On Two Critics of Justificatory Liberalism:
A Response to Wall and Lister[1]

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I am deeply grateful to Andrew Lister and Steven Wall for their careful, thoughtful, and engaging essays on my work. It is immensely gratifying when insightful philosophers think hard about one's writings. More than this, though, both essays focus on important worries about justificatory liberalism: there is no sparring on side issues, nor do they base their criticisms on manifest misinterpretations of the view. Because of this I have learned a great deal from their essays, and I better see how certain issues should be addressed, and how some important points should be developed. I also have come to better appreciate some of the disagreements between us. As I hope will become clear as I proceed, many of the differences between us turn on a basic dispute. Throughout their essays Wall and Lister indicate little reluctance to impose on others, or indeed coerce them to conform to, controversial moral claims endorsed as true by his (i.e., Lister's or Wall's) "first-person" point of view. Here I think the liberal — or at least the liberal inspired by Kant and Mill — adamantly dissents, and this dissent leads to a very different view of social and political morality than Wall and Lister, in their different ways, endorse.

1. The Kantian Foundations

1.1 Moral Authority and Moral Autonomy

As with John Rawls's justice as fairness and S.I. Benn's theory of freedom, justificatory liberalism is Kantian in the sense that it seeks to develop and extend basic themes in Kant's thought. It does not, of course, present itself as a scholarly interpretation of Kant's philosophy; it is a Kantian view, not Kant's view. Lister is correct that the main inspiration is the realm of ends formulation (L: §4.3, ¶4).[2] The problem that justificatory liberalism addresses is a certain tension between a conception of moral persons as free and equal and the authoritative claims of what might be called "social morality" and, ultimately, political authority. By "social morality" I mean the moral claims that that we make on each other to engage in, or refrain from, certain lines of conduct. Much of what

we call "ethics" — including visions of the good life and conceptions of virtue and vice — lies outside social morality so understood. Social morality and its limits are the focus of Mill's great *On Liberty*: the subject of "Civil" or "Social Liberty" involves the nature and limits of the moral authority of society over individuals to insist that they refrain from speaking, acting, and living as they wish.[3] As Mill recognized, when Alf appeals to social morality in regard to Betty's act ϕ he makes a claim to be something like a moral authority over her: he is claiming that on this matter Betty is to do as he directs. Alf believes that morality prohibits ϕ and so she must not ϕ, even if she disagrees. Stephen Darwall has recently stressed the way in which interpersonal morality involves "authority relations that an addresser takes to hold between him and his adressee."[4] When Alf makes this moral claim on Betty, as Darwall points out, he is not making a request that she refrain from ϕ, or calling attention to his view of morality according to which ϕ is immoral: Alf is demanding that Betty refrains from ϕ-ing.[5]

This is not a problem for Alf if he conceives of Betty as someone with inferior moral insight; in such a case he holds that Betty should rightly follow his superior moral authority. However, the Kantian is committed to a second principle: that moral persons confront each other as free and equal. As Rawls says, qua free persons who recognize their fundamental equality we claim no moral authority over each other.[6] We now confront a problem: how can Alf's claim to moral authority over Betty be consistent with treating her as a free and equal moral person? At the heart of our moral relations with others is an appeal to moral authority, yet, as a Kantian view, justificatory liberalism insists that we are moral equals. How can a moral equal claim moral authority over another?

When someone makes a moral claim on another she may defend herself by insisting that she is not demanding that the other submits to *her* authority, but to the authority *of morality*. Perhaps what Darwall calls a claim to "authority" might be better understood as a claim to have *standing* in the lives of others. Morality gives us standing to make another's action our business in the sense that we can appeal to moral principles and demand that another complies. Consider a variant of Wall's case in which Alf is ironing socks in his apartment, and Charlie, in the next door apartment, "desperately needs [his] help" but Alf continues to iron his socks (W: §II, ¶6). Betty is in on the phone with Alf and hears all this and so insists: "You have a moral duty to assist Charlie — you

must do so, now!" Alf replies that he sees no such duty (perhaps he rejects any positive duties to aid others) and, anyway, he asks Betty "what business is it of yours whether I help Charlie or not?" Presumably Betty (like Wall) will reply that *morality* makes it her business, and so morality gives her standing to insist that Alf desists ironing and runs to help. Betty, then, is claiming that her view of morality is to be regulative for Alf: she has standing to direct his action and, moreover, he should defer to her understanding of moral duty. Betty, then, must be supposing that at least in this context she possesses moral authority to interpret morality's demands for Alf. If Alf refuses to comply, she will judge him to have done wrong and to be blameworthy; if Alf addresses to her a contrary moral demand ("There is nothing wrong with ironing in my own apartment, so mind your own business!") she will judge herself blameless for dismissing it.

1.2 Public Justification

Social morality presupposes that we claim a moral standing to direct the actions of others and authority to interpret the demands of morality. Yet we are all free and equal moral persons. There are none who, by nature, have moral authority to direct the actions of others. How can justificatory liberalism's commitment to moral freedom be reconciled with the authoritative nature of moral demands? We arrive at Kant's ideal of the realm of ends: "A rational being belongs to the realm of ends as a member when he gives universal laws in it while also himself subject to these laws. He belongs to it as sovereign when he, as legislator, is subject to the will of no other."[7] Kant insists that for morality to be consistent with "the dignity of a rational being," a rational being must obey no law other than that which he gives himself. For morality to exist, the individual must be a subject; for it to be non-authoritarian, she must be the legislator.

If the moral law to which all are subject is endorsed by the reasons of all, the authority of the law is self-imposed. Moral demands and moral freedom thus are reconciled if we all have reasons to endorse moral requirements. Because only a morality that the reason of everyone endorses is consistent with our status as free and equal, we are led to the public reason principle on which Wall focuses (W: §I, ¶9; see also L: §4.3, ¶2.):

(PRP): A reason *R* is a moral, impartial, reason justifying ϕ only if all fully rational moral agents coerced by ϕ-ing would acknowledge *R*, when presented with it, as a justification for ϕ-ing.

I am now unhappy with this statement of the principle for two reasons. (*i*) It was a short-cut formulation in an essay on political philosophy in which I had to, as it were, speed through some complex issues to get to the political implications. Full rationality seems to me an impossible ideal: I doubt whether we even know what it means (*SP*: 21-23). A justificatory liberalism must certainly idealize the justificatory public; we must abstract away from obvious errors in reasoning, selfishness and other sources of bias, but this requires a moderate, not an extreme, level of idealization. (*ii*) Although it is certainly true that the upshot of a justified morality are impartial reasons that implied by moral principle, I think it is more helpful to focus on impartial moral requirements and rules, rather than impartial reasons. This is because reasons appear at two points in the justificatory process: they are justificatory *inputs* that show what common moral principles everyone can endorse, and they are *outputs* of the justificatory process insofar as once we have common moral principles, we have impartial reasons to make moral demands of others regarding certain courses of action. I have long stressed that an "input" justificatory reason — a reason that feeds into the justification of a shared moral principles — need not itself be shared by all (*VJ*: 19, 332, 439ff; *JL*: 138ff; see also *MRM*, *RRC*). That is, a common moral principle or rule *M* could be justified if some people endorse *M* for one reason (it conforms to their religious views), and others endorse it for another (it conforms to their secular theory of ethics); however, once *M* is a justified moral principle it then provides us all with the same impartial reason justifying ϕ as the moral thing to do to. The upshot of these points is that a shared moral requirement that respects each as free and equal must be endorsed by the reason of all, and so a plausible justificatory liberalism must locate some perspective that identifies what are a person's relevant reasons.

As Wall perceptively notes (W: §III, ¶8), "PRP" is no more than a "gesture" towards the important point that members of the justificatory public must, to some extent, be idealizations of moral persons as they are. As we all know, actual people are subject to biases and selfishness, employ heuristics that can lead them astray, and may be simply pig-headed. We must at least abstract away from obvious failures of moral sensibility and rationality: our aim is not to induce the consent of actual persons, but to appeal to the reasons of all qua members of the realm of ends — that is, moral persons seeking to legislate for all other moral persons. However, because the idea of a "realm of ends" is so tightly bound with Kant's own thought, and because it is apt to suggest

that all moral justification must be universal and cosmopolitan, I shall generally use as a term of art (that, I'm afraid, has considerably less literary appeal and is unlikely to be the title of anyone's book) "member of the public, *P*." A superior formulation of the core principle, then, is something along the lines of:

> *The Public Justification of Impartial Morality*: (*a*) *R* is a moral, impartial, reason justifying a moral demand to ϕ (or refrain from ϕ-ing) only if *R* is implied by publicly justified moral rule *M.*
>
> (*b*) *M* is a publicly justified moral rule or principle only if all "Members of the Public *P*" (understood as a term of art specifying some moderate idealization of actual persons) have conclusive reasons to endorse *M* as a moral requirement binding on all.

Note that "public" (i.e., shared) reasons are the outcome of, not the inputs to, the public justification of an impartial morality.

Kant thought that to consider persons as members of the realm of ends is to "abstract from the personal differences of rational beings and thus from all content of their private ends."[8] Justificatory liberalism rejects this. Whatever precise level of idealization is best, it must include deep diversity about the orderings of values that are relevant to justification. Recall Rawls's insight that a wide range of rational disagreement is the "normal result of the exercise of human reason."[9] All differences in values are not the result of obvious failures in reasoning or bias: even if we imagine good-willed members of the realm of ends reasoning without defects and without relying on any unjustified beliefs or inferential norms, they will diverge on fundamental values. And because of this the moral reasoning of members of the "realm of ends" (i.e., the public) will often diverge. They disagree on what we might call their "*evaluative standards*" — the normative criteria relevant to their evaluation of proposed moral requirements (MRM: 94-99). Consequently one member of *P*'s sound and relevant reasoning cannot be taken as a proxy for everyone's.

Now Wall (W: §III, ¶6) believes that a commitment to the principle of the Public Justification of Impartial Morality clashes with acceptance of:

> *The [Metaphysical] Universalization Principle* (UP): If there is a moral reason for agent A to do ϕ in circumstances C, and if agent B is in circumstances no different in all relevant respects from C, then there is a moral reason for B to do ϕ.

