

6-21-2012

A Defense of Public Justification

Simon Pickus
Macalester College

Follow this and additional works at: <http://digitalcommons.macalester.edu/phil>

Recommended Citation

Pickus, Simon (2011) "A Defense of Public Justification," *Macalester Journal of Philosophy*: Vol. 20: Iss. 1, Article 2.
Available at: <http://digitalcommons.macalester.edu/phil/vol20/iss1/2>

This Article is brought to you for free and open access by the Philosophy Department at DigitalCommons@Macalester College. It has been accepted for inclusion in Macalester Journal of Philosophy by an authorized administrator of DigitalCommons@Macalester College. For more information, please contact scholarpub@macalester.edu.

A DEFENSE OF PUBLIC JUSTIFICATION

Simon Pickus

Abstract Public justification is a concept presented by John Rawls as a way to legitimize political authority and to make fundamental political arguments. In essence, the principle holds that one should only present arguments that the opposition can reasonably accept, as opposed to appealing to a religious or political conception of the good. This paper seeks to present a cogent conception of the principle of public justification. The strengths of the principle will be explained, and the main critiques of the position will be examined and defended against. By this method, Rawls' conception of public justification can be shown to be a compelling and robust position.

Among the more pressing issues that have persisted throughout Western political and philosophical thought have been how political power can be rightly exercised, and how can political disputes between passionate parties be fairly resolved. Under what circumstances can the coercive power of the state be implemented in a way that is just and right? Bloodlines, military might, and religious mandates have all been appealed to as justification for political authority, but these are all answers monarchs and emperors have given to their already cowed populaces. Compelling answers to these questions presented by thinkers such as Hobbes, Locke, and Rousseau emerged in the form of reasonable consent of the governed as a legitimizing factor for

political authorities. In the 20th century, the widely-read political philosopher John Rawls best articulated the concept of public justification, a principle in which political authority can be considered legitimate only insofar as the reasons given for political action could be reasonably accepted by those who are governed. For this project, I will begin by giving a general overview of the position as conceived and presented by Rawls in his more recent works. I will follow this outline of public justification by explaining why this view is appealing and what problems within political thought it solves, or at least purports to solve. I will then present brief explanations of some of the more pressing objections to the theory, and will conclude with a refutation of these critiques.

The Idea of Public Justification

For Rawls, the principle of public justification is one that exists within what Rawls refers to as a well-ordered society. This means that, for him, any discussion of public justification presupposes a democratic society with a political culture that is pluralistic and has a commonly accepted conception of justice. In addition, Rawls notes that, “Accepting this conception does not presuppose accepting any particular comprehensive doctrine.”¹ To clarify, “comprehensive doctrine” is a Rawlsian term for a complete conception of the moral good and a thorough set of values. Although these are not by necessity comprehensive, what is important about them is that they comprise a set of values and a conception of the moral good. Some examples of comprehensive doctrines are religious beliefs and moral philosophical codes such

¹ John Rawls, *Justice as Fairness: A Restatement* (Cambridge: Harvard University Press, 2001), 26.

as utilitarianism. Here Rawls is emphasizing that the principle of public justification is distinct from any one conception of the good or set of moral values. It does not presuppose a religion or ethical code, and does not need to. As it is meant to function within a society that has a plurality of comprehensive doctrines that its citizens accept, public justification is compatible with all reasonable conceptions of the good.

It is important here to note the particular meaning of “reasonable” in this context, as it is a conceptually significant term. For Rawls, “...reasonable persons are ready to propose, or to acknowledge when proposed by others, the principles needed to specify what can be seen by all as fair terms of cooperation.”² By this Rawls means that to be reasonable is to act fairly and to seek cooperation and the resolution of disputes. A reasonable person will not enter into an agreement knowing that they will later violate that agreement, nor will they staunchly refuse any attempt at resolving a disagreement. Additionally, reasonable people will seek to end conflicts and live peaceably, even if doing so is not always in complete accord with their rational self-interests. Acting reasonably is, as Rawls sees it, distinct from acting rationally, although in no way does reasonableness preclude rationality. It is very possible, however, to act rationally and unreasonably at the same time. An example of this would be a person who enters a long-term agreement and immediately forsakes that agreement when they see a way to derive some advantage from it. Another way to conceptualize this distinction is in the context of rational self-interest. To act in accord with rational self-interest is always

² Rawls, *Justice as Fairness*, 7.

rational but not always reasonable. The example of the tragedy of commons demonstrates that rational self interest leads to what Rawls would call unreasonable behavior, because it does not indicate a desire for fair cooperation. Rawls' conception of the reasonable, I find, agrees in large part with commonly held intuitions of what it is to act reasonably.

