Public Reason 8 (1-2): 15-30

Coercion and the Subject Matter of Public Justification

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Abstract: Some public reason liberals identify coercive law as the subject matter of public justification, while others claim that the justification of coercion plays no role in motivating public justification requirements. Both of these views are mistaken. I argue that the subject matter of public justification is not coercion or coercive law but political decision-making about the basic institutional structure. At the same time, part of what makes a public justification principle necessary in the first place is the inherent coerciveness of a legally organized basic institutional structure. While most public reason liberals seem to presuppose that the meaning of "coercion" is sufficiently obvious so as not to warrant further analysis, my defense of the essay's main thesis explicitly draws on an account of coercion as a powerful agent's employment of enforceable constraints to determine the will of another agent.

Key words: coercion, liberalism, public justification, public reason, rule of law.

All public justification principles specify the conditions according to which something is justified to some public. I refer to this something – e.g., laws, fundamental laws, coercive laws, constitutional principles, or other institutional arrangements – as the *subject matter of public justification*. Public reason liberals disagree about both the subject matter of public justification and the significance of coercion for a theory of public justification. Some public reason liberals identify coercive law as the subject matter of public justification, while others claim that the justification of coercion plays no role in motivating public justification requirements. Both of these views are mistaken.

In what follows I argue that the subject matter of public justification is not coercion or coercive law but political decision-making about the basic institutional structure. At the same time, part of what makes a public justification principle necessary in the first place is the inherent coerciveness of a legally organized basic institutional structure. In short, justifying coercion is essential to public reason liberalism's project of public justification even though coercive law is not the subject matter of public justification. While most public reason liberals seem to presuppose that the meaning of "coercion" is sufficiently obvious so as not to warrant further analysis, my defense of the essay's main thesis explicitly draws on an account of coercion as a powerful agent's employment of enforceable constraints to determine the will of another agent.

Sections I and II explain how the subject matter of public justification is understood according to different conceptions of the public justification principle, namely, the more classically liberal asymmetric convergence model (which I criticize) and a Rawlsian inspired alternative to it (which I endorse). These sections also introduce an argument by Colin Bird that aims to separate public justification entirely from concerns about coercion. I challenge Bird's conclusion (section III. 1) and argue that the inherent coerciveness of the basic institutional structure is part of what makes political decision-making about that structure the appropriate subject matter of public justification (section III. 2). Section

IV identifies and responds to objections to this main argument, including the objection that it is the involuntariness of political society rather than the coerciveness of its basic structure that motivates a public justification principle. A subsequent investigation into the meaning of "coercion" in section V explains why the enforcement approach to coercion is a much better fit for a theory of public justification than the pressure approach familiar from the philosophical literature on coercion. Before concluding in section VII, I also discuss why the thesis of my paper does not depend on adopting a particularly narrow or broad view about the so-called scope of public reason, i.e., the set of political decisions to which requirements of public reason and public justification should apply (section VI).

I. THE ASYMMETRIC CONVERGENCE MODEL AND COERCION

Various formulations of the principle of public justification refer to coercive law as the main subject matter of public justification, that is, as what stands in need of public justification. For example, Robert Audi's principle of secular rationale applies to laws and policies that restrict human conduct. But Audi also argues that demands of public justification are higher to the extent that coercion is more immediate or restrictive (2000, 86-9). Christopher Eberle, a critic of Audi and Rawls, sees the obligation to pursue "public justifications" for "favored coercive laws" as a defining element of public reason liberalism (2002, 10). Eberle's alternative ideal of conscientious engagement incorporates this same obligation and defends it on the grounds that citizens are understandably "deeply averse" to being coerced by others (94-100). Finally, the more recently developed and increasingly influential convergence approach to public justification – or what I call the *asymmetric convergence model of public justification* – directly specifies "coercive law" as the subject matter of public justification. According to this model:

> (PJ_1) Coercive law *L* is justified in a public *P* if and only if each qualified member *i* of *P* has sufficient reason(s) R_i to endorse *L* (Vallier and D'Agostino, 2013).

The asymmetric convergence model allows for the public justification of law *L* provided that each qualified member (hereafter "citizen") has a *merely intelligible* justifying reason sufficient to support *L*, even if some (or all) such reasons are intelligible only from the standpoints of particular worldviews, ethical conceptions of the good, or sectarian comprehensive doctrines. This model is asymmetrical insofar as it allows for a wide range of potential defeater reasons that would prevent public justification of *L*. That is, unlike justifying reasons, defeater reasons are more likely to be individually politically decisive. For example, even if reason *R* is alone insufficient to justify *L*, reason *R**, recognized by only one qualified citizen, might be sufficient to prevent *L's* public justification. So while (PJ_1) might be understood in different ways, the convergence model combines it with asymmetry in the relative weight assigned to justifying reasons and defeater reasons in practices of justification.