Wall writes:

> Suppose that I judge that there is a moral reason for me to support the coercive drug policy for my society, and that I know that you are in circumstances no different in all relevant respects from my own. Then, according to (UP), I should judge that there is a moral reason for you to support the policy. Since there is a moral reason for you to support the policy, it is true (in one sense) that a fully rational version of yourself would acknowledge this reason. However, I might discover that you have all relevant factual information on the matter and that you are reasoning in a flawless way. I now must either retract my judgment that there is a moral reason for me to support the policy or judge that you are failing to appreciate the force of some relevant consideration that bears on the matter. …But suppose now that I continue to think that there is moral reason to support the policy. After all, let us assume, it is not as if you have given me any reason to think that I am mistaken. I have merely discovered that you are not ignorant of the facts and that you are not making certain mistakes. Since I judge then that a fully rational version of yourself would accept that there is a moral reason to support the policy, I must reject the construal of [the public justification principle] … that limits idealization to … [less than full rationality]. (W: §II, ¶90).

The [Metaphysical] Universalization Principle is an ontological principle about what reasons there are. Because justificatory liberalism is not about ontology it is consistent with UP. In fact, as I presented it in §1.1, the deep motivation of justificatory liberalism is that we disagree about what our moral reasons are. In Wall's case of the Bad Samaritan Ironer, Betty thinks Alf has a certain moral reason to help while Alf disagrees. Perhaps both are moral realists and indeed realists about reasons such that they believe that there is a mind-independent truth of the matter. All this can be so, yet they have an inconclusive justificatory debate about who is correct. As I understand Wall, he is guided not simply by the (Metaphysical) Universalization Principle (which justificatory liberalism can accept),[10] but by what we might call the *Justificatory Universalization Principle*:

> (JUP): If agent *A* has a reasonable belief that he has an all things considered moral reason *R* to ϕ in circumstances *C*, and if agent *B* is in circumstances no different in all relevant respects from *C*, then Agent *A* must conclude that (*i*) B has an all things considered reason R to ϕ, and

(*ii*) A is justified in advancing a moral demand on *B* to ɸ, and *B* is subject to moral censure for

failing to ɸ.

Consider another of Wall's examples. Jill, qua member of *P*, believes that voluntary euthanasia is wrong, and she discovers Jack, who as a member of *P*, disagrees, holding that it is permissible. Wall asks "Does Jill have any reason to revise her view about euthanasia simply because another person cannot rationally accept it? I do not see how it could. And if Jill believes that the immorality of euthanasia justifies… intervention, then the fact that Jack cannot rationally accept this…*should not matter*" (W: §IV, ¶11, emphasis added). The crucial question is not whether Jill should doubt her belief (though it seems that if another idealized person — a member of the public — cannot see the reason for it, a certain modesty is in order), but whether it "should matter" to the moral demands one makes. It should matter. Jill can only go ahead and claim a moral standing in Jack's life to demand that he not engage in voluntary euthanasia if she insists that her reasoning is determinative for another member of the public, who has employed his idealized reasoning to come to the opposite conclusion. Justificatory liberalism rejects JUP because it rejects the idea that the reasoning of one member of *P* is — or should be — in itself determinative for other free and equal moral persons.

Wall suggests that the principle of public justification can be squared with his understanding of the universalization principle by *really*, *fully* idealizing members of *P* such that they are fully aware of, and appreciate, "the full range of evaluative considerations that apply to the situation at hand" (W: §III, ¶¶8-10). As Wall argues, under this characterization of the justificatory public, if after a great deal of reflection I hold that my understanding of the relevant moral reasons is correct and I should ɸ, I can then infer from UP that because you are in the same circumstance, you have a reason to ɸ, and so you must be missing something of moral importance that you would have grasped under fully ideal conditions. Thus when (on the basis of JUP) I make my moral demand that you ɸ, I conclude "that a fully rational version of yourself would accept that there is a moral reason" to ɸ and therefore my demand that you ɸ is publicly justified.

As Wall is well aware, on his view the ultimate test of the soundness of another's reasoning is whether it corresponds to your own reasoning (W: §IV, ¶15). Wall, I believe, is tempted into the position about which Hobbes rightly warned. Rational people, Hobbes thought, aimed at "right

reason" — true rationality, which reveals the truth. However, no matter how hard we try to avoid mistakes our exercise of rationality is fallible, and so we often disagree about what is right reason and so "no one man's reason, nor the reason of any one number of men, makes the certainty."[11] Although in such controversies each person claims that the use of his own private reason is "right reason," these claims are, of course, unacceptable to others employing their own reason to track right reason. "[W]hen men that think themselves wiser than all others clamour and demand right reason for judge, yet seek no more but that things should be determined by no other men's reason but their own, it is…intolerable in the society of men."[12] Indeed, Hobbes insists that those who make their reason the test of right reason betray "their want of right reason by the claim they lay to it."[13] The Kantian problem, of course, is not Hobbes's — who thought that such disagreement leads to conflict. The problem of justificatory liberalism is that, in a world in which free and equal good-willed agents are all using their reason to track right reason, and find themselves in disagreement, anyone's assumption that his reason determines right reason for all cannot honor a commitment to treat others as free and equal.

2. The First- and Second-person Points of View

Much of Wall's essay is devoted to establishing that "the first-person standpoint is fundamental to political morality. Any principle of restraint or any settlement reached from a shared standpoint must be grounded in reasons that speak to the first-person standpoint. … But proponents of public justification in politics demand that we adopt a shared or common standpoint rather than rely on our own first person moral convictions…. If the demand is to have a claim on us, it must itself be rooted in first-person moral commitments" (W: §IV, ¶16). I absolutely and wholeheartedly agree. Justificatory liberalism does not require that we ignore our first-person perspective and somehow always reason from a shared perspective. That would be impossible. Rather, the core claim of justificatory liberalism is that a fuller appreciation of our first-person perspective leads us to appreciate the ways in which the perspective of others must be addressed in our shared moral life.

Our first-person perspective commits us to seeing that the reasons of others matter to us in two ways. (*i*) Moral judgments are not primarily theoretical claims about the world, but practical demands addressed to others to get them to act in certain ways. When we advance a moral

demand on another we expect that it will move her to act, at least if she adequately reflects on her reasons (PAL). Morality addresses demands that reflective agents are expected to take up. By "reflective agents" I do not mean super-agents who have attained full rationality, or who have angelic advisors who provide flawless advice about their reasons. Rather, we expect that good-willed, normal, reflective agents can see that they have a reason to do as morality commands. Morality presupposes what we might call a "practical (not metaphysical) internalism about reasons" for good-willed moral agents: such agents must have a sound (and not too difficult) deliberative route to their reason to act morally.[14] If a compelling reason for performing an action is not accessible in this way to the person on whom we are pressing it, morality no longer makes a claim of practical rationality on her. Note that it is not enough to provide her with simply "a reason" to act as we demand; if she has overriding reasons to do otherwise, her practical reason would tell her to do otherwise than morality demands. Morality seeks to provide conclusive reasons to act (and that is a fundamental reason why the demands of morality must be conclusively justified; see §4.1 below). Unless our moral demands are endorsed by the practical reason of the person to whom they are addressed, we are demanding that a person ought to do something that as rational creature she could not do: to act as we demand would require her to act against the reasons available to her.[15] Even if she thought deeply about the matter and tried her best to correct the falsehoods she could find, and follow out the implications of her values and beliefs, she could not reason her way to endorsing our claim. Given this, our-first person understanding of morality as a practically rational activity commits us to taking seriously the reasons of others.

(*ii*) The crux of the second argument for taking seriously the viewpoint of others concerns the presuppositions of our moral practices and the place of the reactive emotions in them. I have dealt with the issue in great detail in *Value and Justification* (269-319). That account is now about twenty years old; research on the emotions and their relation to morality has made great progress in the last two decades, but I think the crux of the account has held up reasonably well. The starting point is our own first-person understanding of our moral practices, and our moral relations to others. Fundamental to our moral practices are the Strawsonian reactive attitudes. If we advance a moral claim on another and she fails to honor it, unless there are excusing conditions we blame, we feel

resentment, and we hold that she should feel guilt. When we see someone ignoring the moral claims of others, we experience indignation. These emotions, however, have cognitive appropriateness conditions (*VJ*: §6). There is debate within psychology as to whether all emotions must have cognitive bases, but there is wide agreement that emotions such as resentment and indignation ("moral anger") and moral guilt presuppose beliefs about unwarranted harm, unfairness, etc.[16]

Now there are two views about these presupposed beliefs. On what we might call the Simple View, first-person judgments about whether, say, a wrong has been done, a harm committed, an unfairness perpetrated, is sufficient to stably under gird the emotion. Betty believes that Alf treated Charlie unfairly, so she experiences indignation towards Alf. End of story. On the Complex View, moral emotions are apt to be undermined when we realize that the appropriateness conditions for them are not met: emotions are typically undermined when people come to doubt the supporting beliefs (*VJ*: 26-41). Our moral emotions are undermined when we come to believe they are inappropriate or not rational.[17] My friend and colleague, Shaun Nichols, endorses the Simple View, essentially because the Complex View is more cognitively demanding: it presupposes that moral persons conceptualize their emotions and so understand when they would be inappropriate. But, Nichols argues, children and autistic persons can distinguish moral from conventional rules, and make moral judgments, yet they do not have sophisticated conceptualizations of their emotions and the perspectives of others.[18] Thus he thinks the Complex View cannot be correct. He considers the obvious rejoinder: children and autistic people are not mature moral agents, and we would hardly expect that their understanding of morality would be adequate. His replies are that, if one adopts a sentimentalist theory of morals, one should be wary of dismissing everyday moral sentiments such as that displayed by children, which may well be the basis of much adult reasoning. (On the way in which unjustified childhood beliefs can become justified adult beliefs, see *JL*: 23-25). And, in addition, he points out that while the (simple) emotional reactions are nearly universal, reasoning differs, so the Complex View introduces moral disagreement.[19] Perhaps these considerations are decisive for some forms of moral sentimentalism that seek to tie justified morality *very* closely to common sense attitudes. But to insist that an adequate account of morality must make sense of, and connect up with, our moral practices, does not imply that an

adequate theory should take children and autistics as paradigmatic moral agents. Part of moral maturity is to develop a self-critical capacity to reflect on the adequacy of one's moral responses, and to overcome childhood egocentrism to develop an increasingly sophisticated view of one's relations to others. As Nichols himself notes, when one integrates conceptions about one's place in the world into one's account of moral reasoning, one is apt to arrive at Kohlbergian conclusions that the moral emotions we sustain depend on the sophistication of our conceptions. I see this as a mark in favor, not against, the Complex View. An adequate account of my understanding of moral claims and sensible emotions in relation to others must depend on an adequate view of my relations to them. To see myself as one among others in a moral world that does not center around me allows me to achieve an objectivity or impartiality that undermines many of the direct emotional responses endorsed by the Simple View.[20]

One cognitive element underlying rational moral emotions is a supposition that the person to whom they are directed knew better — that she had available to her reasons that endorsed the claim. Once again we come to practical internalism: the moral emotions are sustained if their object had a sound (and not too difficult) deliberative route to the reason. If she did not have such a reason, and so as a rational moral agent she could not have done otherwise than she did, we can hardly blame her for it acting as she did. To be sure, a modality such as "could not have" can be interpreted in a variety of ways: she *could*, with enough indoctrination, be transformed into the sort of person who would do as we say. Or, to take Wall's example of one who is unable to see the truth because of a bad upbringing (W: Appendix, ¶3), we might say he could have seen the truth if he had a different history. But these understandings of the modality are too weak to sustain the reactive attitudes. To take a significant and not at all fanciful case: suppose one is a theist who holds that only those with grace can see the true moral law. Someone without grace thus will have what Wall calls a moral "blind spot" (W: Appendix, ¶3): she just cannot appreciate the force of the moral law, though she could have done so had she received grace. As Wall, I think, acknowledges, the rational reactive attitudes are undermined here: the person's practical reason does not endorse doing as we demand.

