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Public Reason Liberalism and the Certification of Scientific Claims

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In “What Facts Should be Treated as ‘Fixed’ in Public Justification?” (2019), Andrew Reid examines the issue of when scientific claims ought to be regarded as beyond reasonable disagreement (i.e., as “fixed” facts). According to one common line of thinking, scientific claim S is beyond dispute whenever there is a scientific consensus on S . However, Reid aims to demonstrate that this criterion is underdeveloped and, as a result, permits some citizens to be deemed “unreasonable” even when they do not have sufficient reason to regard S as a fixed fact.

Reid is explicit that his focus is restricted to Rawls, and his article illustrates how the matter of determining which scientific claims ought to be regarded as fixed represents an unresolved complication for Rawlsian public reason liberals. However, public reason liberalism, while greatly indebted to Rawls for his extensive development, has blossomed into a theory with a number of competing versions. Moreover, the problem that Reid addresses applies to public reason liberalism broadly construed. In light of this, I will situate the considerations highlighted by Reid within a broader context of public reason liberalism. I will begin with a brief overview of public reason liberalism and then provide a short description of some of the theoretical tools commonly employed by public reason liberals. Each of these tools will be referenced in the ensuing discussion.

Public Reason Liberalism

At the core of public reason liberalism sits a principle of public justification. While this principle is framed and articulated in various ways by different public reason liberals, what is common amongst the various formulations is the requirement that some principled set of coercive laws be justifiable to all citizens who will be accountable to such laws. Depending on the particular account, such a requirement may apply to only constitutional matters or it may be extended to cover *all* coercive laws, from constitutional matters down to matters of everyday legislation. Whatever the scope of a principle of public justification, the issue of whether a particular law is justifiable to a particular citizen is determined by inquiring whether the citizen in question has sufficient reason to accept the law.¹ If all citizens who are answerable to law L have sufficient reason to accept it, then L is considered “publicly justified” and, hence, legitimate.

In theory, then, all accounts of public reason liberalism incorporate a unanimity requirement.² This is a direct consequence of asserting that a law that falls within the scope of a principle of public justification is not publicly justified unless *each and every* citizen accountable to the law has sufficient reason to agree to it. Of course, unanimity requirements have not traditionally been popular amongst political theorists since, among other reasons, it is difficult to imagine how citizens afflicted with moral and epistemic shortcomings could

¹ The question of whether a citizen has sufficient reason to accept a law is sometimes presented as inquiring whether the citizen could reasonably reject the law (Scanlon 1998).

² Here is Rawls’ principle of public justification with a built in unanimity requirement: “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 equal may reasonable be expected to endorse in light of the principles and ideals acceptable to their common human reason” (emphasis added, Rawls 1996, 137).

come to unanimously agree on anything (Schwartzberg 2014, 71-72). It is for this reason that public reason liberals are faced with the possibility that no laws whatsoever will get publicly justified.

The Public Reason Liberal's Toolkit

Not to be deterred by the worry that public justification is unattainable, public reason liberals utilize a variety of theoretical devices in an effort to plausibly maintain that at least some laws will get publicly justified. Here are four such prominent devices:

1. *Moral and/or Epistemic Idealization*. When public reason liberals ask whether a citizen has sufficient reason to accept some proposed law *L*, they are not asking whether the *actual* citizen – as he or she really is – has reason to accept *L*. Rather, they are asking whether that citizen's *idealized* counterpart – one who is hypothetically cleansed of the *actual* citizen's basic moral and/or epistemic defects – would have reason to accept *L*. Idealization is a way of preventing shortcomings in reasoning, and even moral beliefs, from undermining public justification.

2. *Public-Reasons-Only (PRO) Restriction*. Public reason liberals who incorporate a PRO restriction place limits on the types of reasons that citizens can appeal to in order to support or defeat a proposed law. Advocates of the PRO restriction demand that citizens ultimately appeal to only “public reasons” and not to non-public reasons.³ Public reasons, sometimes referred to as “shared” reasons, are reasons acceptable to all no matter what personal comprehensive moral, philosophical, or religious doctrines one endorses. This has sparked a divide amongst public reason liberals, with consensus theorists endorsing the PRO restriction and convergence theorists rejecting it.