The principle of public justification, once established in the Rawlsian political context, is the vehicle for those with political disagreements to discuss and resolve their disputes in ways that are reasonable and acceptable to all involved. As Rawls explains, this principle allows people and groups to "...justify to one another their political judgments: each cooperates, politically and socially, with the rest on terms all can endorse as just. This is the meaning of public justification."³ Here Rawls explains the very basic idea of the public justification principle.

People within a well-ordered society, or any developed democratic society as we would recognize today, will inevitably disagree with each other and their leaders on their political and social policy judgments. This alone is difficult to dispute. There are many reasons, even within a well-ordered society with a shared conception of justice, for these disagreements, such as what Rawls refers to as the plurality of comprehensive doctrines. He claims that, "...a diversity of conflicting and irreconcilable yet reasonable comprehensive doctrines will come about and persist... This fact about free societies is what I call the fact of reasonable pluralism."⁴ Once the aforementioned disputes arise, public justification acts as

³ Ibid, 27.

⁴ Ibid, 34.

a mechanism for their resolution. People and groups justify their political judgments by presenting arguments that their opponents can reasonably endorse as a means of making their views plausible within the worldviews of the other. Using public justification, they appeal not to their conception of the good, such as, for example, the principle of utility or the intrinsic value and dignity of a human being, but rather they appeal to political values and reasons they both share so as to cooperatively come to a conclusion. In this way political disputes can, ideally, be solved in such that all can reasonably accept the conclusion without having to violate their closely held values and beliefs. Rawls goes on to note that, “Public justification proceeds from some consensus: from premises all parties in disagreement, assumed to be free and equal and fully capable of reason, may reasonably be expected to endorse.”⁵

The general aim of this principle, then, is to provide a way for political judgments to be justified without appeal to reasons that the disagreeing party would never accept. A utilitarian could never convince a Kantian that a political moral dilemma can be solved using the principle of utility, no more than an Orthodox Jew could appeal to his or her religious tenets to convince a political opponent who is an adherent of Islam. No matter how dearly someone holds their conception of the moral good, they will not be able to offer compelling arguments to me if I do not agree with that idea of the good. They would need to find a set of criteria we both accept. By avoiding argument entrenched in the values of a comprehensive doctrine, public justification aims to avoid some of the persistent and pressing disagreements that have plagued

¹ Ibid, 27.

political discourse. Additionally, it reinforces political cooperation and reasonable discourse in a way that is consistent with a functioning democracy.

One important distinction that Rawls emphasizes is that public justification does not have a basis in simple agreement. What sets public justification aside as unique is its appeal to a common ground of reasonable arguments based, in part, on a shared conception of justice that allows for important political disputes to be fairly solved. Rawls himself states that, “It is this last condition of reasoned reflection that, among other things, distinguishes public justification from mere agreement.”⁶ Here Rawls shows the true importance of justifying political positions by presenting reasons anyone could reasonably accept. It is this aspect of public justification that sets it apart and, as I will now explain, it is this aspect that makes the principle of public justification appealing.

Why Public Justification is Compelling

The theory of public justification has a variety of strengths that make it a very compelling way to approach political discourse and legitimacy. The first largely intuitive main strength of public justification is that it serves as an alternative to tyranny and oppression, and as construed here does not allow for tyranny or oppression of any sort. The very nature of public justification does not allow for any sort totalitarian coercive rule that is imposed on the populace of a nation unwillingly. This aspect of public justification, though simple and straightforward, is a significant

⁶ Ibid, 29.

point in its favor.

