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A Defense of Public Justification

Simon Pickus
Macalester College

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Title: A Defense of Public Justification

Author: Simon Pickus

A Defense of Public Justification

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Simon Pickus

Advisor: Bill Wilcox

Philosophy Department

Macalester College

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Introduction

It is my belief that political philosophy can serve to be genuinely insightful with regard to practical political and social matters. Not to imply that ideal political circumstances are simple enough to construct hypothetically, nor that the application of these theories is easy or straightforward. However, there are concepts that originate in philosophical discourses that can be applied to actual circumstances with positive results. I am convinced that among those concepts that have something positive to offer existing politics is the idea of public justification, as presented by John Rawls. My general aim in this project is to demonstrate that Rawls' conception of public justification is a compelling and immensely useful principle within political philosophy. In particular, public justification is a highly persuasive means to ensure the legitimacy of political authority and fundamental political decisions made by governing bodies.

I will begin this project by giving a detailed explanation of what the principle of public justification is, in addition to the function it serves within political philosophy and any given political system. Chapter 1 describes the principle in considerable detail, and in addition to the specifics of the principle I will explain the purpose of public justification, along with important auxiliary concepts that provide useful insight for the theory. As I discuss the fundamentals of public justification, I will also make a point of explaining the context of its origination within Rawlsian theory, as that is largely the same context I will be using it in. This will include the intent Rawls had for the principle, the scope of the principle, as well as how Rawls felt the principle fit into larger political theories. Throughout this explanation of the principle of public justification I will also clarify and explain several technical terms Rawls originated and used within his

philosophical writings. In this way the meaning and intent of the principle I am defending will be made clear.

Among the concepts examined in this section include the conception of the reasonable, which is a benchmark Rawls uses throughout his discussion of political liberalism, along with the highly significant auxiliary concept of public reason. Public reason is best conceived of as the vehicle for public justification, and is the sort of reasoning used when giving publicly justifiable reasons or arguments. For the purposes of this project, a rejection or critique of public reason is equivalent to a critique of public justification, because the goals of the two and the meanings of the two are sufficiently similar. I also in the first section explain what is meant by the distinction between the reasonable and the rational, as well as the concepts of reasonable pluralism, comprehensive doctrines, and justice as a political as opposed to a moral concept. While none of these actually serve to comprise the principle I am presenting, they all are important for understanding public justification as well as contextualizing it within Rawls' greater political liberalism. Additionally, many of the concepts presented in this first section are useful for better understanding some of the criticism and objections that are entertained later in the project, as well as for understanding the ways in which those objections are problematic.

Next, I will demonstrate the ways in which the principle of public justification is compelling. This section, in essence, is meant to demonstrate why the principle is worth endorsing and defending, and in it I explain the good work that can be done with the principle. I will explain the strengths of the principle and the currently existing political problems it successfully addresses. This will serve to contextualize the ways in which

the principle can be genuinely useful in actual politics. Public justification can serve as an alternative to some of the de facto strategies currently in use in democratic political cultures, and I argue that the use of this principle would be highly conducive to healthy political discourse. In this section I will discuss the reasons for the implementation of public justification, and the ways in which public justification is a compelling and persuasive approach to political discourse and the legitimization of political authority. The strengths of the principle will be made clear so as to demonstrate the utility of public justification and why it is a position worth adhering to.

In chapter 2, in order to more firmly ground the principle and avoid the common philosophical pitfall of working in an exclusively abstract arena, I will present two hypothetical cases of public justification. The purpose of this is to demonstrate what public justification actually looks like when used in a political context. The two examples will facilitate the conceptualization of the principle, which will be particularly helpful when dealing with the various critiques of the principle. The first example will demonstrate public justification when it is used correctly and successfully to generate agreement on a divisive political issue when before there was just argument. The second example of public justification will demonstrate the principle being used correctly but without resulting in success. It is at this point that I will explain the role of disagreement in public justification and its causes. Lastly, in this chapter I will explain what can be done in the case of disagreement even after the principle has been used properly.