Those such as Wall who insist that we may advance *bona fide* moral demands on others that cannot be justified to them,[21] must either (*i*) accept the Simple View (which, in my view, makes the

morality of children and autistics the standard) by abandoning the tie between moral demands and practical rationality or (*ii*) accepts that their view creates a gap between judgments of wrongness and moral responses. But the latter is even less appealing than the former. There is an increasing body of empirical evidence that normal agents see the emotions and moral judgments as closely linked. The evidence indicates that merely social norms are seen as truly moral precisely when they become tied to emotional reactions.[22] Those who would break the tie between morality and emotional response are distancing themselves far from morality as most understand it.

The upshot of this, I believe, is that a commitment to seeing all as free and equal is implicit in a critical and impartial first-person view of our moral practices. *Pace* Wall, it is not enough to be guided by one's own conviction of moral truth when this is inaccessible to non-defective moral agents; one's own first-person view requires one to take account of the reasons of others. Now Wall advances a fundamental challenge. Since "no one literally can leave his own standpoint," in the end our own, first-personal, view of the reasons of others, is decisive. If it is "browbeating" to advance moral demands on others that cannot be justified to them, isn't it just another form of browbeating to insist that they really do have reasons to endorse one's demand even in the face of their disagreement? (W: §III, ¶11). And of course we must, in the end, advance moral claims that others resist. As I have stressed (§1.1), someone who advances a moral claim holds she has standing to instruct others what to do, and their judgment should conform to her demand — even when they disagree. So, if in the end you claim such an authority to override judgment, why worry about public justification?

The importance is the distinction between justified authority and authoritarianism: justified authority is not browbeating. One's own first-person point of view commits one to seeing others as free and equal, and so commits one to considering what reasons are accessible to them. One cannot satisfy the requirements of one's first-person view unless one understands the views of others. Of course, what constitutes an adequate understanding of the views of others itself is ultimately first-personal: *we must do our best to satisfy ourselves that we are treating all as free and equal and we grasp what their reasons are*. Having done that, the rational moral emotions, and so our rational moral life, can be sustained.

3. Presumptions in Favor of Liberty

Wall and Lister are highly critical of the presumption in favor of liberty; others have registered similar reservations.[23] Some of the objections and worries are, alas, due to misunderstandings that are my doing. In different contexts, depending on the subject of the essay, I have employed different versions of the presumption. In more recent writings focusing on the general nature of moral justification (e.g., MRM: 89-92), I have advanced a principle according to which all moral persons are free in the sense that any moral duties and obligations must be justified to them; in the absence of such duties each has a moral liberty to act on her own view of what she should do. No duty is the default in justification. In other writings on topics in moral and social philosophy, I have generally followed Stanley Benn's formulation of the principle as a substantive moral presumption against interference or impositions in general (e.g., *JL*; 162-168; *VJ*: 379-97; PAL: 274ff). In writings especially on politics (e.g., LN: 145; RRC: §2.1) I have focused on a subset of interferences — those backed by coercive threats — since states do not simply interfere with action, but do so in a way that, in my view, the liberal tradition has seen as especially worrying — to wit, through force and the threat of its use. These versions of the presumption are mutually reinforcing, but I think it will help clarify my differences with Wall and Lister to examine them separately.

3.1 The Justificatory Presumption in Favor of Hohfeldian Liberty

Recall our first-person commitment to treating each as free and equal. We have seen that justificatory liberalism views this not as a foundational external moral requirement but as a deep commitment of the moral practices in which we are enmeshed, and the value systems we have erected upon them (*VJ*: §17). Now to treat another as free and equal is, as Rawls says, to lay no claim to moral authority over him — except that which he himself (as a member of *P*) endorses. To return to a version of one of Wall's examples: Jill (qua member of *P*) believes that Jack (another member of *P*) has a duty to refrain from voluntary euthanasia. Jack, let us suppose, simply sees no-duty on this matter. He does not hold that he has a claim right (with a correlative duty on others) to engage in this activity, but simply that he has no duty to refrain. Now the deep dispute between justificatory liberalism and Wall and Lister is whether, given our commitment to treating others as

free and equal, Jack and Jill's claims are symmetric from the perspective of justification. Does Jack have the same justificatory burden to show that he is not under the duty as Jill has to show that he is under it? It is hard to see how this could be. Fundamental to seeing others as free and equal is to refrain from asserting moral authority over them without justification. But only Jill is asserting any claim to moral authority. To see their justificatory burdens as on par is to say that Jack is under an equal burden to show Jill that her claim to authority over him is ungrounded as she is to show him that it is well-grounded. Although this may be consistent with a sort of moral equality between them (anyone's claims to moral authority over anyone else is *prima facie* valid), it is not consistent with seeing Jack as morally free, for he is hostage to everyone's reasonable beliefs that they have moral authority over him, even when their authority is not justified from his point of view.

From the perspective of moral justification, the default position must be that one is not under the moral authority of another. Suppose Jill goes ahead and holds that her claim is a valid moral requirement such that Jack is under an obligation not to engage in, or assist in, voluntary euthanasia. To be sure, she may go ahead judge that in her view "Jack does wrong" but, because she has failed to justify her demand she does not address Jack's practical reasoning and the rational reactive attitudes are undermined. She cannot say that (qua member of *P*) he knows better and so has reason to do as she demands, and so guilt on his part (for assisting or attempting — it is hard to see how guilt could be appropriate for a successful violation on his own part), would be inappropriate. As would blame, resentment and indignation. But as I have stressed, these are fundamental to people's conceptions of a moral norm or moral rule, as opposed to a merely personal conviction about what other must do. Jill, in effect, has a personal norm that condemns this activity (based, say, on her religious convictions or personal insight into what she believes is the realm of moral truth — in both cases, these are realms that other members of *P* do not have access to) but it is unable to perform the job of moral norms and claims in our actual social-moral practices.[24] On the other hand, Jack makes no moral claims on her; his non-claim is entirely consistent with the failure to justify. And that is why there is indeed a deep asymmetry between their normative positions.

Wall objects to this view of morality. Drawing on Samuel Scheffler's work, he argues that "morality is pervasive" (W: §II, ¶6).[25] To say that morality is "pervasive" can either be a sort of

metaphysical thesis about the nature of morality (i.e., on the correct view of morality, it is the sort of thing that applies to each and every human action) or a thesis about the pervasiveness of one's moral authority over another. As I have been at pains to point out, justificatory liberalism is only concerned with the latter. Like so much else, whether morality is pervasive (in the metaphysical sense) is one of the things about which members of the realm of ends disagree. Given that Wall invokes his symmetry thesis here (W: §§II, ¶11-12), I believe that he is endorsing the pervasiveness of moral authority of one person over another: he holds that there is a standing requirement in all cases such that, in order to have a justified moral liberty (i.e., a no-duty) to act, you must have good reasons that show you have a moral permission to act on your own (non moral) ends.[26] If you do not have such reasons, you cannot authoritatively claim to have a no-duty, and so you have not established a claim to a liberty. Others may not be able to show that you have a duty, but according to his symmetry thesis, this does not let you off the moral hook: it just shows that the moral issue is unresolved. Now to reject this version of the "pervasiveness of morality" is just to reject the pervasiveness of others' authority over me to instruct me what morality requires. If I thought I had a moral obligation in this matter, then as a member of *P* I would acknowledge those reasons; even if the obligation could not be justified to others, I would still be apt to act on it as a personal norm (i.e., not part of social morality) that defines my own first-person understanding of decent action. In the difficult case on which justificatory liberalism focuses someone says to me that I must justify to her that I am not under a duty, where I can see no duty. And I ask, "whence did she receive this standing to so direct me?" Taking the role of sovereign she claims authority to grant me moral permissions over my actions: "apply to me, and I can grant you a permission to act as you see fit based on my view of morality." As a free and equal member of the public I must refuse to acknowledge her first-person aspirations to sovereign standing to so interpret morality and direct my actions. When no claims to interpersonal moral authority can be justified, then we are left with moral no-authority — moral liberty.

3.2 The Right to Natural Liberty

Suppose, though, that Jill is not concerned with showing that Jack has a moral duty to refrain from voluntary euthanasia; she simply seeks to stop him. She takes the view that she is merely

exercising her own Hofeldian moral liberty to stop him, which conflicts with his moral liberty to decide to pop off. Since no moral claims are being made, the presumption of liberty as it figures into moral justification is irrelevant.

In *Value and Justification* (381ff) I argued that a substantive, moral claim establishing a presumption in favor of liberty *is itself publicly justified*, or, as I said in *Justificatory Liberalism*, it is a publicly "victoriously" justified principle (162-66). All members of the public would endorse a right to "natural liberty," according to which (*i*) a person is under no standing obligation to justify his decisions about what he chooses to do but (*ii*) any action by another that seeks to stop or impede him from acting on his choices must to be backed by good reasons. Following my great friend Stanley Benn very closely here, I argued that this is a foundational principle of liberal morality.[27] "Foundational" not in the sense that it is simply assumed or seen as self-evident: like any moral claim, it must be publicly justified. It is foundational insofar as it states a general default moral principle that sets the stage for further justificatory discourse. If we accept the right to natural liberty, then Jack has a moral claim-right on Jill to mind her own business unless she has a good reason that shows that she has standing to interfere with his choice because his action is of moral concern. That is, she is to refrain from impeding his chosen course unless she has good reason to make his action her business. If I seek to stop someone from acting as she chooses, I must have some good reason for doing so. And, as I have argued, in justificatory liberalism good reasons that override moral claims are those that would be endorsed by all members of the realm of ends.