A second way in which the principle of public justification is strongly compelling is that it provides a way to solve political disputes that otherwise seem too divisive or too deeply entrenched in moral values for either party to possibly accept the other's position. This is particularly relevant to American politics, and similar systems, in which there is a political culture of such profoundly divided adversarial fervor that a resolution between the adversaries, in this case the two political parties, seems completely unfeasible. Joshua Cohen, a prominent contemporary political philosopher, echoes this sentiment when he notes, "The more immediate concerns come from the pathologically polarized state of political discourse in the United States."⁷ He goes on to state that the intention of politics is to confront and overcome important and pressing issues relating to people and what they value in their lives, which is significant because "...public reason arguably provides a more promising basis than polarized disagreement for doing the works of politics, and...decent and inclusive political life is not only a profoundly important good, but a painfully fragile one."⁸ In essence, the principle of public justification allows us to do the important work of politics without being hobbled by the vehement political culture that currently exists in the U.S. All that is required for this to work is that those engaged in political arguments accept that giving conceptions of the good as criteria for political decisions is not only unreasonable but disrespectful, as it is essentially a demand that political opponents defer to one's

⁷ Joshua Cohen, "Politics, Power, and Public Reason" (paper presented at the UCLA Legal Theory Workshop, Los Angeles, California, April 17, 2008): 2.

⁸ Cohen, "Politics, Power, and Public Reason." 3

comprehensive doctrine. Were politicians and pundits to accept this burden of respect and consider the practical advantages of public justification, we would not be stuck in such a partisan rut. In this case, public justification is compelling in that it avoids this issue by leading the disputing parties to converse using reasons that the other side might reasonably accept. At the very least, this principle presents the possibility of progress beyond the partisan impasse that some see the United States to be stuck in, and in this way public justification is compelling to American political thinkers.

A third reason that public justification is appealing lies in the distinction between rational and reasonable. As a method for justifying political positions and authority, public justification as presented by Rawls prioritizes the reasonable over the rational. To some, the appeal to discussion between reasonable people without emphasizing acting in strictly rational ways lies in the avoidance of prisoner's dilemma-type situations. By this I mean that for some, political discourse is problematic because it can be said to be populated by those who act strictly in their own interests and the interests of their associates; people who act in ruthlessly calculating ways. Public justification, on the other hand, ensures political discourse in which nobody is trying to trick their opponents, but rather encourages reasonable people to make genuinely persuasive arguments so as arrive at resolutions of political disputes. This emphasis on reasonableness is appealing to some because it presents a less adversarial, more cooperative method of dealing with political disagreements. As an environment focused on the genuine resolution of the issues in reasonable and productive ways, public justification is an

appealing principle.

A fourth strength of public justification is the way in which it provides a means for the maintenance of both legitimacy and stability in contractarian societies, those societies with a basis in some sort of founding agreement or governing document. A very real issue for these societies is that in several generations that society will be comprised of citizens who were not party to the original contractarian agreement. In a Hobbesian society, for example, once this point is reached, and there is no effective institutional way to change the society, then it is only a matter of time until circumstances change such that sufficient people reject the original contractarian agreement and the foundations of the society collapse. For this reason, there will come a point at which the members of the society no longer see a compelling reason to continue to submit to the coercive powers of the state granted by their ancestors. Public justification becomes appealing in this circumstance because it provides a plausible means for the contractarian society to change according to the wills of its citizens without a fundamental threat to its stability. Since the society's basic institutions are now mutable according to the will of the current populace, general discontent with the contractarian nature of the state is no longer an issue. In this way public justification is a compelling principle to those who adhere to contractarian conceptions of statehood.

Objection 1: Begs the Question

In addition to its many compelling features, the principle of public justification has significant objections to contend with. To begin, it is necessary to clarify the concept of public reason and its

interaction with public justification. As Rawls puts it, public reasons are, "...the political values covered by the political conception of justice (or one of a suitable family of such)."⁹ In essence, public reasons are those we can give to justify our actions and positions to others within our society who therefore share our basic political conceptions. As Cohen puts it, "...the ideal of public reason says that in our political affairs...justification ought to be conducted on common ground...common ground provided by considerations that participants in the political relations can all acknowledge as reasons."¹⁰ Simply put, public reason is the vehicle of public justification; reasons that are publicly justifiable are discussed using public reason. It is the form of reason we use to justify our political judgments to others. In this sense a discussion of public reason goes hand-in-hand with one of public justification, and a rejection of public reason is a rejection of public justification.