In chapters 3 and 4, I will approach the principle of public justification from a different angle, by addressing the weaknesses of the principle. I will do this by presenting some of what I feel to be the most pressing and damaging critiques of public

justification as put forth by contemporary political philosophers. These critiques serve to highlight the potential shortcomings of public justification as a means to improve political discourse and ensure legitimacy. Additionally, in order to most adequately present and defend public justification, the most formidable critiques must be presented and understood. There are four objections I entertain in this work. The first, presented by Robert Westmoreland, is concerned that political liberalism, and by extension public justification, fails in its attempts to be a neutral, nonpartisan principle. Westmoreland discusses how Rawls' standards for reasonableness and the sources of disagreement do not properly represent the way the majority of people think about these issues. As a result, Westmoreland argues, political liberalism sets the stage for only its own adherents to be able to present properly public reasons in political debates. The next critique I address comes from Steven Wall, who claims that the principle of public justification might be self-defeating. Wall's concern is that public justification does not demonstrate that it is the definitely correct or rational choice as a political principle. Because of this, the principle needs some sort of justification, and Wall proposes that public justification, without insisting on its own truth, must now be publicly justified. Wall argues that public justification must either meet its own demands, or not apply to itself. If it can be demonstrated to be neither, then it fails on its own terms and is useless as a principle. The third objection comes from Bruce Brower, who argues that public justification is overly insular, and cannot be compelling to those who do not prioritize the reasonable. Brower claims that there are various possible justifications for the principle that are not insular, but that these fail for several reasons. He claims that an appeal to political justice is itself an appeal to the reasonable, and that an appeal to equal respect fails because the principle

in fact serves to undermine equal respect. The fourth and last objection I entertain is presented by David Estlund. Estlund also argues that public justification is problematically insular because that reason the standards of reasonableness it sets forth are only compelling to those who have already accepted the priority of the reasonable. A related argument Estlund makes is that because of this insularity, Rawls' political liberalism, including the principle of public justification, has to admit an element of the truth. What this means is that Rawls' liberalism, which holds that matters of absolute truth are left to conceptions of the moral good, must now insist that it is a true rather than merely just system. These objections present a wide variety of critiques and serve to point out potential weaknesses in the principle.

As I present these objections, I will offer refutations to the critiques presented in the preceding sections. I will demonstrate that even in light of the weaknesses these objections highlighted, public justification is compelling and is a more resilient principle than the objections present it to be. The refutation of these damaging critiques will serve to underline the strengths of the principle and demonstrate the persuasive and compelling nature of the principle of public justification.

Chapter 1: The Principle and Its Strengths

My first task in this project is to present the principle of public justification, to explain its purpose as well as its context, and to present why it is a principle worth endorsing and defending. I will begin this chapter by introducing the principle of public justification and examining what Rawls had in mind for it. In doing this, I will present several key terms and ideas that will be important throughout the project. Once these significant concepts have been made clear, I will give a working definition of public justification to ensure that the concept is made sufficiently clear. In the second section of this chapter, I will enumerate some of the most significant strengths of the principle of public justification, and explain why these strengths make the principle a compelling one. In this way I will demonstrate why public justification is worth defending. This first chapter will serve to clarify the important aspects of the principle, and will facilitate deeper consideration of public justification

Section 1: The Principle and Key Concepts

This principle is presented by prominent political philosopher John Rawls most thoroughly in his work *Justice as Fairness: a Restatement*.¹ Before I begin to explain the content of this principle, it is necessary to first examine the scope and context of the principle. Public justification is presented by Rawls as a part of his titular project in *Justice as Fairness: a Restatement*. Although for Rawls public justification functions as a principle that furthers his larger project, I am convinced that the principle is useful, and can do meaningful work outside of the sometimes overly-detailed and insular project Rawls himself embarked on. Public justification as I will be using it is in some respects a

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

principle limited in scope. As Rawls used the idea, and as I will be using it, public justification applies only to free democratic societies. Although the principle could very well do its work in a society that does not fit the criteria for being free and democratic, the use of the principle in such a state is unlikely. In addition, the principle of public justification is only used within the context of a single free state. It does not apply internationally or beyond state borders. The very nature of the principle restricts its plausible functioning to the internal workings of a single state and the interactions of citizens with their compatriots.

As the principle of public justification is introduced, Rawls states that “The aim of the idea of public justification is to specify the idea of justification in a way appropriate to a political conception of justice for a society characterized, as a democracy is, by reasonable pluralism.”² Rawls here means that the aim of the principle is to specify the idea of justification in a way consistent or compatible with political justice. In order to fully understand what is meant here, it is necessary to unpack some of the technical terms Rawls uses throughout his work.