I shall not attempt to provide the public justification of the right to natural liberty here; the case involves defenses of the following claims. (*i*) To be a self-directed agent is to understand one's own deliberations as naturally tied to one's own action in a way that other people's deliberations about what one should do are not. Self-directed agents cannot help but think there is a crucial asymmetry between the status of what others think I should do, and what I think I should do (LN: 150ff). As I argued in *Value and Justification* (388ff) the view that my decisions about what I should do have no special relation to what I should do indicates a profound psychological disassociation of self from activity that is characteristic of the schizoid personality. This understanding of what it means to be a person has been implicit in a wide variety of cultures, but has become the salient feature of the

individualized persons that have arisen in Western Civilization since the late Middle Ages.[28] (*ii*) Given this deep psychological fact about our self-understanding of our own agency, if one views oneself and others as free and equal moral persons — and so one is committed to the moral life and the making of moral claims (and so, one is not, say, a psychopath) — we experience resentment and indignation when others fail to respect this basic aspect of our agency by supplanting our choices about what we should do with their choices *for no good reason* (remember, the right to natural liberty simply requires that one who supplants our choice has good reason for doing so). I do not claim that all humans must claim the right to natural liberty: indeed, I explicitly considered the sorts of views of agency and the social world where such a claim is not part of one's first-person perspective (*VJ*: 383-86). But the moral psychologies underlying these views are very different from *our* conception of what it means to be an agent in moral relations with others. (*iii*) So the basic idea is that the sentiment, "Of course she had no justification for stopping me from doing as I choose, but I see nothing morally untoward about that" is not sustainable given our conception of the moral status of our own agency. On the basis of this fundamental moralization of the claims of personal agency we have erected complex value structures, including notions of privacy (as Benn used to say, "that is none of your business" is a basic claim of agency), romantic love, and personal salvation.

To be sure, there have been modern totalitarian movements that have denied this basic moral claim: by claiming a total authority over all aspects of their citizens' lives they have denied the right to natural liberty. As does the Hobbesian sovereign, such states claim that the sphere of liberty is simply the area of life in which the state has not yet chosen to command. And we have witnessed the totalitarian ethic of act utilitarianism, which makes the even more outrageous claim that for every act of every person throughout her entire life she is under a moral obligation to perform that specific act which best maximizes social utility. She should perform the act that the best judge of social utility selects, and if her deliberations have a special place, it is only because she can claim she has a better insight into what is that maximal action. It is, I think, no surprise that no one actually lives this way, or sees her deliberations in this light.

Wall is entirely correct that the right to natural liberty in no way entails that only acts, not omissions, must be justified (W: §II, ¶7). Suppose Betty does not act and Alf insists that she must

do so because she is under a duty to φ. If she does not act then she must justify herself or else she does wrong. She must rebut the charge of wrongdoing. All this is entirely consistent with the right to natural liberty, since Alf is claiming that Betty is under a moral duty to act, and so the onus is on her to justify inaction. But, of course, this supposes that a justified moral duty is in play. The right to natural liberty maintains that if no justified moral requirement is in play, there is no obligation for an agent to justify to others when she acts as she chooses. There must be something about her act or her absence of action — e.g., that it violated a justified moral duty — that sets the stage for a justificatory demand. As Benn says, "justifications and excuses presume at least prima facie fault, a charge to be rebutted."[29]

3.3 Political Liberty: The Presumption against Coercion

Like Mill, I have been worried about "authoritative" interferences of government that "extend to controlling the free agency of individuals." In such cases government interdicts "all persons from doing certain things; or from doing them without its authorization; or may prescribe to them certain things to be done, or a certain manner of doing things which it is left optional with them to do or to abstain from."[30] The Political Liberty Principle applies to such authoritative interventions (I leave aside here whether non-authoritative interventions are a significant category). The liberal tradition in politics has presumed that such interventions must be backed by good reasons: that is, they must be justified. Mill certainly thought so,[31] as did Joel Feinberg.[32] And so did Rawls, who endorsed "a general presumption against imposing legal and other restrictions on conduct without sufficient reason."[33] Although Rawls held that we have justified rights to basic liberties, on his view "liberties not counted as basic are satisfactorily allowed for by the general presumption against legal interference."[34] I stress this not to invoke the authority of Mill, Feinberg and Rawls, but to underline that Wall's, and especially Lister's, critique is not directed at a distinctive claim of justificatory liberalism, but at a long-standing commitment of liberals as different as Mill and Rawls. Their worry is about a whole tradition of liberal thought. Because of that I doubt I can allay it here.

On my account, the Political Liberty Principle is a special and compelling case of the Right to Natural Liberty as applied to the actions of the state. And so, like the right to Natural Liberty, it is

itself a publicly justified moral claim that certain things may not be done unless they can be supported by the requisite type of good reasons. Because one can interfere, intervene or impose on another without using force or threatening to,[35] the Right to Natural Liberty casts it net wider. The idea behind the Political Liberty Principle is that authoritative government intervention is especially worrying because, not only does it constitute an interference, but interferes by threatening harm to citizens. The law threatens to set back your financial interests or your fundamental interests in being able to move at will. It is always a matter of concern when one party harms, or threatens to harm, another. That party, even if it is the state, must justify threatening to harm, and actually harming, others (*VJ*: 420-423; *SP*: chap. 8).

Lister raises a variety of questions and objections concerning this principle in particular, and the idea of coercion in general. Many of these issues involve the concept of coercion, and the extent to which it is "moralized." These are deep and complex matters, which I seek to (somewhat) clarify in a recent essay.[36] For now, let me address two of the important points he raises. First, Lister complains that according to this principle "State action must be publicly justifiable; state inaction need not be." He continues:

> If such a principle is intended to be a moral principle, rather than an institutional rule to be assessed by its consequences, it is implausible. It is certainly conceivable that a government could fail to act where there are good public reasons for acting….Yet *if our only principle* is that government must not act if it lacks a suitably public justification, we have no legitimate complaint, in this case, as the government has not acted, and so does not run afoul of the principle (L: §4.2, ¶¶1-2; emphasis added).

Now Lister is entirely correct that "state action *must* be publicly justifiable; state inaction *need* not be." Consider the following case: there is no publicly justified case for legislation *L*, nor is there a publicly justified case (apart from the Political Liberty Principle) not to legislate *L*. Suppose half the citizens (considered as members of *P*) endorse *L* while the other half reject it. There is no public justification for either course; the point of the Principle of Political Liberty is that in this case *L* cannot be imposed. Lister complains that this is implausible: if this is "our only principle" then we will be committed to the idea that we never have a complaint when the government fails to act. But of course it can wrongfully fail to act, so the principle is, Lister thinks, implausible. I do not wish

to be argumentative, but I find this an odd interpretation of my work. As he himself notes (L: §4.2, ¶1), the principle sets out only a condition for the justifiability of government *action*; it by no means purports to present necessary and sufficient conditions of just government. The claim that it is the "only principle" of just government would be, as he suggests, absurd; I have in various places argued for the public justification of a number of principles of social morality and justice (e.g., *SP*: Part II; MRM). Once principles of justice have been justified and the state has a positive duty to act — I have employed a version of contractualism to do so (*VJ*: chaps. 7-9) — then of course it typically will be an injustice for the state not to act. If the state has an obligation of justice to protect property, to provide for basic welfare, or ensure that everyone benefits from the fruits of social cooperation, then inaction will be wrong in a wide range of cases. To be sure, if the state fails to act on these obligations it will not violate the Political Liberty Principle — but there is no reason to think that one principle accounts for all injustice.

Lister's second point is probing (L: §4.1ff). My essay on "Liberal Neutrality" offered a specification of the Political Liberty Principle employing the term "*prima facie*" — it is, I claimed, *prima facie* wrong to coerce another, although the use of coercion can be morally justified. Drawing on Susan Hurley's work, Lister considers two interpretations of this claim. (*i*) "*Prima facie*" might mean literally "on the face of it" so that coercion may, on first look, appear wrong, but once we justify it we see it was not really wrong at all. (*ii*) It might also mean something like "coercion is *pro tanto* wrong" — coercion always has a wrong-making feature, though this, as Lister puts it, "may not be determinative." I hope it won't cause too much confusion to translate his point into the language I employed in *Justificatory Liberalism* (66-70). The Political Liberty Principle states a moral reason (R) to believe that coercion is wrong (β_{wc}). A successful justification of coercion must provide another, defeater, reason R_D such that β_{wc} is no longer a justified belief. Now there are two sorts of defeater reasons. A *rebutting* defeater does not undermine one's acceptance of R or the soundness of the inference from R to β_{wc}, but defeats β_{wc} by providing a "stronger reason" R_D that justifies not-β_{wc}. In contrast, R_D is an *undermining* defeater if holding R_D undermines either the justification of R and/or the inference from R to β_{wc} such one no longer has that reason to believe that coercion is wrong, or, we might say, one no longer has that moral reason not to coerce. Lister's

query, I take it, is whether successful justifications serve as rebutting defeaters or undermining defeaters to the moral reason to refrain from coercing specified by the Political Liberty Principle.

I doubt whether there is a uniform answer to this question. In cases of successful paternalist justifications, for example, at least part of the set of reasons not to coerce may be undermined. If (*i*) a reason not to coerce is that it constitutes a violation of the Right to Natural Liberty and so undermines free agency, and (*ii*) the point of the paternalist intervention is, say, to protect the person against choices that undermine her ability to deliberate and choose, then (*iii*) it would seem that this reason not to interfere may well be undermined. I would not, though, generalize this analysis to all cases of justifiable coercion. Lister, I think, does:

> If we adopted Gaus' view, we would have to be prepared to say that laws against murder, assault, and rape are only justified because the standing presumption against coercion is successfully rebutted. Yet our belief that such laws are legitimate does not seem to be based on an "on balance" judgment. We do not weigh the benefit of being safe from murder and rape against the cost of losing one's freedom to murder and rape; we do not count frustrated desires to murder and rape as having any value….