The first objection I will address comes from a writer named Bruce Brower of Tulane University. In his article *The Limits of Public Reason*, Brower analyzes several ways in which Rawls can make public reason, and by extension public justification, compelling to those who do not accept the priority of the reasonable. If I can refute any one of these, it would show that Rawls' project does not succumb to the limitations Brower presents. I am choosing to address one of these lines of argument, in which Brower claims that the demands of public reason violate equal respect and can be shown to be compelling only to those that

⁹ Rawls, *Justice as Fairness*, 90.

¹⁰ Cohen, "Politics, Power, and Public Reason." 1

already accept the ideal of the reasonable. In other words, Brower argues that the case for public reason begs the question. Brower argues that the demands of public justification violate equal respect because they require people to abandon values and beliefs that are deeply important to them. As he writes, “Treating others equally and acting autonomously...requires us to ignore an important part of our character...”¹¹ Here Brower is arguing that in requiring that people not use their conception of the good to make fundamental political decisions Rawls is asking them to forsake something too important to simply discard. Brower goes on to argue that proponents of public justification, “...do ignore something ‘constitutive’ of our persons: that we care deeply about our conceptions of the good and associated justifications...The problem is...Rawlsian arguments will be acceptable only to those who have already approved the...ideal of the reasonable person.”¹² This is the meat of the objection that Brower presents. Rawls fails to show equal respect because he devalues peoples’ constitutive values on the grounds that they are not publicly acceptable reasons to give in a political sense. Because of this, Brower feels that Rawls is saying that people should not give morally-grounded justifications, and should rather give public justifications, which are more reasonable. But, Brower claims, this requires that someone has already accepted the priority of the reasonable. Because of this, public justification is only compelling to those who already accept it.

This objection is not as strong as it first appears, and it in

¹¹ Bruce W. Brower, “The Limits of Public Reason,” *The Journal of Philosophy* 91 (1994): 14.

¹² Brower, “The Limits of Public Reason,” 15.

fact undermines itself. There are two primary claims to deal with: the demands of public justification violate equal respect, and public justification is not compelling to those who have not already accepted it. A fair way to analyze this objection is to consider a political dialogue between two people and look to see if the issues Brower presented indeed occur. Abe is someone who wants to make political arguments based on his conception of the moral good. Zeke is a proponent of public justification. He adheres to a comprehensive doctrine but does not seek to ground political arguments in the values of that doctrine. Abe claims that society should implement policy A because it is consistent with his comprehensive doctrine's view of the moral good. Zeke says that that conception of the good conflicts with his own, and as such he cannot reasonably accept Abe's justification. Zeke suggests that Abe appeal to shared aspects of their society's political culture. Abe responds by saying that it is disrespectful that he be asked to discard his comprehensive doctrine, which is very important to him, when making this important political argument. This is the point Brower gets at. My response is to ask what, then, is the alternative? It seems as though the only way out of this impasse for Abe is that Zeke accept his conception of the good and therefore his political argument. But this undermines any attempt at equal respect that Brower wants to make. If this is what comprises equal respect, then Abe's demand of Zeke is no less disrespectful than Zeke's demand. For people who value conceptions of the good and their importance as much as Brower does, it follows that they would then find it unfair to ask someone else to defer to their conception of the good, as that would be demanding that they disregard a personally constitutive value.

I respond that Brower's standard for equal respect is too high to be feasible, and that it will inevitably lead to the impasse mentioned above. Given the aforementioned fact of reasonable pluralism, which I take to be uncontroversial in a free society, this impasse will occur constantly. Public justification is compelling precisely because it is a mechanism for this plurality of doctrines to exist without anyone having to defer to another's conception of the moral good. A more proper standard for equal respect is to consider each comprehensive doctrine to be as valuable as any other. This standard of respect, together with the fact of reasonable pluralism, leads us to conclude that those who hold conceptions of the good to be vitally important to people would in fact find a reason to endorse public justification. It provides a mechanism for political cooperation while maintaining everyone's deeply important values and ensuring that the standard of equal respect is not violated. This conclusion in addition to the strengths of public justification I mentioned earlier provides a very strong basis for the acceptance of public justification by those who do not necessarily endorse Rawls' ideal of the reasonable.