3. *Scope and Evaluation Restrictions*. As already alluded to, public reason liberals must specify which laws ought to be publicly justified, if not all of them. Rawls believed that it is only constitutional essentials and other matters of basic justice that require public justification. Other public reason liberals might hold that *all* laws should get justified, not just the constitutional essentials. However, there is also the related issue of what the appropriate *item of evaluation* should be. Are we to justify individual laws, packages of laws, constitutional articles, or whole constitutions? One dubious way to increase the likelihood that at least some laws will be agreed upon is to offer up arbitrarily-constructed packages of items in an effort to secure agreement (Gaus 2010, 198).

4. *Restrictions on the constituency of public reason*. A common way amongst public reason liberals to implement this device is by dividing up the general public into two categories: the reasonable persons and the unreasonable persons. A

³ Some consensus theorists follow Rawls and allow for non-public reasons to be introduced into public political discussion so long as, *in due course*, “we give properly public reason to support the principles and policies our comprehensive doctrine is said to support” (Rawls 1999, 144).

less abrasive version of this is to simply distinguish between reasonable views and unreasonable views. Those deemed unreasonable are excluded from the *constituency of public reason* – the group of persons whom a proposed law has to be justified to. As a result, when considering whether law *L* is publicly justified, public reason liberals do not always ask whether all citizens accountable to *L* have sufficient reason to accept it; rather, they sometimes only ask whether all citizens who comprise the constituency of public reason, with respect to *L*, have sufficient reason to accept *L*. By doing this, those pesky unreasonable people do not undercut attempts at public justification. There are of course worries about abuse here. We should avoid manufacturing public justification by groundlessly tossing all dissenters into the unreasonable category.

The aim of public reason liberalism is not to fabricate agreement whatever the cost, but to identify the most appropriate normative structure to regulate the justification of coercive laws in light of the fact of reasonable pluralism among free and equal persons. As such, we should avoid deploying the tools of public reason liberalism for the purpose of *merely* securing agreement – doing so betrays the aim of public reason liberalism. Unsurprisingly then, debates within public reason liberalism often center on how these tools should be utilized. This is also true of Reid’s article in which the notion of a constituency of public reason (device #4) is central to the discussion.

The Problem of Certification

Reid maintains that Rawls was an advocate of the idea that some facts should be treated as beyond reasonable disagreement (i.e., as “fixed”⁴). While Rawls may not have used the phrase “fixed facts,” he did employ various similar-sounding phrases, such as “settled convictions,” “fixed points,” and “basic facts” to convey the idea that certain claims should not be open to dispute (1996, 8, 124). For Rawls, these are things which we accept provisionally, but with confidence. As a political constructivist, Rawls thought that certain moral claims ought to be regarded as settled convictions or basic facts, such as “slavery is unjust” and “exploitation is unjust” (1996, 124). On his view, for such statements to be regarded as reasonable, they need not be grounded in further moral argument. It is enough for Rawls that slavery, for example, would violate principles which he believes all people would agree to in the original position.⁵ To reject such a “settled conviction” is to be unreasonable.

Rawls invokes these various phrasings when conveying the idea that certain types of *moral* convictions should be treated as basic. This raises the question of when Rawls would regard a *scientific* claim as achieving a status, similar to that of a settled moral conviction or basic moral fact, such that anyone who rejects the scientific claim would be considered unreasonable. It is well-known that Rawls asserts that “in discussing constitutional essentials

⁴ To say that a fact is “fixed” is not to say that it is no longer open to dispute or somehow immune to challenge. A fixed fact is treated as true until reason surfaces that is sufficient to cause us to think otherwise.

⁵ The original position is the hypothetical position in which deliberators are placed behind a “veil of ignorance” that deprives of them of knowledge of certain things about themselves, such as their position in society, their strengths and weaknesses, what they value, etc. (Rawls 1971, 12)

and matters of basic justice we are not to appeal to comprehensive religious and philosophical doctrines...” (1996, 224-225). What are we to appeal to then? According to Rawls, “we are to appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial” (1996, 224). As Reid explains, “[t]he latter is the body of knowledge that is the subject of an overwhelming and on-going consensus amongst scientists, and which has not been debunked using the scientific method” (2019, 493-494).