To begin, Rawls notes three main attributes that define what he calls a political conception of justice. The first attribute is that while a political conception of justice is a moral concept, it is oriented specifically at the fundamental structure of society. A political conception of justice, “...does not apply directly to associations and groups within society...”³ This means that such a conception of justice exists as a fundamental concept at the very basis of a society, and should be considered distinct from the sort of justice considered in fields such as criminal law. For us, this basis of society would be

² Rawls, *Justice as Fairness*, 26.

³ Rawls, *Justice as Fairness*, 26

our constitution as well as the fundamental political offices and their roles. A useful concept Rawls employs here is the basic structure of society. As he explains it, a society's basic structure is its "...main political and social institutions and the way they hang together as one system of cooperation..."⁴ This is what justice as a political conception applies to. This is what political justice is concerned with, ensuring that such aspects of a society are fair and just.

The second attribute of political justice is that it does not presuppose or require adherence to a conception of the moral good, which Rawls refers to as a comprehensive doctrine. A political conception of justice, as Rawls notes, is concerned specifically with the political structure of a society and "...is not intended as a comprehensive moral doctrine."⁵ Rawls goes on to explain that "A political conception presents itself as a reasonable conception for the basic structure alone and its principles express a family of political values that characteristically apply to that structure."⁶ There are two important points here. First, a political conception of justice does not serve as part of a comprehensive view of the good, nor does it presuppose any particular view of the good. Rawls argues that anyone within a given society could reasonably accept a political conception of justice that applied to the basic structure of society, regardless of their religion or moral doctrine. Even if that person held unreasonable views, so long as that person was willing to act and talk reasonably, they could accept a political conception of justice that concerns the basic structure of society by virtue of their participation in political culture. Second, Rawls is noting that a political conception of justice has a unique relationship with the particularities of a given society. In other words, for any

⁴ Rawls, *Justice as Fairness*, 8-9.

⁵ Rawls, *Justice as Fairness*, 19.

⁶ Rawls, *Justice as Fairness*, 26-27.

given society, the nature of the basic structure of that society will be reflected in that society's political conception of justice.

The third primary attribute of a political conception of justice as Rawls describes it is that it will be, "...formulated...solely in terms of fundamental ideas familiar from, or implicit in, the public political culture of a democratic society..."⁷ By this Rawls means that, as is mentioned in the previous attribute, a political conception of justice will be uniquely related to the fundamental political structure of a society. This relationship will take the form of the political conception of justice reflecting the political culture of the society. An example of a reflection of the political culture of a society would be the understanding of individual freedoms within the society, or the conception of society as a fair system of cooperation. These three attributes—a moral concept aimed at the basic structure of society, avoidance of appeal to a conception of the moral good, and a unique relationship with a state's political culture-- make up what is a political conception of justice, which is necessary to understand the principle of public justification and its aim.

Reasonable pluralism, the second technical term in this statement of purpose⁸, is the fact that different comprehensive doctrines will inevitably coexist in modern democratic societies. The reason for this is that there are many reasonable comprehensive conceptions of the good, and reasonable people can and do end up endorsing different ones. The reason for this reasonable plurality is explained later when I explain what Rawls call the burdens of judgment. Unless a state is willing to coercively promote its preferred doctrine (which it should not), then it will have a population with

⁷ Rawls, *Justice as Fairness*, 27

⁸ To refresh, "The aim of the idea of public justification is to specify the idea of justification in a way appropriate to a political conception of justice for a society characterized, as a democracy is, by reasonable pluralism."

this plurality of comprehensive doctrines. As Rawls explains, "...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." Rawls goes on to argue that the only method of guaranteeing homogeneity of comprehensive doctrines is through oppression, which is inimical to free societies.⁹ This means that reasonable pluralism will always be part of the context in which public justification is being used. Because of this, the principle must at least be able to function in the face of these multifarious reasonable conceptions of the good, and should preferably be conducive to the coexistence of these mutually exclusive comprehensive doctrines. This fact will always persist within societies in which public justification is used.

What is meant, then, by Rawls' statement of the aim of public justification is that the principle is aimed at demonstrating what sorts of justifications are compelling and just in free societies with a shared conception of political justice as part of the political culture. Public justification is oriented at ensuring politically, as opposed to morally, just discourses and outcomes in an open and free society. This, in essence, is the aim of the principle that I will set out to defend.