Objection 2: Self-Defeating

The second objection to the theory of public justification I will address is presented by Steven Wall in his article, *Is Public Justification Self-Defeating?*. Wall argues that public justification is in need of justification, and is unable to satisfactorily meet its own demands to justify itself to those who it would apply to. In other words, Wall is arguing that public justification is not in itself sufficiently publicly justifiable to justify itself as a principle for determining the legitimacy of political authority. Wall begins his

argument by defining public justification in a way that is coherent and continuous with the way it has been defined here. He claims that among the relevant requirements for political authority to be publicly justifiable is what he calls the “acceptability requirement.” Wall defines this by saying, “. . .the justification must be one that can be reasonably accepted (or not reasonably rejected) by those to whom it is addressed.”¹³ There is nothing problematic here. He goes on to discuss how we must make a distinction between a public justification and a correctness-based justification. For Wall, a correctness-based justification is one that demonstrates that a conclusion is correct, whereas public justification, something that has already been made clear, is distinct from this. This is significant for Wall because if proponents of public justification do not hold that political authority must be legitimized by both of the aforementioned justifications, then they are left to answer why public justification is even worth discussing. Wall continues by explaining that this can be resolved by claiming that public justification serves to mark the outer limits of our freedom¹⁴, and as such leads to what Wall calls the “reconciling function” of public justification, which serves to show that each person has a good reason, by appealing to public justification, to accept political authority. This function demonstrates why a correctness-based justification is not inherently sufficient for legitimizing political authority.

Wall argues that despite the appeal of the reconciling feature of public justification, it is still not an inherently correct

¹³ Steven Wall, “Is Public Justification Self-Defeating?” *American Philosophical Quarterly* 39 (2002): 385.

¹⁴ *Ibid.*, 387

theory of political legitimacy. This, Wall explains, "...is why it is reasonable to say that [public justification] stands in need of justification."¹⁵ In other words, since public justification does not claim to be correct on moral grounds, it needs to be justified by other means. So, Wall asks, what sort of justification is required? The answer is that public justification must satisfy its own requirements, and for this reason the theory might be self-defeating. As Wall puts it, "If [public justification] were indeed a self-defeating principle, then it would fail on its own terms. This would give us a reason to reject it."¹⁶ Wall proceeds by claiming that supporters of public justification must now either demonstrate that public justification does not apply to itself, or that it does in fact meet its own demands. Wall addresses the first claim and argues that it is untenable because it contradicts the very purpose of public justification. To claim that public justification does not need to meet its own demands would be to say that any given authority is publicly justifiable but then not offer a reason to accept the constraints of public justifiability. This does not get us anywhere.

Wall addresses the second claim against the self-defeat of public justification in two ways. In the first, Wall argues that any attempt to argue that public justification applies to itself because of values that permeate contemporary democratic societies would have to contend with the objection that the principle of equal respect is in fact not embedded in modern democratic societies. This results in there being at least some people in contemporary

¹⁵ Ibid., 388

¹⁶ Ibid., 387

society who would not reasonably accept the theory of public justification. Secondly, Wall discusses how even if there did exist some sort of background political value that all members of a society shared, people would disagree as to the particular nature of that value. In this case there would be so much disagreement about the shared value that the value would be too thin a concept to appeal to when giving public reasons.

Wall concludes his discussion of public justification by expressing doubt that there is any recourse for those who support public justification to prove that it in fact is not self-defeating. Additionally, he notes, political legitimacy might be a matter of degree, and that public justification still serves to legitimize political authority better than any alternatives. He concludes by claiming that given that even if these might be valid options for the proponent of public justification, they do not refute the overall claim that public justification is self-defeating.

To begin my response to this objection, I note that Wall seems to give a charitable presentation of the general principle of public justification. I will also concede here that since public justification is not a correctness-based justification, it does need to be justified further. I will here accept the claim that in order to avoid being self-defeating, public justification must either be said to not apply to itself, or must itself be publicly justifiable. I will refute this objection by showing that public justification is itself publicly justifiable. This is because, despite Wall's insistence to the contrary, there is indeed a commonly held political conception of justice in contemporary democratic societies, and it is that conception of justice that can be appealed to in order to justify the theory of public justification, as well as other political claims.