So, Lister concludes, "coercion is not itself bad." I think things are rather more complex than this would suggest. Take Lister's own example of a law against murder. And take an easy case: where someone has been rightfully convicted for murder and is about to be sentenced and punished. To be sure, we do not think that a cost of punishing this person lies in her frustrated desire to murder — after all, we haven't succeeded at frustrating her desire to murder if we are at the point of punishing her. (We may think that, where a person has successfully been deterred from murder by a threat there is a cost of impinging agency — it would have been better if she had freely exercised her agency to do the right thing — but I shall not insist on that. In a case such as this I think it is at least reasonable to conclude that the reason not to coerce has been undermined.) As I have stressed, though, more is at stake in the state's use of coercive powers. When the state inflicts punishment on our convicted murderer it will be inflicting great harm on her. When English judges sentenced convicted murderers to death they donned a black sentence cap; the occasion was one of great solemnity. They were about to inflict great harm on her, and officially recognized that we all have a moral reason not to intentionally kill fellow citizens. If the reason not

to inflict death was really *undermined* — if justified coercion really was not "bad" at all — they would have no reason for any deep regret that they were about to sentence the murderer to death. It would not really harm her at all, at least not in any morally significant sense. This is why I have argued that it is implausible to think that harm is always wrongful (*VJ*: 420-23). The judges did see a genuine reason not to inflict a real harm on the murderer, but one that the dictates of justice overrode. And I take it that the point has nothing to do with the death penalty: taking away a person's freedom of movement for twenty years, her ability to decide what she will do, and when and how she will do it, is to inflict grievous harms on her. To say that we have *no reason* to refrain from doing this to guilty people — that we have no reason to refrain from inflicting all this harm and suffering — strikes me as manifestly erroneous. Draco (who, we are told, codified the first set of law for Athens) is said to have insisted that even the smallest infractions such as stealing an apple should be punished by death. Draconian laws go so wrong because they fail to see any moral reason to refrain from harming the guilty, and so inflict excess punishment. Having no moral reasons to weigh against punishing, any punishment seems justifiable.

When the state legislates against a type of activity it does not simply use its coercion to stop us from doing that sort of act (this is why I think the Political Liberty Principle is much higher barrier than the Right to Natural Liberty). It makes a general threat against all citizens that, should they engage in that activity they will be harmed, often severely. To say that this is "*pro tanto* wrong" seems odd if we take this to imply that there is always something wrong in justified state action. On the other hand, to say that the state always has a moral reason not to threaten its citizens with such harm, and even a moral reason not to inflict it when they do violate the law, strikes me as clearly correct, and an important feature of a just and humane state.

4. Conclusive Justification, the Eligible Set, and "The Aggregation Problem"

4.1 Conclusive Justification

Lister rightly notes that my account of justificatory liberalism holds that, to justify a coercive law, there must be a conclusive reason for all (qua members of *P*) to endorse the law. It is not enough that there be merely a plausible reason to coerce. Let me first explain the motivation of this requirement, and then turn to some of Lister's worries.

Lister asks "Is conclusive justification just a criterion for one to have the right to coerce/ support coercion, or is it also a criterion for having an obligation to obey?" (L: §3.3 ¶7). Let us begin with the stronger claim by the state (see *JL:* 184-91) that is has morally justified authority over citizens such that they have a moral obligation to obey. If there really is a moral obligation to obey, one has an overriding reason to do as the state instructs. Moral reasons are not simply *a* reason to act; they instruct the person to set aside her values and aims and do the right thing. They are overriding (*VJ*: 269-75). The claim that citizens have a moral obligation to obey the law is, then, that on the basis of social morality (apart from coercion) they have an overriding reason to do as the law demands. Now manifestly this can only be so if each member of the realm of ends would not simply see *a* reason to do as the state instructs (one that might be overridden by their personal aims and concerns) but a conclusive reason to do so. Social morality aims at conclusive reasons to act: that, indeed, is its point and why it constitutes a system of demands, not of advice. Of course, in addition to justifying the moral obligation to do as the state instructs, the threats of harm that accompany the law must also be justified. The barrier is high.

So perhaps we should forget about an authoritative law that imposes moral obligations, and rest content with a legitimate law that simply claims to non-wrongfully exercise force against citizens without claiming any obligation on their part to obey. The justificatory burden is certainly lower: rather than justifying a moral duty of citizens to obey, the state "merely" claims a liberty to threaten and employ force against them. Of course "merely" is misleading: the Political Liberty Principle still holds that such coercion requires justification. Now, we may ask, does a state that "merely" seeks non-wrongful use of force have only a lesser justificatory burden to bear (since it does not seek to justify moral obligations), or should we also hold it to a lower standard of justification? Lister, siding with Rawls and Nagel, thinks a lower standard is appropriate: it is enough if a member of the public can see that the state has a reason or set of reasons, but not necessarily a conclusive one, that justifies her accepting the coercion. But this cannot be sufficient, for unless the reason is conclusive a member of *P* does not have reason to endorse the coercion, so it is not justified. Our concern is justification among members of the realm of ends: to say that the public justification for a coercive law is conclusive is, at a minimum (see §4.2), to say that each member of the realm of ends, drawing on her evaluative standards, has all things considered

reason to rank living under the law's coercion as better than having no coercive law at all on this matter. Suppose that Betty, as a member of the public, accepts some reasons for the law: after all, she acknowledges that other members of public endorse it, so it is by no means a crazy law. Nevertheless, on the basis of her evaluative standards she judges the law to be worse than no law at all. If so, the belief that the law and its coercion are justified is rebutted in her evaluative system: given her evaluative standards the law is worse than no law, and so she cannot believe that its coercion is justified. But the Political Liberty Principle requires that the coercion must be justified. A successful justification must not be rebutted.

4.2 The Optimal Eligible Set (The "Escape Clause")

Given (*i*) that justification (among members of *P*) must be conclusive and (*ii*) members of the public disagree about the basis for their evaluation of laws, they are unlikely to concur on a proposal — one that is not rebutted in some member of *P*'s set of beliefs and values. I model this as them disagreeing in their rankings of proposals (MRM). No specific proposal is apt to be conclusively justified in a straightforward way. Instead there is a set of proposals that different members of the public see as justified from their own point of view. Is there any way for them to agree to reduce the set? Members of *P* would unanimously agree to apply the Pareto Principle: if in every member of *P*'s ordering L_X is ranked higher than L_Y, all would agree that L_X is better than L_Y. Being strictly dominated by L_X, L_Y can be eliminated from the set of options to be considered. Once all such dominated proposals are eliminated the members of the public would be left with an *optimal set* of proposals. Can they eliminate any other proposals? In the eyes of each member of *P*, some of the remaining proposals may be marginally worse than her favored law; others she may find highly objectionable. But how objectionable is too objectionable? Assume for now that the aim is to justify an authoritative law that imposes a moral obligation to obey. All members of *P* accept the three presumptions in favor of liberty, so they believe that liberty is the norm unless duty, interference and coercion can be justified. What this means, then, is that in evaluating *L* in terms of her evaluative standards, a person will find a proposal unacceptable if *L* is worse than its absence — a condition of no-duty to obey *L*, and no-coercion based on *L*. For a law to be acceptable to a member of the public, it must be a net improvement on our three liberties. Consulting her own

values and evaluative standards, each must hold that *L* is an improvement on not-*L*. If a condition of liberty — not *L* — would be better given her evaluative standards, she has no reason to accept *L*. Self-legislating *L* would be manifestly irrational: it would create net loss to her evaluative standards.

We thus arrive at an *optimal eligible set*: each member of *P* holds that, in her view, (*i*) that every option is conclusively justified over any eligible option that is not in the optimal set and (*ii*) every option in the set is, conclusively, better than non-legislation. However, there is no conclusive public justification for one member of the optimal eligible set over any other. While I do not want to minimize the problem of selecting one member from the set, I have argued elsewhere that certain formal (*JL*: Part 3) and informal (MRM) procedures may justifiably do the job. Lister, as I read him, objects not to the idea that there are acceptable selection procedures, but to my depiction of the eligible set.

We now are in a better position to see what is meant by the idea of conclusive justification. There are three different ways in which conclusive justification enters into the account:

(i) Simple Conclusive Justification: *L* is so justified if and only if for all members of the public *L* is ranked as superior to all other alternatives. That is to say, each member of the public (the realm of ends) sees it as the option she has most reason to endorse.

(ii) Conclusive Justification as Eligible: *L* is so justified if and only if for all members of the public *L* is ranked as superior to no authoritative law on this matter.

(iii) Procedurally Conclusively Justified: *L* is so justified if and only if (*a*) it is a member of the optimal eligible set and (*b*) has been selected by a conclusively justified selection procedure.

To simplify: my claim that all coercive laws must be justified amounts to the claim that they must ultimately be justified in senses (*i*) or (*iii*).[37] It is important that, on my account, our political life is a debate about inconclusively justified proposals — matters about which we reasonably disagree.
 In politics we aim at "conclusive justification" only in sense (*iii*). My defense of the principle of neutrality is, in essence, a defense of the idea that a politics among free and equal persons must be restricted to disagreements about choosing from the eligible set. Any law in that set is endorsed by the evaluative standards of every member of the public. In contrast, legislation outside the eligible set is only endorsed by the evaluative standards of some members of the public — in traditional

terms, it is based on controversial conceptions of the good. Such legislation is decisively rebutted by the evaluative standards of some members of the public. Its imposition is unjust.

4.3 The "Aggregation" Problem

Lister focuses much of his paper on an important problem. As presented, my account seems extraordinarily sensitive to the level at which we describe the justificatory problem. If we cast the problem in a very sweeping way (or, using Lister's nice term, we "zoom" out) then almost anything could be justified. Recall Hobbes's argument. Suppose we accept that the justificatory problem is whether to have a state or live in a state of war. If that is really how we characterize our problem, a Hobbesian will press that any state will be preferred by all members of the public to such an anarchy. So the argument for selection from the optimal eligible set could justify almost every conceivable state so long as it provides order and peace. What state wouldn't we rank as superior to a war of all against all? Justificatory liberalism may end up accepting an authoritarian state. On the other hand, if we "zoom-in" on very narrow issues, we will find that the doctrine is much more libertarian, since we get down to fine-grained issues, some members of the public will think that all fined-grained, specific, legislation (say, laws regulating pornography) is unnecessary and so rank all proposals as inferior to no legislation. Consequently they will place all proposals outside the eligible set, shrinking the eligible set to null.

