly justified a political arrangement must be underwritten by  $T$  and  $T^*$ . Perhaps, in this simple example, the overlap of political arrangements underwritten by the two tests would be substantial. But when one moves to the world of modern societies the prospects for substantial overlap become vanishingly small. The considerations that explain why political subjects should be expected to affirm a wide range of incompatible views on the justifiability of political arrangements also explain why they should be expected to affirm a wide range of incompatible tests for public justification.<sup>27</sup> Moreover, given that the larger the conjunction in a test of public justification, the more difficult it will be to satisfy it, we should not expect many political arrangements for a modern society to be able to pass the test.

Instead of a conjunctive test one might propose that political subjects adopt a common view of the test of public justification that all could accept. Modelling the process of negotiation that would lead to this common view would be delicate, since rival tests of public justification characterise MOPs differently. It thus might not be possible to identify a common view. Yet even if a common view could be identified, it would have a discomfiting consequence for those who embraced it. For suppose that, on the common view, a given political arrangement is publicly justified that would not be publicly justified on a particular MOP's considered view as to what is the correct test of public justification. Then, for this MOP, the arrangement would not be publicly justified on her own best view of how public justification works. She would have to allow, however, that the arrangement would be publicly justified, given the common view. Faced with this situation, she would be in an uncomfortable position. Seen from one angle, insisting on her favoured understanding of the test of public justification would be authoritarian. Seen from another angle, insisting on the arrangement justified by the common view also would be authoritarian (after all, by her own best lights, the arrangement is not publicly justified and imposing arrangements on others that are not publicly justified is authoritarian).

<sup>27</sup> Even if disagreement over tests of public justification were less substantial than disagreement over matters of first-order substantive politics, it still likely would be substantial.

The aspiration to avoid moral authoritarianism in politics has led to a conundrum for public reason liberalism. The MOPs are committed to having some political arrangements. They are also committed to respecting one another as moral equals and to rejecting moral authoritarianism in politics. However, as our discussion reveals, it is very unlikely that MOPs can jointly honour these commitments in modern societies.<sup>28</sup> If both commitments cannot be jointly honoured, then proponents of public reason liberalism must either concede that political arrangements in these societies cannot be publicly justified and embrace anarchism (or something close to it) or countenance a measure of moral authoritarianism in politics and concede that the publicity condition that informs public reason liberalism is at odds with its underlying rationale.

Gaus has worked harder than anyone else to show how political arrangements in a modern society could be imposed without adopting the authoritarian stance. The failure of his efforts provides some reason for concluding that the quest for a thoroughly nonauthoritarian politics, at least for the modern world, is misconceived.

*Philosophy, University of Arizona*

<sup>28</sup> Jointly honouring both commitments would be easier to achieve if idealisation of the MOPs were increased to eliminate significant evaluative diversity among them. But this manoeuvre would contradict Gaus' account.