Although there are considerable disagreements when it comes to moral conceptions of justice, such as how to punish criminals and what moral codes people ought to abide by, when it comes to political discourse Americans still share fundamental intuition about what political justice is. By this I mean our political culture holds that taxation without representation, for example, is unfair and unjust in a political sense. Americans expect the will of the people and the spirit of the constitution to be enforced as matters of justice and would as a group reject a leader or proposal that violates the basic tenets of democracy and representation. We have an understanding of society as what Rawls calls "...a fair system of social cooperation over time from one generation to the next."¹⁷ We have a sense of basic liberties as defined by our constitution. This commonly-held conception of justice, broadly defined, functions as a baseline that publicly justifiable arguments can appeal to. In other words, this shared conception of political justice in American political culture is a common ground that demonstrates that the principle of public justification can be applied to the United States. I am confident that such shared conceptions of justice exist in similarly democratic nations.

Here it is important again to note the distinction between agreement and a shared political conception of justice. People agree when for whatever reason they both find an argument or idea appealing. A common conception of political justice, however, goes beyond agreement because it is a fundamental aspect of the democratic political culture that members of a free society share. They share it not because it is in accord with their conceptions of

¹⁷ Rawls, *Justice as Fairness*, 5.

the moral good, but because it is part of the political culture they belong to. People who disagree on political and moral matters may still appeal to this shared political value and offer compelling arguments (i.e. public reasons) to each other. It is from these public reasons that people may come to an agreement about political decisions or policies. Because of this common ground I, or anyone else, can offer arguments in political disputes that are reasonable for my opponent to accept on the basis of political justice.

Wall also argues that even were a shared political value to exist within a society, "...it does not follow that everyone has reason to accept the particular interpretation of this principle that is needed to ground [public justification]."¹⁸ I contend that even given differing interpretations of this value, the fundamental core of the value, such as justice, would suffice for the purposes of public justification. Additionally, Rawls himself addresses this concern in his presentation of the idea of an overlapping consensus, wherein he echoes my claim. As he writes, "While...all citizens affirm the same political conception of justice, we do not assume they do so for all the same reasons...but this does not prevent the political conception from being a shared point of view from which they can resolve questions concerning the constitutional essentials."¹⁹ As a result, public justification is in fact not self defeating because it can meet its own demands, and it can be shown that modern democratic societies do have sufficient shared political values for public reasons to be feasibly presented.

¹⁸ Wall, "Is Public Justification Self-Defeating?" 390.

¹⁹ Rawls, *Justice as Fairness*, 32.

Conclusion

The principle of public justification, that political authority is legitimized and political disputes resolved by both parties appealing to arguments that the other side can reasonably accept, is to me a powerful principle. Because it is not limited by conceptions of the moral good and because it can help us to escape the partisan rut we as Americans seem to be stuck in, public justification can act as a means to end long standing and seemingly irresolvable political disputes. In addition, the emphasis of the reasonable over the rational ensures we avoid the pitfalls of unrelenting rational self-interest, such as those presented in the prisoner's dilemma and the tragedy of the commons. Although objections are leveled against the theory, they are not sufficiently strong to dissuade us from accepting public justification and its advantages in terms of fairness, respect, and pragmatism. In the end, public justification remains the most reasonable and compelling method for adequately resolving political disputes and legitimizing political authority. I genuinely believe that this principle is the best way to overcome the obstacles of political oppression and divisiveness, in spite of people's desires to adhere only to their conceptions of the good. Were just Americans to accept this principle, the contemporary political climate would improve tenfold, and much more genuine progress could be made.

Bibliography

Brower, Bruce W. "The Limits of Public Reason." *The Journal of Philosophy* 91 (1994): 5-26.

Cohen, Joshua. "Politics, Power, and Public Reason" Paper presented at the UCLA Legal Theory Workshop, Los Angeles, California, April 17, 2008. 1-70.

Rawls, John. *Justice as Fairness: A Restatement*. Cambridge: Harvard University Press, 2001.

Wall, Steven. "Is Public Justification Self-Defeating?" *American Philosophical Quarterly* 39 (2002): 385-394.