Reid’s complaint is that, on the Rawlsian view, the existence of a consensus amongst experts is regarded as sufficient for treating a scientific claim as a fixed fact. But if this is an accurate depiction of the Rawlsian stance, it would, as Reid remarks, elicit the following corollary: “to invoke a fact that contradicts this scientific consensus whilst justifying a policy would be ‘unreasonable’” (2019, 491). But since those holding views deemed unreasonable may be excluded to some extent from the constituency of public reason, there exists the potential for unjustifiable exclusion.

It would be wrong to exclude someone from public deliberation on the basis that their political propositions are underpinned by a denial of facts *that we can have no reasonable expectation for them to accept* (emphasis added, Reid 2019, 493).

On Reid’s view, the Rawlsian criterion is inadequate to the extent that it permits one’s rejection of a scientific claim to be treated as unreasonable even in cases where one does not have sufficient reason to accept the claim. Reid’s proposed solution is to shore up the criterion for fixed facts. In using terminology borrowed from Philip Kitcher, this is the problem of certification. Certification is “the phase of inquiry in which new findings are accepted or rejected as part of public knowledge” (Kitcher 2011, 12). Reid is specifically concerned with the certification of scientific claims. What are the circumstances in which a scientific claim ought to be certified such that it becomes part of the shared information base (public knowledge) and, as such, is unreasonable for anyone to reject? If the certification process is too broad (i.e., it allows claims to be treated as fixed facts when they should not), it runs the risk of abusing the fourth device in the public reason liberal’s toolkit. One way the fourth device is abused is when citizens’ views are improperly labelled as unreasonable and the “offending” citizens are consequently excluded from the constituency of public reason. It is this worry that prompts Reid to propose an additional condition on what qualifies as a fixed fact.

According to Reid, simply having a consensus in the relevant expert community is necessary, but not sufficient for characterizing a scientific claim as a fixed fact.⁶ In cases where the general public is in disagreement, despite the presence of an expert consensus, Reid argues that scientific facts should be regarded as beyond reasonable dispute only when “a consensus exists amongst all reasonable citizens that there is reason to defer to experts in these cases” (2019, p. 491). To arrive at this consensus all reasonable citizens will need to partake in a second-order assessment of the debate. Reid understands this second-order assessment as consisting in (1) an evaluation of the credentials of the experts who are making factual

⁶ I am setting aside the issue of how to determine when a scientific consensus has actually been achieved.

claims; and (2) an evaluation of the process by which a community of experts arrived at a consensus.

Item (2) is important given that the judgments of scientific communities are not infallible. Like the rest of us, scientists are prone to cognitive biases and other errors of reasoning that sometimes lead to the endorsement of false claims. While working together as a community can often help to deflect some of these missteps, it provides no assurances against error. As such, just because a community of experts has reached a consensus, it does not follow that we should *uncritically* accept their claim(s). Rather, if a scientific consensus has been reached on scientific claim S , then while that gives us a strong reason to accept S , it is a reason that must be weighed against any other reasons we may have to reject S . In other words, at this early stage, our reason for accepting S is open to being defeated.

Once a scientific consensus on a claim is reached, the establishment of that claim, amongst laypeople, comes via an exchange between experts and non-experts. Non-experts may make inquiries about “the process by which the specific experts in the field came to believe what they did” (Reid 2019, 496). Scientists have a responsibility to listen and respond to questions and objections formulated by those outside the specialist community. If they cannot do this or are unwilling to do this, then we have reason to reject their claims. We must then distinguish between a community of scientists reaching a scientific consensus and the general public being epistemically obligated to accept the claims comprising the consensus (or, at the very least, conceding that there is no good reasons to reject the claims). That scientists have simply reached a consensus is not sufficient to accomplish the latter.

Elizabeth Anderson argues that a layperson’s second-order assessment of the trustworthiness of those making scientific claims consists in assessments of expertise, honesty, and epistemic responsibility (2011, 145-146). Regarding assessments of epistemic responsibility, Anderson says that:

one must be able to judge whether testifiers are responsive to evidence, reasoning, and arguments others raise against their beliefs. This third criterion is needed to ensure that testifiers are basing their beliefs on a responsible exercise of their skills... The mark of epistemic responsibility is responsive accountability to the community of inquirers. One’s claims are suspect if one fails to hold oneself accountable to the demands for justification made by the community of inquirers (146).