Elsewhere I criticize the asymmetric convergence model by challenging its strong presumption against direct state coercion (Boettcher 2015; cf. Vallier 2016). This criticism is summarized as follows: An implicit assumption of the model is that only certain positive actions of the state – especially its laws, policies, or administrative decrees that would directly and coercively restrict or compel human conduct – stand in need of public justification. But if the Marxist theory of structural coercion is at least intelligible, and if the state's failure to enact certain laws and policies – e.g., egalitarian property rules, restrictions on inheritance, employment regulations, guaranteed health care, or other measures of distributive justice – allows for otherwise avoidable forms of structural coercion in labor markets or elsewhere, then various forms of state inaction appear to sustain or promote coercion, at least from the standpoint of some citizens. Some citizens will call for measures to prevent structural coercion, while others will object to these measures as themselves needlessly or excessively coercive. The result is that no particular property rights regime would meet with the endorsement specified by principle (PJ_1), as each proposed regime might be defeated by the intelligible reasons of some qualified citizens. Thus, the asymmetric convergence model encounters an incompleteness problem according to which no publicly justified arrangements are found for a pressing set of political issues. Pursuing this criticism is not the purpose of the present paper, though I do return to a version of its incompleteness problem in section VI.

Here I begin instead with a different objection to (PJ_1), developed in a recent article by Colin Bird (2014). For a public justification principle may seem to apply even in cases that do not involve coercion in any immediate way. If so, then (PJ_1) fails to capture fully the domain of public justification. In Bird's imagined example, the proceeds of an entirely voluntary state-run lottery are used by government *noncoercively* to promote a perfectionist conception of the good. Funds are devoted to voluntary educational programs, research grants, public memorials and iconography, and the dissemination of relevant information. This proposal would directly promote an ethical conception of the good that some citizens reasonably reject. The problem, according to Bird, is that some qualified citizens would be unable to *condone* such political actions, where *condoning* suggests a willingness to associate oneself with another agent's action.

Citizens are already involuntarily complicit in democratic political actions that are carried out in their name. So even when there are no proposed coercive restrictions on or prohibitions of human conduct, as in the lottery example, citizens rightfully object to political actions they cannot at least condone. Bird maintains that laws and policies should not be based on justifications that would alienate citizens from "their civic standing as equal co-authors of democratic legislation" (2014, 203). So, according to this view, a public justification requirement is warranted, but not because of concerns about coercion. Bird concludes that a principle of public justification does not aim to justify coercion at all. I shall argue that this conclusion is mistaken.

II. RAWLSIAN PUBLIC JUSTIFICATION AND COERCION

One solution to the problem posed by the lottery example is to reconceive the subject matter of public justification. Andrew Lister distinguishes two ways in which a qualified acceptability criterion, such as the one presented in (PJ_1), might function as a *constraint* in public justification (2011; 2013). It might function as a constraint on state coercion, where the default position would be inaction, i.e., government not exercising coercive power at all with respect to some political problem or question. Alternatively, the criterion might function as a constraint on reasons for political decisions about social arrangements, where the presumption is that nonpublic reasons should not determine matters of law and policy. Where the criterion serves as a constraint on state coercion, as in the asymmetric convergence model, the public justification principle has a classical liberal tilt. As we have seen, if according to principle (PJ_1) coercive law L remains unjustified as long as one qualified individual citizen i_1 has sufficient reason to reject L, even in cases in which the balance of shareable public reasons overwhelmingly supports *L's* adoption, then many otherwise desirable laws and policies will be quite difficult to justify publicly.

The alternative suggested above is to apply the public justification principle to political decisions, or, more precisely, political decision-making concerning the basic institutional structure. The basic institutional structure is quite obviously a Rawlsian notion, denoting society's main constitutional, political, and economic institutions that together provide for a unified scheme of social cooperation over time (Rawls 2005, 11, 258). This focus on decisions about basic institutional arrangements, rather than coercion or coercive law, appears in a Rawlsian alternative to (PJ_1) and the asymmetric convergence model of public justification. According to the Rawlsian model:

> (PJ_2): Decision D about basic institutional-structural matter L is publicly justified in a public P if and only if each *reasonable* member i of P sincerely has sufficient, accessible, credible, and reasonably acceptable reason(s) R_i to endorse L instead of its alternatives.