The question is this: what is the issue over which we deliberate? One thing, I think, is clear: justificatory liberalism must avoid arbitrarily bundling separate issues. We seek a resolution of our justificatory disputes, not a grab-bag of different disputes. Intuitively, a bundle of issues is arbitrary if members of the public's evaluation of one set does not significantly affect their judgments about the other. If my decision about which wine I will have with dinner tonight is independent of which shirt I will wear tomorrow, it is arbitrary in a straightforward sense to link these together as one decision. The important question for our purposes is whether my evaluative standards are such that my decision about acceptable α options is dependent on my β decisions about eligible options. More formally, we can say, letting A and B be two issues; and $\{\alpha_1 \ldots \alpha_n\}$ being the set of proposals regarding A, and $\{\beta_1 \ldots \beta_n\}$ the set of proposals regarding B:

def. Independence: Issue A is independent from B if and only if no member of the public *P* has evaluative standards such that her identification of the eligible elements of $\{\alpha_1 \ldots \alpha_n\}$ depends on her decision of the eligible elements of $\{\beta_1 \ldots \beta_n\}$. A and B are fully independent if they are independent from each other.

Notice that the definition of independence appeals to a member of the public's evaluative standards. Any version of justificatory liberalism will have something to say about admissible evaluative standards; there will be some basis for moral evaluations that a plausible justificatory liberalism must deem unacceptable. For example Alf may have only strategic reasons for bundling α_i and β_i, thinking that there will be no action at all on the A issue unless he manages to link it to the B question. This would be a purely strategic reason for linking the justificatory questions, and I take it that such purely strategic reasoning will be ruled out in any plausible understanding of what legislation all members of the public have reason to accept.

The ideal is to partition political issues into the smallest sets that are fully independent of each other — or, at least that approximate such independence. The upshot of this, of course, is that justificatory liberalism is sensitive to the underlying theory of justification (a view that I have insisted upon in opposition to "political" interpretations). Holistic accounts of justification incline towards "zooming out" since the holist thinks very few evaluations are independent of the rest of our judgments. As I argued in *Justificatory Liberalism*, such holism is cognitively impossible: we simply do have the cognitive resources to consider all the inferential relations among all our beliefs and values. A cognitively plausible account of justification must focus on the local justification of fairly narrow sets of issues. This is not to say that the correct level of justification is necessarily individual pieces of legislation: surely the justification of some laws is clearly tightly bound up others. Rawls's early idea of a "practice" may be useful here: we often do well to focus on sets of laws that are closely interconnected with each other yet are relatively separable from other areas of social life.

Perhaps the most important reason why reasonable members of the public will reject holist specifications of of justification is the aim of *justificatory stability*. If justification is holistic in the sense that the eligible set on any issue *i* depends on the contours of the eligible set on every other

issue, if people's reflective views on any issue changes, the eligible set on all other issues will change. An evaluative change in any area would apt to produce universal instability in the entire system of laws. Changes in, say, people's views of acceptable laws about adultery would not simply undermine those laws, and perhaps closely linked laws concerning the family and divorce: they would reverberate throughout the entire system of laws. Reasonable members of the public know that such changes are inevitable, and must be managed; the great good of having a reasonably stable justified system itself gives them strong reason to avoid holistic approaches to justification.

No theory of political justification will provide an algorithm for determining precisely what our disagreements are about and to what extent they are independent of each other. Lister makes much of the fact that actual citizens will disagree about what the relevant issues are. No doubt. The aim of political philosophy is not to provide a mechanical decision procedure that somehow will end our disputes (that is an illusion) but a normative basis that we can appeal to in justifying our moral claims. Think of Mill's harm principle. Some hold that Mill's harm principle is inadequate because we disagree about what constitutes harm, as if a successful theory of political morality will simply read what we should do off its pages. What is important about Mill's principle is that it provides a normative perspective from which we can debate about the reasons that are offered — are you making out a compelling case that this is a harm to another? (*SP*: 106-13). So too with justificatory liberalism: that a political process is engaging in logrolling and vote trading on independent issue is a cause for complaint (*JL*: 267-71). Of course there will be disputes about when this happens. Nevertheless, we have normative basis for the design of legislative institutions and for criticizing some sorts of outcomes.[38]

What constitutes an independent issue is itself part of our political life. One of the ways we come to a fuller understanding of our political disputes is through deliberating about the contours of our disagreements, when some issues can be detached from others, and when this is impossible. Although Lister is correct that there are important philosophical issues lurking here, we should not make so much of them that we lose sight of the fact that we do argue about the merits of specific laws. Sometimes this debate leads us to the justification of other laws, sometimes not. As I argued

in *Justificatory Liberalism* (270), the actual course of political debate in a political culture helps us converge on common understandings of just what the political issues of the day are.

5. Coercion and the "Measurement Problem"

5.1 Why The Least Coercive Option is not Conclusively Justified

Lister argues that because justificatory liberalism should be committed to an "incremental version of the public justifiability principle" (L: §3.2, ¶2), it is committed to the idea that there such be "no excess coercion" (L: §3.2, ¶1), and so the least coercive option (in the eligible set) is conclusively justified. As I reconstruct the argument it runs something along the lines of:

(*i*) According to the Political Liberty Principle, it is the coerciveness of a law that triggers the demand for political justification.

(*ii*) Justificatory liberalism holds that justification must be conclusive.

(*iii*) Coerciveness comes in degrees.

(*iv*) The more coercive a law, the more justification is required.

(*v*) When considering two laws, L_1 and L_2, where L_1 is the less coercive alternative, L_2 is conclusively justified if and only if the additional coercion of L_2 is conclusively justified over the coercion of L_1.

(*vi*) Supposing that Alf (qua member of P) ranks L_1 over L_2, L_2 is not conclusively justified over L_1. Alf does not see the additional coercion involved in L_2 as conclusively justified.

(*vii*) Therefore: since the additional increment of coercion involved in L_2 is not conclusively justified, justificatory liberalism must select L_1.

It might help to think about Lister's point in a different way. Alf and Betty are debating between two alternative laws. Alf favors L_1, which involves x level of coercion; Betty favors L_2, which involves $x+y$ coercion. Alf says to Betty: "I hold that L_1 is conclusively justified, but I disagree that the additional y coercion involved in L_2 is justified. So L_2 cannot be conclusively justified to me. On the other hand, if you think that $x+y$ degree of coercion is conclusively justified, you must think that x coercion is conclusively justified, and so you must agree that L_1 is conclusively justified. Thus L_1 but not L_2 is conclusively justified between us."

Let us assume for a moment that all members of the public agree on the ordering of options in terms of their coerciveness (in the end, I agree with Lister that this not a plausible assumption; see §5.2). Crucial to Lister's analysis is the idea that "conclusive public justification is required for each increment of coercion, *permitting democratic choice only between equally coercive policies unanimously reasonably preferred to less coercive policies*" (L: §3.2, ¶2, emphasis added). This would only be true if, once we identify a set of laws that is conclusively justified as eligible (sense *ii*, §4.2 above), the least coercive law immediately becomes conclusively justified in the simple sense (*i*, §4.2, above): the eligible set immediately shrinks to a singleton (supposing no proposals are exactly tied on the coercion measure). This shrinking does not occur. To see why, assume that L_1 and L_2 are both in the (optimal)[39] eligible set. They are conclusively justified in exactly the same sense even if L_2 involves more coercion. Consider. (*a*) Alf and Betty (qua members of the public) accept that both laws are conclusively better than no authoritative law, and so both hold that the levels of coercion involved in the laws are conclusively justified in that sense (i.e., *ii*, §4.2 above). (*b*) Neither law is conclusively justified in the simple sense (*i*, §4.2 above). Alf ranks L_2 with its additional coercion as worse than L_1; so L_2, Lister and I agree, is not conclusively justified in the simple sense. What about L_1, which Lister claims is conclusively justified? Betty ranks the lesser coercion of L_1 as inferior to the more coercive law L_2. She may, for example, think that L_1 is a horribly inefficient use of coercion. Like a vaccine, using too little coercion may fail to achieve adequate results; and by definition she thinks it does not achieve optimal results. Alf's crucial claim — *that his less coercive alternative is conclusively justified in the simple sense to Betty* — is false because she believes that the real benefits of coercion only set in when higher levels are reached. Recall his claim: "if you think that $x+y$ degree of coercion is the best option (and so you would see it as conclusively justified), you must think that x coercion is conclusively justified, and so you must agree that L_1 is conclusively justified." With good reason she dissents. Whether any degree of coercion is conclusively justified must depend not only on reasons against it, but the reasons for it. Their justificatory dispute is not simply about costs, but how much good is done by different amounts of coercion. Alf cannot claim that his lesser amount of coercion is conclusively justified (in the simple sense) to her without reference to how much good it does. It is surely an unacceptable conception of justification according to which Alf can justify a proposal merely by showing that it has low

costs without having to concern himself with its benefits. "I cannot show you what good it does, but we agree it does not cost much" cannot be a decisive argument for a proposal.

A slightly more formal analysis may help bring out the point. Recall that I have modeled members of the public as ranking all proposals; this yields for each an ordinal utility function. It is absolutely crucial to keep in mind that the idea of a "utility function" is simply a mathematical representation of a member of *P*'s views about the choice worthiness of a proposal based solely on her reasonable evaluative standards. This point is of the first importance: utility is not an independent goal, much less self-interest, but a mathematical representation of an ordering of the choice worthiness of outcomes.[40] What we are seeking to model is each person's reasons for endorsing a proposal. It will help to translate each person's ordinal ranking of the alternatives (based on her set of evaluative standards) into a cardinal function.[41] Because our interest is in the way that the costs of degrees of coercion figures into the deliberations of members of *P*, let us separate out the evaluation of the degree of coercion and its costs from each member of *P*'s utility function. For each person we then have (α) her evaluation of all the costs and benefits of the law (based, as always on her evaluative standards) except for (β) her evaluation of the coercive costs of the proposal. Suppose for a moment that members of *P* agree about the coerciveness of a proposal and, indeed costs associated with coercion. Call (α) the member of the public's *pro tanto evaluation of the law* (1=best law, 0=a law that is not better than no law at all) and (β) his or her estimate of *the coercion costs of the law*.
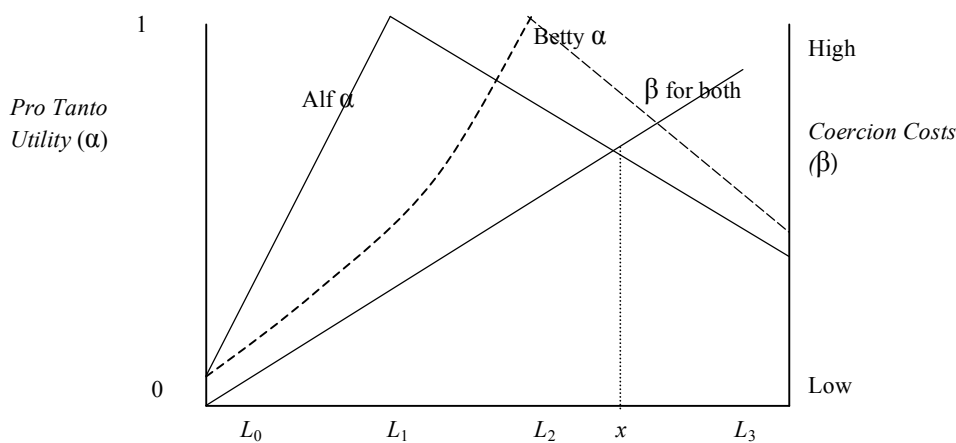
Display 1: Two Utility Functions, Each Split Into Two Parts (α & β)