Some worries surely arise. It is frustrating to witness scientists carefully explain the process by which they arrived at a claim, answer questions, and respond patiently to objections, only to have a portion of the general public refuse to accept the claim on the basis of their own cognitive biases and other errors in reasoning. Public reason liberals might attempt to deal with this reality through idealization. If epistemic shortcomings prevent citizen C from recognizing that his or her objections are ill-formed and that scientists have adequately defended the claim, then public reason liberals may be warranted in claiming that C ’s

idealized counterpart would recognize this and, and such, *C* has good reason to accept the claim.

As is often the case though, things are not so simple. The problem of certification is especially pronounced for public reason liberals when it is the case that the relevant scientific community has discharged its responsibility to the general public and, yet, there remains a discrepancy between what the scientific consensus is and what the *idealized counterparts* of citizens could be said to have reason to believe. In an effort to achieve resolution, one may be tempted to apply progressively greater degrees of idealization to the citizenry. But public reason liberals should resist engaging in too much idealization for, if one over-idealizes, then the idealized counterparts of citizens will be so far removed from actual citizens that the idealized counterparts will affirm a set of reasons that we cannot reasonably expect actual citizens to arrive at (Gaus 2011).

Over-idealization runs the risk of violating a key tenet of public reason liberalism insofar as we cannot be said to justify an action *to a citizen* if we are attributing non-reasonably-accessible reasons to them. This amounts to abusing another device in the public reason liberal's toolkit (device #1). Still, some idealization is needed to prevent superficial epistemic shortcomings from disrupting the process of public justification. A citizen should not be able to obstruct public justification when his or her objection constitutes, for example, an obvious straw man fallacy or is based on beliefs that are clearly false (such as the belief that the world is flat). To put this in the language of Reid's article, too much idealization would deprive citizens of epistemic autonomy, but too little idealization would allow citizens to fail to defer when deference is warranted.

Beyond Rawls

While Reid's focus is on Rawls, it is perhaps the case that Rawls is less exposed to the problem of certification than many other public reason liberals. This is because Rawls holds a *narrow view* regarding the scope of public reason (device #3). For Rawls, the scope of public reason is restricted to "constitutional essentials and questions of basic justice" (Rawls 1996, 214; 1999, 133; 2001, 91 fn. 13). The principle of public justification does not apply to matters that are neither constitutional essentials nor questions of basic justice. The prominence of the problem of certification within the Rawlsian framework is contingent on the extent to which scientific claims figure into the highly-abstract level at which Rawls operates. Whatever the result for Rawls, it is plausibly the case that the problem becomes more pronounced as we consider other less-abstract legislative matters in addition to constitutional matters. This is not to argue that Rawls is immune to considerations for the problem of certification, but rather to emphasize that if such considerations are relevant to the Rawlsian account, they are arguably more pressing for those public reason liberals who expand the scope of the public justification requirement.

In speaking on non-Rawlsian public reason liberals, Reid remarks that "convergence theorists, I think, object to the idea of fixed facts, or at least not see them as important for their theory" (2019, p. 499). It is important to recognize, however, that what fundamentally distinguishes convergence models of public reason from consensus models is that convergence approaches reject the public-reasons-only restriction (device #2). Because of this, convergence theorists permit non-public reasons (i.e., those based in one's personal

comprehensive doctrines) to enter into the justificatory domain and ground the acceptance of proposed laws. Another common, but non-fundamental, difference between consensus theorists and convergence theorists is that consensus theorists have tended to adopt an accessibility requirement which places some shared evaluative standards (i.e., agent-neutral rules of inference and evidence) on which reasons can enter into the justificatory domain. Rawls referred to such standards as “guidelines of inquiry” – the “principles of reasoning and rules of evidence ...” (Rawls 1996, 223-224). While the earliest convergence theorists have rejected the accessibility requirement in favor of other alternatives (such as the less-restrictive intelligibility requirement), there is nothing about the convergence approach that necessitates such a rejection (Tyndal 2019). The issue is further complicated by the possibility that the conditions that must be met in order to defeat a proposal may diverge from the conditions that must be met to merely accept a proposal. Nevertheless, whether one adopts the consensus or convergence approach, it is true that as soon as one leans on the notion of shared evaluative standards, Reid’s notion of fixed facts becomes salient and the problem of certification surfaces.

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