Elsewhere I explain the many details of this principle, such as what it means for citizens to be reasonable or how to define the discursive qualifiers *sufficiency, accessibility, credibility,* and *reasonable acceptability* (Boettcher 2015). The main points to emphasize here are, first, that (PJ_2) represents an alternative to asymmetric convergence with its default of state inaction, and, second, that (PJ_2) is consistent with the intuition informing Bird's lottery example, namely, that important government decisions should be publicly justified.

Bird takes an even stronger position, however, claiming that the goal of justifying coercion plays *no role* in motivating a public justification requirement. To be sure, Bird recognizes that acts of coercion should be justified. He proposes a Coercion Principle according to which "political action is legitimate only to the extent that any coercion of private individuals required by it receives proper justification," where proper justifications

are not equivalent to public justifications (Bird 2014, 190). Bird distinguishes correctness-based complaints about why a coercive law is bad or faulty from standpoint-dissonance complaints, whereby citizens cannot reconcile their reasonable doctrinal or ethical commitments with the standpoint from which laws and policies are justified. Coercion as such is justified when all relevant correctness-based complaints have been answered, whereas public justification is said to aim at something different, namely, minimizing standpoint-dissonance and thereby respecting each citizen as a free and equal co-author of the laws that govern them. According to Bird, this is why we demand suitable public justifications in the non-coercive lottery example or even in those cases in which the citizens registering their standpoint-dissonance complaints are not the same individuals who are personally facing the prospect of greater coercion from proposed laws. Citizens must be able to *condone* the acts of the public of which they are members.

III. COERCION AND THE BASIC STRUCTURE

The subject matter of public justification should be political decision-making about the basic institutional structure of society, including political decisions made within that structure. This means that the qualified acceptability criterion in (PJ_2) should be a constraint on reasons rather than a constraint on state coercion as such. However, *pace* Bird, I also argue that the justification of state coercion must play *some role* in motivating the public justification principle. To establish this conclusion, I begin with a variation on his lottery example.

1. The Game Night Analogy

Suppose that members of a neighborhood association begin organizing a weekly fundraising event in private and public spaces around their neighborhood. While participation is entirely voluntary, "Game Night," featuring games of chance, trivia games, and other activities, is entertaining and attracts crowds from surrounding neighborhoods. Game Night is also quite profitable and the proceeds are used for weekend educational and social youth programs in the neighborhood, again entirely voluntary, that work against rigid gender roles according to which the virtues of athletic skill, risk taking, competitiveness, and self-reliance are construed as paramount for boys and men. And the reasons in support of these programs are in turn based on a progressive and ecumenical religious creed that the majority of residents share and which informs youth programming through their association. Programs are sponsored by the neighborhood and open to children from surrounding areas. The neighborhood becomes well known for both its weekly entertainment and youth programming.

Suppose that dissenting residents in my example – e.g., theologically conservative traditionalists or maybe some football-obsessed parents – experience standpoint-dissonance much like citizens in Bird's example who encounter laws and policies adopted in their name but justified primarily or solely by a doctrinal or ethical perspective

they reasonably reject. Dissenting residents not only disagree with the content of the youth programming but they resent the fact that their neighborhood is now known for sponsoring it. If the goal of avoiding such standpoint-dissonance is what motivates a public justification requirement, as Bird suggests, and the cases are relevantly similar, then by analogy the requirement should apply in my example. If so, then unless they are supported by sufficient public justifications, the neighborhood's programs would be illegitimate social practices, wrongful impositions on residents who object to the background ethical commitments and religious doctrines that motivate and sustain them.

This conclusion is plainly counter-intuitive from any liberal point of view that celebrates freedom of association. Residents organizing voluntary neighborhood programs are not running afoul of any public justification requirements, nor would they be doing so even if roles were reversed and majority-supported programming were aimed at solidifying rather than resisting rigidly traditional gender roles. And yet Bird's example is persuasive in many respects – indeed members of the democratic public arranging the basic institutional structure by allocating public funds to social and educational programs should expect decisions to be publicly justifiable and not based solely on a comprehensive religious or ethical doctrine that some citizens reasonably reject. This suggests that Bird's lottery and my Game Night example are not relevantly similar cases.

A key difference between the two cases is that political decisions concerning the basic institutional structure of society are necessarily linked to the exercise and authorization of coercive state power. To be sure, no persons directly experience coercive pressure in Bird's state lottery example. But to concentrate on that point is to risk misrepresenting the relationship between the democratic public, the state, and coercion.