<<Display 1 about here>>

In Display 1, Alf holds that the optimal amount of coercion is at L_1. Now from the peak of his utility curve until point x, he holds that for each additional unit of "law," the benefits decrease and the coercion costs increase. Alf judges that the total benefits exceed the total costs of coercion for all options until point x, where the benefits of coercion equal the costs (x thus defines the boundary of the eligible set; we see that by definition, for all options in the set it is conclusively justified that their benefits exceed their costs.) Betty holds that the benefits of coercion modestly exceed the costs at L_1, but much more net good is done at L_2. Now the dispute between Lister and me is whether Alf can claim that all proposals to the right of his peak cannot be justified to him since for every such proposal, the benefits are decreasing as the coercion is increasing, and so there is an "excess" of coercion. I acknowledge that from L_1 to L_2, in Alf's view the marginal costs of coercion exceed the marginal benefits; coercion is in "excess" in the sense that it is not the optimal amount for Alf, and if he was the sole chooser he would stop at L_1. That much must be part of the model, and I am grateful to Lister for making me aware of it: a person's ideal point must be at the place where in his estimation the marginal costs equal the marginal benefits of a law. But the whole point is that he and Betty disagree about optimality; the possibility for mutual acceptability arises because they have reason to endorse non-optimal proposals on both sides of their ideal points. On my view what Alf has reason to endorse, and what is optimal for him to endorse, are not equivalent. Alf has reason to accept L_2 because the coercion costs are less than the benefits of the law, so as I understand it there is no "excess" of coercion until point x, for it is only at that point that Alf's reasons against the proposal are more weighty that his reasons for it. Alf cannot claim to Betty than he has (in the simple sense) conclusively justified L_1 to her; indeed, on her view L_1 has small positive benefits (Alf accepts that L_2 has significant positive benefits). Note also that Display 1 accepts Lister's incremental version of the public justifiability principle, viz., that greater amounts of coercion require greater justification, and each additional unit of coercion must be justified. The coercion cost curve rises fairly steeply, putting an additional justificatory burden on L_2. However, it remains in the eligible set, and is in that is conclusively justified.

5.2 Reasonable Disagreement about the Coerciveness of Laws

Of course the supposition that the members of the public agree on what is a more or less coercive law is too strong. As Lister rightly notes, this is one of the matters on which we reasonably disagree (L: §3.1, ¶1). We cannot suppose either that the degree of coerciveness of a law is simply an external fact that constrains justification, or that all members of the public concur on the ordering of laws in terms of their coerciveness. The concept of coercion — though it has paradigmatic core cases — is liable to reasonable disputes in many instances. No doubt, one of the reasons members of the public rank proposals differently is that they entertain different estimations of the coerciveness of a law. However, on my analysis nothing turns on what proposal in the eligible set is the least coercive, so disputes about this matter are not fundamental. As Display 2 show, we can model disagreement about the coerciveness of a law without affecting the results.

<<Display 2 about here>>
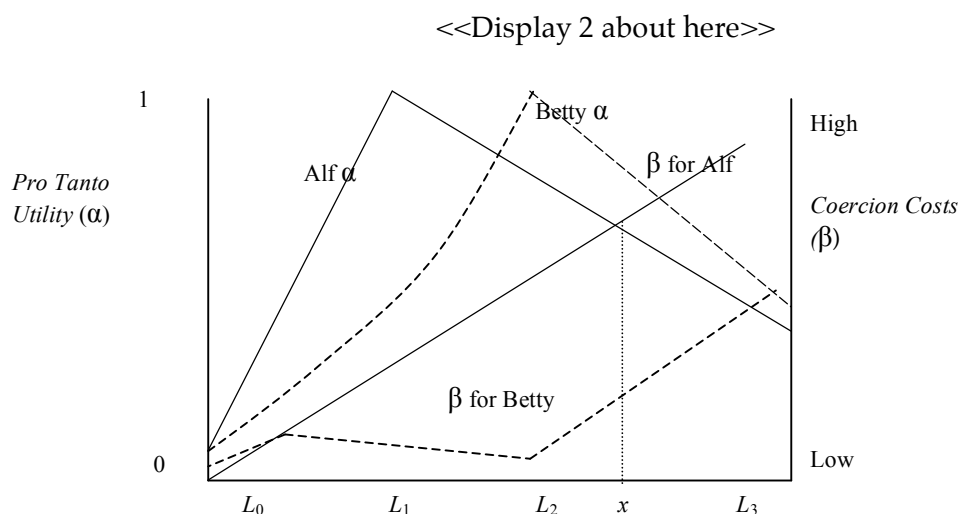
Display 2: Two Utility Functions, Disagreeing about the Coerciveness of Laws

In this case we can see that divergent judgments about the coerciveness of a law are one of the elements of reasonable disagreement among members of the public; Betty thinks that L_1 is more coercive than L_2, Alf disagrees. Note that in Display 2 this disagreement does not affect the boundary of the eligible set as I have characterized it. Again, what is important is the eligible set: all proposals within it possess precisely the same degree of public justification. Note here that if we accepted Lister's stringent definition of an "excess" of coercion, i.e., that coercion is in excess whenever for a person the marginal coercion costs of a unit exceed the marginal benefits, L_1 is in excess for Betty, L_2 is for Betty, and so there is no mutually acceptable outcome, even though for

both the benefits of coercion exceed the costs for both L_1 and L_2. We also can see that once we accept that costs of coercion need not be monotonic with its amount, and so marginal costs go up and down as we increase the amount of coercion, the appeal of the marginalist interpretation of "excess" in undermined.

5.3 The "Non-coercive Baseline"

Lister relies on the idea of an "inactive/non-coercive baseline." This is not a concept I have explicitly employed, and I am not clear precisely what Lister takes it to imply. I hope it is reasonably clear at this point what I take the "baseline" to be. *First*, every law that makes threats of force against citizens demands public justification. The Political Liberty Principle requires the justification of coercive acts by the state. *Second*, in defining the eligible set, each member of the public must evaluate whether, given her evaluative standards, endorsing, and living under, a law *L* is better than no law at all on this matter. Although Lister complains that conclusive justification of this judgment is too strong a requirement, others have complained that this is too weak a requirement: to be in the eligible set a law must be simply better (in the rankings of all members of *P*) than no law at all. (Perhaps, as in the story of Goldilocks and the Three Bears, this shows that I have got it "just right"?)

That is what the "baseline" is. Let me be clear what I do *not* claim:

• *That public justification starts off from a societal "zero-coercion" point*. Of course there is no such point. At any time in society there is great deal of private coercion (justified as well as unjustified) as well as state coercion.

• *That private coercion does not have to be justified*. The Right to Natural Liberty, and the harm of force and the threat of force, are principles of social morality that apply to all. My focus here is simply on the moral constraints that apply to state action.

• *That an additional law always increases the net amount of coercion in society*.[42] Of course not. The fundamental insight of the social contract theories of Hobbes, Locke and Kant was that "public lawful coercion" often reduces private unjustified coercion, making society overall less coercive and more just. This, though, does not show that public coercion need not be justified, but that a compelling justification is readily available. It follows from this that, of

course, "no state action" is surely not always a way to minimize overall coercion in society. The point of the Political Liberty Principle is that a just state must justify its threats against its citizens, not that threats against its citizens may not be an excellent way to reduce unjust coercion in society.

- *That an additional law always make the system of law more coercive.* One law can interact with others so that the state employs less net coercion after the additional law. Again, this is a justification of the additional law, not a way of showing that justification is unnecessary.

- *That "a state of affairs is presumptively legitimate provided it contains no unjustified coercion."*[43] The Political Liberty Principle is a requirement on justified state action, not the legitimacy of states of affairs. A state of affairs may be unjust in the sense that its description involves violations of principles of fairness endorsed by a publicly justified social morality. We can certainly conceive of a state of affairs in which there is no coercion at all, and yet there is such unfairness. Presumably, there is then a strong case for the state to introduce coercion into the world in order to enforce the duty of fairness. Again, all the Political Liberty Principle requires that if the state does so, its threats against the liberty and interests of its citizens must be publicly justified.

5. Conclusion

As Rawls and others have pointed out, the liberal tradition arose out of the confrontation of religious creeds in the sixteenth and seventeenth centuries. In England, for example, Catholics, Anglicans and Puritans confronted each other, each devoted to their own, deeply held, first-person convictions about the requirements of salvation and the moral and social order. Each insisted that they had access to the truth — the Supreme Truth — that was either denied to others, or which others failed to try sufficiently hard to grasp. Each held that they must be true to their convictions, and this required making religious, moral, and legal demands on dissenters. Conviction — of course, this was described as "true conviction" — that one possessed the truth *must* grant one the authority to regulate and coerce those who closed their hearts and minds to it, or were simply denied access to it. The liberal — as a liberal — took no sides on these disputes. He denied that

moral or political authority could be based on claims to a publicly inaccessible truth, and was especially outraged when threats of force were employed to make dissenters conform to the perceived truths of others. The liberal did not belittle these claims of personal insight; indeed, it is just because they are so important to so many that the liberal denied that any are obligated to live according to the perceived truths of others. At the time it was widely thought that this must lead to social chaos; people of commonsense knew that devout believers could not leave aside their convictions of truth in the social and political realms and conform to rules that all could accept. How could a good person *not* live her moral and political life according to her deepest convictions? The liberal, it was said, demands far too much civility from us — the liberal order is not in accordance with the nature of humans who live their life from within.