2. The Basic Structure and the Law

Rawls identifies the basic institutional structure as the subject of justice for reasons based ultimately on respect for persons as free and equal citizens (2005, 257-71). First, such a focus is necessary if background conditions – e.g., the preconditions for social relations and economic transactions – are to remain fair over time, consistent with moral equality. Second, the basic structure has a profound impact on the abilities and aspirations that shape our choices, projects, and commitments as individuals and members of groups and associations. I submit that these same reasons also point to the basic structure as the subject matter of public justification. But additional support for that judgment is provided by reflection on the liberal-democratic rule of law as the inherently coercive organizing principle of an unavoidable form of social cooperation, viz., the modern state.

A basic institutional structure is organized through a legal system. While law is not reducible to acts of state coercion, law's action-guiding qualities are supported both by raising claims to validity and by stabilizing expectations, partly through issuing coercive threats (Habermas 1996). Lawful authority includes the right to authorize coercive enforcement of legal norms and duties, including the regulation of "when, and under

what conditions, coercion may be employed" (Lamond 2001, 55). The coerciveness of law is obvious in forms of punishment associated with criminal law. But private law is "rife with coercion as well" (Blake 2002, 277). Contract law and property law involve rules of ownership that are enforced through coercive measures. The same is true of the law of taxation, which ultimately assigns authority over various resources and compels citizens to undertake actions, such as filing documents or making quarterly or annual payments to the state.

Furthermore, the democratic rule of law is not simply a series of isolated rules but a unified system (Blake 2002, 54-7). This system claims an indeterminate authority over all members of the political society. Even when particular legal rules are not immediately coercive in the sense of employing substantial pressure to determine an agent's will, they are part of a legal system that is both generally coercive and recognized as authorizing acts of coercion. Moreover, the political and legal systems of the basic institutional structure maintain *final* authority over how coercion may be exercised. Relevant legal agents within this structure are authorized to address disputes about coercion between individuals, as in cases of liability and assumed risk, contractual duress, blackmail, or sexual harassment. However, typically no court of appeals functions outside of public reason for addressing complaints about constitutional principles or other fundamental political decisions and arrangements. The legal authority of political society – its state and government – is subordinate to no other authority and superordinate over the all other individuals and associations within the territory that it governs (Raphael 1970, 55).

Finally, a political society with a basic structure organized through the democratic rule of law is not like a voluntary association that one joins or abandons, depending on one's interests and values. Here my argument rests on two assumptions. First, a complex legal-political system is necessary for fruitful social cooperation under socio-historical forces of modernization and liberalization. Second, the democratic rule of law is necessary for the legitimacy of such a system. So, insofar as these assumptions are sound, then unlike in the case of voluntary associations or religious and cultural communities, the role of citizen is a generally unavoidable social role. To be sure, some persons deliberately reject this role, while others are excluded from it. But fruitful and legitimate social cooperation cannot be sustained unless a critical mass of a society's denizens identify as citizens and recognize their civic obligations. Citizens are indeed responsible for political decisions as equal members of their political society.

To summarize, there are several features of a liberal-democratic political society's basic institutional structure that together make it the appropriate site of public justification. First, membership in such a society is involuntary and participation in its political life is normally unavoidable. Second, its principal mode of organization – the rule of law – is inherently coercive. Third, its legal and political institutions are the final court of appeals for disagreements, including disagreements about coercion itself. None of these features are present in the Game Night example, but all are implicated in decisions about how to allocate public resources from a state-run lottery.

Bird focuses instead on the way that democratic citizens share responsibility for their political decisions and should be able to condone these decisions as co-legislators. That feature is also crucially important. Yet, as my example suggests, its significance arises through its connection to, and not independently of, the other three features. Citizens share responsibility for political decisions about the basic structure because of its involuntariness, coerciveness, and finality. It is in the context of these features of political life that an underlying duty of mutual respect for one another as free and equal citizens gives rise to a principle of public justification and requirements of public reason. We should be able to endorse the basic terms on which we unavoidably limit the freedom of our moral equals through a coercively enforceable institutional apparatus.

IV. REPLIES TO OBJECTIONS

1. The Presumption against Coercion

Bird refers to the kind of view I've sketched as a "mixed view," according to which requirements of public justification depend "both on the conditions for justified coercion and on the desiderata of democratic co-authorship" (2014, 205). He rejects the mixed view because it might weaken the presumption against coercion, implicit in his own Coercion Principle. Recall that the Coercion Principle states that political action is legitimate only to the extent that any coercion of private individuals required by it receives proper justification, where proper justification is not limited by a standard of public justification. If debates about coercion were limited by a public justification requirement, then some arguments *against* coercion, such as those deriving from Mill's Harm Principle, would be excluded because they are subject to reasonable disagreement. The unwelcomed result, according to Bird, is that coercion would be easier to justify, and this result is supposed to serve as a *reductio* against the mixed view.

This objection fails, for two reasons. First, there's the dubious assumption that the Harm Principle is generally a source of inaccessible nonpublic reasons. Insofar as the Harm Principle could be formulated in terms of basic political values and independently of Mill's comprehensive liberalism, arguments deriving from it are consistent with a public justification principle like (PJ_2). Such a formulation is already available (Rawls 2007, 291-3). The second reply concerns the connection between public justification and the accessibility of relevant arguments for and against coercion. For if arguments about coercion carry less weight when their premises derive solely from religious or other comprehensive doctrines, then those arguments, or at least many of them, will prove to be less important and influential according to most standard public justification theories. If so, then such arguments are not likely to present especially strong objections to various coercive proposals. The asymmetric convergence model is an exception, as it allows for merely intelligible nonpublic reasons to defeat potential coercive laws. But Bird does not endorse this model. He seems to think that more open-ended discussion based on

the Coercion Principle should be completed before narrower questions of standpoint dissonance are addressed through public reason. Yet this suggestion presupposes an artificial and ultimately faulty conception of public deliberation.

The problem lies in Bird's assumption that the Coercion Principle can be satisfied independently of a public justification requirement. That's not the case, since citizens are not always in a position to evaluate the soundness of various arguments for or against coercion unless those arguments are accessible in the way that a public justification principle such as (PJ_2) requires. An argument is *accessible* when it can be meaningfully evaluated in light of standards shared by citizens generally, such as reliable perception and observation, rules of inference, common sense, natural and social-scientific methods and results, basic moral-political reasoning such as human rights discourse, historical evidence, and shared democratic political values. Only by scrutinizing the accessible arguments for and against coercion would democratic citizens be able to determine with confidence whether the Coercion Principle is satisfied.

Citizens should not have to adopt doctrinal or ethical standpoints they otherwise reject just in order to have equal access to the reasons in support of (or against) basic institutional arrangements, including coercive laws and policies. Of course some citizens who disagree with coercive law *L* may still resent being coerced by *L* even though the reasons in support of *L* are fully consonant with their evaluative standards. But similarly they might resent being coerced by *L* even though *L* satisfies the Coercion Principle. Disagreement about political outcomes is inevitable. Still, if democratic citizens are the co-authors of their political decisions, and if my description of the basic institutional structure as organized through an inherently coercive legal system is correct, then citizens as agents of coercion should take responsibility for their actions by justifying laws and policies in terms that others might reasonably accept.

2. Involuntariness and Coercion

A second objection to my thesis turns on the distinction between coerciveness and involuntariness, both of which are associated with political society's legally organized basic institutional structure. Bird also emphasizes the fact that political society is involuntary and cites this fact in his condonation/democratic co-authorship argument in support of a public justification requirement. He cautions against conflating involuntariness and coerciveness, observing that the privileges of democratic citizenship are bestowed involuntarily, but not necessarily coercively (Bird 2014, 202-3). A potential objection to my thesis seems to follow: an appeal to coercion is unnecessary for a convincing account of why the basic institutional structure should be the subject matter of public justification; due attention to the involuntariness of political society, and perhaps the finality of its political decision-making, is sufficient in this regard.

A first reply to this objection is to observe that there is at least one institution, the family, which is partly involuntary but not necessarily coercive. While many people

voluntarily make choices about whom to marry or whether to have children, nobody chooses to be born into one particular family or another. Norms governing certain involuntary familial relationships, such as filial duties, are not typically thought to require public justification, as would be the case if involuntariness were sufficient for motivating public justification. Second, state coercion should be justified, for it limits the choices that persons might otherwise make as part of their freedom to pursue and revise a conception of the good. As suggested above, the justification of state coercion depends upon citizens having adequate access to the reasons for and against proposed laws and policies. This is why a plausible public justification principle such as (PJ_2) includes an accessibility criterion for the reasons that would justify (or defeat) law *L* or its alternatives.

It is worth noting that the Rawlsian political liberalism inspiring Bird's approach as well as my own also distinguishes involuntariness from coerciveness. Rawls cites both as "special features" of the "political relationship" in a constitutional democracy (2005, 135, 216). Political power is always coercive and indeed uniquely coercive insofar as only government is authorized to use force in upholding law. In a constitutional democracy this coercive political power is also the power of the public. After briefly expounding these special features of the political relationship, Rawls then writes that "[t]his raises" the question of how to understand liberal legitimacy and requirements of public reason. The subject term "this" in "this raises" refers not just to the involuntariness of political society but the coerciveness of the public political power that is "regularly imposed" on citizens (2005, 136).