Chaos did not result, but resistance to the liberal demand continued. Just as early liberals insisted that we had good reasons to not to use moral and political authority to save the souls of our fellows — or even to save us from their corrupting influence — justificatory liberalism holds that we have such reasons to refrain from invoking authority and making threats to promote their flourishing, their perfection, or even to make others conform to our personal deep intuitions about what a moral and just society must be. The claims of first-person truth continue to be pressed as sources of moral and social authority, and the liberal is still criticized for his conviction that the fundamental fact of our moral and social life is that our perceived truths clash, and so we must endeavor to transcend our first-person truths in our moral and social relations with others. Of course Steve Wall is right: we can never really transcend our view of the world. But we can develop a decentered view of the social world in which we can respect, understand, and appeal to the perspectives of others, and refrain from making claims to moral or political authority on the basis of our own deep convictions — when rejected by other members of the realm of ends — about how those others should act.

If we come to decenter our view of the social world, and we genuinely take seriously that we are one among others and so we must appeal to the convictions of our fellows as free and equal moral persons when we claim authority over them, then we must be led to the conclusion against which Andrew Lister so strenuously argues: our justified claims to such authority will be more limited than many of us would like. Until very recently, this too was fundamental to the liberal

tradition: government is necessary and its functions diverse, but its justified authority is significantly limited. Today, alas, to claim this is to be labeled a "libertarian" with all the philosophical sins that is supposed to involve — one is even liable to excommunication from the High Church of Liberalism.[44] The point, though, is not about some abstruse theory of original appropriation or the economics of private protection agencies, but about whether justificatory liberals can be true to their commitment to ground their moral and political authority on the reason of all citizens while simultaneously pursuing extensive state activities that are reasonably rejected by many. Political liberals proclaim that they respect the reasonable concerns of all, and then proceed to specify what these are in ways that allow them to justify precisely the range of government activities they privately endorse. At best, this is remarkably fortuitous. Once we take seriously the perspectives of all, we must find that some of our cherished aspirations no longer ground the range of authority over others many of us would claim — claims that are advanced only to make our fellow citizens better people, and the world a better place. No wonder the liberal demand continues to rankle.

Notes

[1] In addition to enlightening interchanges with Steven Wall and Andrew Lister, I have greatly benefited from the careful comments of Peter Vallentyne and Kevin Vallier. My thanks to them, and all those who have heard me present these ideas, and who have pressed me to clarify and expand them.

[2] The following abbreviations are used in this paper: L: Andrew Lister, "Public Justification and the Limits of State Action," (this issue); W: Steven Wall, "On Justificatory Liberalism," (this issue); *JL*: Gerald Gaus, *Justificatory Liberalism* (New York: Oxford University Press, 1996); *VJ*: Gerald Gaus, *Value and Justification* (Cambridge: Cambridge University Press, 1990); Gerald Gaus, *Social Philosophy* (Armonk NY: M.E. Sharpe, 1999); PAL: "The Place of Autonomy in Liberalism" in *Autonomy and the Challenges to Liberalism*, edited by John Christman and Joel Anderson (Cambridge: Cambridge University Press, 2005): 272-306; LN: "Liberal Neutrality: A Radical and Compelling Principle" in *Perfectionism and Neutrality*, George Klosko and Steven Wall, eds. (Lanham, MD: Rowman & Littlefield, 2003): 137-165; MRM*: "*On Justifying the Moral Rights of the Moderns," *Social Philosophy & Policy*, vol. 25 (1), 2007: 84-119: RRC: Gerald Gaus and Kevin Vallier, "The Roles of Religious Conviction in a Publicly Justified Polity," *Philosophy & Social Criticism*, vol. 35 (January 2009): 51-76.

[3] See John Stuart Mill, *On Liberty* in *The Collected Works of John Stuart Mill*, J.M. Robson, ed. (Toronto: University of Toronto Press, 1977), vol. 18: chap. 1, ¶1.

[4] Stephen Darwall, *The Second-person Standpoint: Morality, Respect and Accountability* (Cambridge, MA: Harvard University Press, 2006), p. 4.

[5] Ibid., pp. 10-11, 76.

[6] John Rawls, "Justice as Fairness" in Samuel Freeman, ed., *John Rawls: Collected Papers* (Cambridge, MA: Harvard University Press, 1999), p. 55.

[7] Immanuel Kant, *Foundations of the Metaphysics of Morals*, Lewis White Beck (ed., trans.) (Indianapolis: Bobbs-Merrill, 1959), p. 52 [Akademie, 433-434].

[8] Kant, *Foundations of the Metaphysics of Morals*, pp. 51-52 [Akademie, 433-34].

[9] Rawls adds: "within the framework of free institutions of a constitutional regime." *Political Liberalism*, paperback edn. (New York: Columbia University Press, 1996), p. xviii.

[10] Justificatory liberalism also endorses a universalization principle involving judgment consistency. See *VJ*: 307

[11] Thomas Hobbes, *Leviathan*, Edwin Curley, ed., (Indianapolis: Hackett, 1994), p. 23 (chap. 5, ¶3).

[12] Ibid.

[13] Ibid., p. 23 (chap. 5, ¶3). See further David Gauthier, "Public Reason," *Social Philosophy & Policy*, vol. 12: 19-42 at p. 27. Compare E.W. Ewin, *Virtues and Rights: The Moral Philosophy of Thomas Hobbes* (Boulder, CO: Westview Press, 1991), chap. 2

[14] Bernard Williams, "Internal Reasons and the Obscurity of Blame," in his *Making Sense of Humanity and Other Philosophical Papers* (Cambridge: Cambridge University Press, 1993), pp. 35-36. See further *JL*, chap. 3. I should again stress that this internal reasons requirement is not a metaphysical thesis about what reason there are, but a doctrine about what reasons a person has access to.

[15] See Jonny Anomaly, "Internal Reasons and the Ought-Implies-Can Principle," *The Philosophical Forum*, vol. 39 (2008): 469-483.

[16] See Jesse J. Prinz and Shaun Nichols, "Moral Emotions" in J. Doris and S. Stich, eds., *Oxford Handbook of Moral Psychology* (Oxford: Oxford University Press, forthcoming); Jesse J. Prinz, *The Emotional Construction of Morals* (Oxford: Oxford University Press, 2007), chap. 2.

[17] Thus according to Alan Gibbard "what a person does is *morally wrong* if and only if is rational for him to feel guilty for doing it, and for others to resent him for doing it." *Wise Choices, Apt feelings* (Cambridge: Harvard University Press, 1990), p. 42. Emphasis in original.

[18] Shaun Nichols, *Sentimental Rules: On the Natural Foundations of Moral Judgments* (Oxford: Oxford University Press, 2004), pp. 87-92.

[19] Ibid., pp. 93-94.

[20] As I have put it following Piaget, the objective moral agent "decenters" (*VJ*: 198-203).

[21] See Steven Wall, *Liberalism, Perfectionism and Restraint* (Cambridge: Cambridge University Press, 1998), p. 118; Christopher Eberle, *Religious Convictions in Liberal Politics* (Cambridge: Cambridge University Press, 2002), p. 133.

[22] See Paul Rozin, "The Process of Moralization," *Psychological Science*, vol. 10 (May 1999): 218-221. Shaun Nichols reports a variety of findings on this point in "Emotions, Norms, and the Moralization of Fairness," forthcoming in this journal.

[23] See Jonathan Quong, "Three Disputes about Public Reason: Commentary on Gaus and Vallier" [www.publicreason.net/wp-content/PPPS/Fall2008/JQuong1.pdf]

[24] Recall that I am concerned with social morality, not all uses of moral terms. On the distinction between personal and social norms see Cristina Bicchieri, *The Grammar of Society* (Cambridge: Cambridge University Press, 2006), chap. 1. As Bicchieri notes, some moral norms can be understood as personal norms, but norms of interpersonal justice are social norms with social functions.

[25] Samuel Scheffler, *Human Morality* (Oxford: Oxford University Press, 1992), chap. 2.

[26] This is the view that Susan Wolff disputes and which Scheffler endorses. See her "Moral Saints," *Journal of Philosophy* vol. 79 (August 1982): 419-39, at p. 436.

[27] Stanley I. Benn, *A Theory of Freedom* (Cambridge: Cambridge University Press, 1988), p. 87.

[28] See John W. Chapman, "Toward a Theory of Human Nature and Dynamics," in *NOMOS VXIII: Human Nature in Politics*, J. Roland Pennock and John W. Chapman, eds. (New York: New York University Press, 1977): 292-319; Zevedei Barbu, *Problems of Historical Psychology* (London: Routledge, 1960).

[29] Benn, *A Theory of Freedom*, p. 87.

[30] John Stuart Mill, *Principles of Political Economy* in J.M. Robson, ed., *The Collected Works of John Stuart Mill* (Toronto: University of Toronto Press, 1977), vol. 3, Bk. V, Chap. IX, §1.

[31] "In practical matters, the burthen of proof is supposed to be with those who are against liberty; who contend for any restriction or prohibition, either any limitation of the general freedom of human action, or any disqualification or disparity of privilege affecting one person or kind of persons, as compared with others." Mill, *The Subjection of Women*, in *Collected Works*, vol. 21, chap. 1, ¶3.

[32] "Liberty should be the norm, coercion always needs some special justification." Joel Feinberg, *Harm to Others* (New York: Oxford University Press, 1984), p. 9.

[33] Rawls, *Justice as Fairness: A Restatement*, Erin Kelly, ed. (Cambridge, MA: Harvard University Press, 2001), p. 44.

[34] Ibid., p. 112. Many followers of Rawls ignore this principle, and wrongly insist that for Rawls the only reasons for leaving people free are stated in his first principle of justice.

[35] See, e.g., Benn, *A Theory of Freedom*, pp. 87ff; John Kleinig, *Paternalism* (Totowa, NJ: Rowman & Allanheld, 1983), pp. 5-14.

[36] "Coercion, Ownership, and the Redistributive State: Justificatory Liberalism's Classical Tilt," *Social Philosophy & Policy*, forthcoming.

[37] This is a simplification; in recent essays I have argued that informal evolutionary mechanisms may allow us to select from the eligible set even though those mechanism have not been justified. But that point is not at issue here.

[38] See further my *On Politics, Philosophy and Economics* (Belmont, CA: Wadsworth, 2008), pp. 191-202.

[39] Optimality is not important to what follows; I shall henceforth omit it.

[40] See *On Politics, Philosophy and Economics*, chap. 2.

[41] This is merely for purposes of exposition; a cardinal analysis is not required.

[42] Thomas Christiano wrongly thinks I am committed to this claim. See his *Constitution of Equality* (Oxford: Oxford University Press, 2008), p.

[43] Quong, "Three Disputes about Public Reason."

[44] See John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), p. 48; Samuel Freeman, "Illiberal Libertarians: Why Libertarianism Is Not a Liberal View," *Philosophy & Public Affairs*, vol. 30 (no. 2): 105-151.