The appeal to condonation and co-authorship does not fully explain why the decisions of a democratic public must be publicly justified. After all, and as the Game Night example suggests, we do not normally believe that all collective decision-making – i.e., the choices and actions of all the groups and associations of which we are members – must meet standards of public justification. What then is so special about *liberal-democratic political decision-making*? The answer that I've proposed links involuntariness to other characteristics of political life that significantly affect our ability to cooperate together fairly as free and equal citizens, namely, an inherently coercive legal system and the finality of political decision-making. There are, then, multiple but interconnected grounds for seeing the basic institutional structure as standing in need of public justification. It follows that coercion plays *some role* in motivating a principle of public justification even if the best formulation of the principle does not target coercion as such as the main subject matter of public justification. We should aim to have a publicly justified basic institutional structure in part because of its inherent and systematic coerciveness.

V. WHAT IS COERCION?

Public reason liberalism is a form of liberalism and, as such, includes a presumption against state coercion. This presumption is strong in the asymmetrical convergence model with its apparent default of state inaction where no law or policy satisfies its rather demanding test of public justification. Alternatively, while Bird's Coercion Principle implies a presumption against coercion, he does not assume a default position of state inaction with respect to pressing

political questions. Nor does Rawls when he avers that the content of public reason is provided by a reasonable political conception of justice that prioritizes basic rights and liberties over claims for the general good. These latter examples suggest that the presumption in favor of liberty and against coercion in public reason liberalism does not depend on identifying coercion directly as the subject matter of public justification, as is the case with asymmetric convergence and principle (PJ_1).

At the same time, the concept of coercion is often left unexplained by public reason liberals. "Coercion" is not listed as an entry in *Political Liberalism's* index, nor is it discussed in any detail by the book's lectures. Gerald Gaus addresses the question of coercion's meaning more directly, observing that the term is notoriously difficult to define. While Gaus does not offer a full theory of coercion, he notes that state coercion is "especially morally problematic" because "it employs force, or threatens to use force, against the persons of its citizens" (Gaus 2010b, 242). Gaus's suggestion about how to understand coercion for the purposes of public justification is promising, though it also represents something of a departure from much of the recent philosophical literature on the topic.

1. Coercion as Pressure

Leading philosophical analyses of coercion investigate how a coercer's proposal puts pressure on the coercee to influence his or her actions. Alan Wertheimer develops his influential theory by studying U.S. case law, and defines coercion accordingly:

> (C_p) A coerces B to do X if and only if (1) A's proposal creates a choice situation for B such that B has no reasonable alternative but to do X and (2) it is wrong for A to make such a proposal (1987).

Because (C_p) identifies only threats, and not offers, as coercive, it crucially depends on specifying a baseline according to which *B* will be worse off if he or she fails to accede to *A's* proposal. And Wertheimer is among those who favor defining the baseline in moralized terms, that is, by appealing to *B's* moral rights and interests. Indeed, according to his theory, a conception of moral rights and duties is necessary to determine both if *A's* proposal is wrongful and whether *B* is blameworthy for acting in the way that *A* demands.

Despite its considerable influence in contemporary discussions of coercion, this kind of theory is not well suited for explaining why coercive laws and policies typically stand in need of public justification. The second step in (C_p), the so-called proposal prong, identifies the wrongfulness of the coercer's proposal as a necessary condition for deeming a proposal coercive. The implication is that acts of coercion are always wrong, or perhaps always at least *prima facie* wrong. This understanding of coercion makes sense when the question is whether a person's actions under duress are legally or morally excusable. However, it is not especially helpful for explaining the intuition that coercion is sometimes not wrong *precisely because it is publicly justified.* For example, we normally think of criminal penalties designed to deter acts of wanton violence as coercive, but also publicly justifiable and entirely morally appropriate. It is of course possible to hold the following position: It is *prima facie* wrong to threaten would-be violent perpetrators with

criminal penalties, and thereby to coerce them, but still the most appropriate course of action all things considered. But such a rationale seems like a needlessly complicated way of arriving at the conclusion that some coercion is justified.

A second problem concerns Wertheimer's notion that successful threat proposals are essential to coercion. Public reason liberals and other political philosophers typically presuppose a broader domain of coercion, where coercive law and policy includes both threats of harmful force and actual deployments of force, punitive and nonpunitive. For example, coercive law is assumed to apply to citizens generally, even those citizens who ignore or are unmoved by the threats that are attached to noncompliance. Suppose that a particularly ruthless and reckless man, Anton, insists on doing whatever he wants to whomever he chooses, often thereby violating criminal law, regardless of the severity of the corresponding sanctions and penalties. Since the no-reasonable-alternative prong [(C_p) step (1)] is not met, he appears not to have been coerced by criminal law. We nevertheless would want to say that Anton is (fortunately) subject to state coercion – and that he is in fact coerced – when he is forcibly detained, relocated, imprisoned, incapacitated, or otherwise restricted from acting by the criminal justice system.

By contrast, some people would dutifully act just as the law requires regardless of any threat component. Hayek cites this kind of case in introducing the distinction between state coercion and the threat of state coercion (1978, 142). Hayek's conception of coercion differs from Wertheimer's by not including the wrongful proposal prong [(C_p) step (2)] though it still recognizes the way in which the coercee is essentially left with no genuine alternatives. For Hayek, *A* coerces *B* when *A* intentionally and through threat of harm determines *B's* will in accordance with *A's* purposes (1978, 134). With coercion so defined, the threat of state coercion is a kind of second-order threat, i.e., a threat, or perhaps a warning, that some choices and circumstances will engender the state's coercion through the threat of harm. According to this view, citizens are able to avoid actual state coercion simply by fulfilling their voluntarily incurred obligations, particularly in matters of private law. When individuals deliberately act as they ought, they avoid putting themselves in a position where they would encounter the coercive pressure deriving from an intentional threat of harm.

I submit that even if coercion is sometimes only indirect in this way, or merely threatened counterfactually, persons qua citizens are still subject to it. Recall from section III. 2 that law should be understood as a unified system, authorizing acts of coercion on an ongoing basis and claiming authority over all persons in its domain. Moreover, the distinction between state coercion and the threat of state coercion is difficult to maintain. Hayek cites the example of taxation as unavoidably coercive, presumably because the sanctions associated with it command individuals to act in specific ways. But surely we can imagine someone who not only harbors no resentment about being taxed, but would otherwise prefer to transfer some portion of her earnings, equivalent to or more than her annual tax, to an agent, like government, well positioned to promote the common good. According to the Hayekian distinction between coercion and the threat of coercion, this seems more like a case in which coercion has been avoided. A more plausible position, I think, is to say that taxation is necessarily coercive, regardless of whether the individuals who are taxed experience any threat or pressure associated with it.

2. Coercion as Enforcement

These problems with the pressure approach suggest that a theory of public justification must rely on a broader notion of coercion, in at least two respects. Coercion should not be limited to successful threats. Nor should it be understood as always *prima facie* wrong. Scott Anderson has developed just such an account, focusing less on the pressure experienced by the coercee and more on the power of the coercer to determine another's actions. He writes:

> (C_e) Coercion is "one agent's employing power suited to determine, through enforceable constraints, what another agent will or (more usually) will not do, where the sense of enforceability here is exemplified by the use of force, violence and the threats thereof to constrain, disable, harm or undermine an agent's ability to act" (Anderson 2010, 6).

Coercion, in short, is a powerful agent's employment of enforceable constraints to determine the will of another agent. It is made possible by the power that the coercer acquires or maintains over the coercee as well as the willingness to leverage or deploy that power. This "enforcement approach" does not encounter the problems identified earlier. For (C_e) is consistent with the idea that coercion may involve successful threats of force, or unsuccessful threats, or the actual use of force and other direct mechanisms of constraint. It does not link the existence of coercion necessarily to the coercee's responses or subjective experience. Finally, it is consistent with a morally neutral understanding of coercion, where the justification of coercion depends on the circumstances of who is exercising power over whom and for what reasons.

The enforcement approach recognizes the state as plainly coercive. Anderson notes that paradigmatic cases of coercion are those in which an agent intentionally accumulates and then employs or threatens to employ the power needed to constrain others, "where that power is usually generic in its potency, suited to work against almost any agent, and employable for a wide range of ends" (2010, 28). Obviously not everything done by government is directly coercive in the sense of determining the will of another by forcibly constraining his or her ability to act. Bird's imagined lottery is not directly coercive in this sense. But the enforcement approach to coercion nicely complements the earlier account of the basic institutional structure and the rule of law (section III. 2). Just to repeat: The basic structure is organized through the rule of law. And the rule of law is inherently coercive as a unified system, claiming the general and final authority for the coercion of individuals to assure compliance with social rules.

VI. THE SCOPE OF PUBLIC REASON

This essay began by inquiring into the subject matter of public justification, i.e., the question of what exactly is supposed to be publicly justified. The answer developed herein – namely, political decision-making about the basic institutional structure – may appear to be too imprecise to those readers familiar with debates among public reason liberals, especially Rawlsians, about the so-called *scope* of public reason. Public reason's scope refers the issues to which requirements of public reason apply. It seems, then, that my account of the subject matter

of public justification should be refined even further to specify the scope of public reason more precisely.

The principal distinction is between a narrow view and a broad view of public reason's scope. Jonathan Quong provides the following definitions:

> *The Narrow View*: The idea of public reason must apply to constitutional essentials and matters of basic justice, but need not apply beyond this domain.
>
> *The Broad View*: The idea of public reason ought to apply, whenever possible, to all decisions where citizens exercise political power over one another (Quong 2011, 274).

As is well known, Rawls adopts the narrow view, limiting the scope of public reason to fundamental political questions, namely, constitutional essentials and matters of basic justice. At the same time, the discussion of public reason's scope in *Political Liberalism* is brief and ambiguous, and at times even intimates that the broader view is more appropriate (Rawls, 2005 215). Quong evaluates three arguments in support of the narrow view – based on the basic structure, citizens' basic interests, and completeness in public reason – and ultimately finds each argument inadequate (2011, 275-87). His conclusion is that we should aspire to follow the broad view, even if public reasoning turns out to be incomplete with respect to some of the non-fundamental political questions addressed by that view.

The main arguments of this paper do not require a more precise answer to the question of public reason's scope. That is, their success does not depend on adopting a particular view, narrow or broad, of how much of the basic institutional structure must be publicly justified, as long as we assume that at least the fundamental aspects of that structure, such as constitutional essentials and matters of basic justice, are subject to public justification. In other words, the main arguments of this paper presuppose only the first clause in Quong's definition of the narrow view. Quong's defense of the broad view is plausible, though I shall offer two main comments in lieu of further discussion. First, even if the broad view is correct, constitutional essentials and basic justice nevertheless remain the more urgent and significant matters of public justification. Support for this conclusion is provided by the reasons for focusing on the basic structure in the first place. Insofar as law is *coercive as a unified system*, the constitutional order will determine how various acts of coercion are employed on an ongoing basis. Furthermore, constitutional and basic justice issues are more closely connected to the *finality* of political society's decision-making than ordinary acts of legislation or administrative power. Public reason is the only shareable normative mechanism governing fundamental questions of the former type.

A second main comment responds to the worry that the broad view is more likely to encounter cases of inconclusive public reasoning. Inconclusiveness is a form of incompleteness that results when there are multiple conflicting proposals based on reasonable (and even undefeated) arguments and no justifications are victorious, i.e., sufficient to rebut or undermine all of the competing arguments. While it is surely true that legislative debate falling under the broad view sometimes will be inconclusive, we need not broaden the scope of public reason just in order to encounter that problem. Rawls's own discussion of abortion politics suggests that inconclusiveness is possible at all levels of political deliberation and cannot be avoided just by

sticking to the narrow view. Public reason liberalism should explain how laws and policies might achieve at least some degree of public justification even in the context of ongoing disagreement, including disagreement about the premises and conclusions of the relevant arguments. Whether the scope of public reason is narrow or broad, it is possible for laws, policies, and other institutional arrangements to achieve at least a weak form of public justification, even when no proposal or decision is endorsed by all reasonable citizens (Boettcher 2015).

VII. CONCLUSIONS

The subject matter of public justification refers to that which stands in need of public justification. I have argued that the subject matter of public justification is not coercive law, as assumed by proponents of the asymmetric convergence model, but political decision-making about the basic institutional structure of society. This judgment is based on an analysis of several features of political society and its basic institutional structure, namely, (i) the involuntariness of political society and its state apparatus, (ii) the finality of political decision-making, and (iii) the inherent coerciveness of the rule of law. The legal system is coercive as a unified whole; it claims an indeterminate authority over all members of political society and thereby authorizes particular coercive acts on an ongoing basis. It is true that citizens who respect one another as politically free and equal should be able to condone and take responsibility for the laws and policies that are adopted in their name. Yet this view of liberal-democratic citizenship as responsible and respectful co-authorship is essentially connected to, rather than independent of, the involuntariness, finality, and inherent coerciveness of political society and its legally organized basic institutional structure. This is why we would demand public justifications for resource allocation decisions by government but not voluntary neighborhood associations, even when the resources being allocated are neither collected coercively nor intended directly to support particular coercive acts against individuals. The justification of coercion must play at least some role in motivating a public justification requirement.

For the purposes of a political philosophy like public reason liberalism, coercion occurs when a powerful agent employs enforceable constraints in order to determine the will of another agent. On this view, a legally organized democratic government is an essentially coercive agent, where its particular acts of coercion may take the form of either threats to use force or the actual use of force. This enforcement approach to coercion is consistent with a general presumption against state coercion and with the important notion that some acts of coercion are not *prima facie* wrong because they are justified.

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