Before delving into the meat of the principle of public justification, two additional conceptually significant terms must be examined. First among these is the concept of the reasonable. 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."¹⁰ By this Rawls means that to be reasonable is to act fairly and to

⁹ Rawls, *Justice as Fairness*, 34.

¹⁰ Rawls, *Justice as Fairness*, 7.

seek cooperation and the resolution of disputes. Reasonable people 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 preferred outcome. 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. A useful way to conceptualize this distinction is in the context of rational self-interest. To act in accord with rational self-interest is always rational but not always reasonable. The examples of the prisoner's dilemma and the tragedy of the commons demonstrate the sort of rational self interest that Rawls finds to be problematic. In the prisoner's dilemma, it becomes clear that cooperation between the two parties would be the most mutually beneficial, and yet the most rational action to take leads away from both cooperation and the preferred outcome. In the tragedy of the commons, there is a shared but limited resource that would be best used when all those benefiting from it limit their use of the resource to a point that it remains sustainable. However, if one of the participants were to fully take advantage of the resource while the others were abiding by the agreement made for the sake of sustainability, that individual benefits far more from the resource than the others do, leading to a set of decisions and rationales similar to those in the prisoner's dilemma. These are situations that demonstrate what Rawls would call unreasonable behavior, because such behavior does not indicate a desire for fair cooperation or an inclination to

abide by mutually beneficial agreements if there is some advantage to be had by not cooperating or keeping said agreements. Rawls' conception of the reasonable, I find, agrees in large part with commonly held intuitions of what it is to act reasonably, and as such is sufficient.

The second additional concept important to the discussion and understanding of public justification is public reason. As Rawls puts it, public reasons are, "...ways of reasoning and inference appropriate to fundamental political questions..."¹¹ In essence, public reasons are those we can give to justify our actions and positions to others within our society who share our basic political conceptions when making political arguments. 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."¹² Simply put, public reason is the vehicle of public justification; reasons that are publicly justifiable are discussed using public reason. People use public reason when they present political arguments that appeal to shared political values such that all participants could find the argument acceptable. It is the form of reason we use to justify our political judgments to others. Additionally, Rawls notes that "Public reasoning aims for public justification."¹³ Public reason allows public justification to work. 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.

¹¹ Rawls, *Justice as Fairness*, 27.

¹² Joshua Cohen, "Politics, Power, and Public Reason" (paper presented at the UCLA Legal Theory Workshop, Los Angeles, California, April 17, 2008) 1

¹³ John Rawls, *The Law of Peoples* (Cambridge: Harvard University Press, 1999), 155.

Now that many of the important Rawlsian terms have been made clear, we can proceed to discussion of the principle itself. As has already been made clear, the principle of public justification is aimed at determining what sorts of justifications are appropriate to free democratic societies in which reasonable pluralism exists. Public justification looks to determine what are appropriate arguments to present when discussing fundamental political issues and issues of political legitimacy. Using public reason, one can present publicly justifiable arguments. At its very core, 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."¹⁴ Additionally, Rawls explains that when presenting publicly justifiable arguments, "...ideas of truth or right based on comprehensive doctrines are replaced by an idea of the politically reasonable addressed to citizens as citizens."¹⁵ In essence, the principle of public justification holds that when making arguments with regard to political legitimacy or other fundamental political issues, appropriate reasons or arguments do not appeal to comprehensive conceptions of the moral good or necessary moral truth. Instead, appropriately publicly justifiable arguments appeal to shared beliefs and values within a society's political culture, such as a political conception of justice, as a common ground that all could reasonably accept. In this way political disputes can be resolved such that all reasonable people could 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

¹⁴ Rawls, *Justice as Fairness*, 27.

¹⁵ Rawls, *Law of Peoples*, 171.

of reason, may reasonably be expected to endorse.”¹⁶ The most important aspect of the principle, then, is that in spite of the fact of reasonable pluralism and other bases for disagreement with regard to fundamental political issues, there does exist a common ground in free societies that can be appealed to in order to make arguments that can be reasonably accepted by all citizens.

Rawls does make a point to differentiate public justification from other sorts of arguments or agreements that might seem similar but are conceptually very distinct. One important distinction that Rawls emphasizes is that true 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 premises based, in part, on a shared conception of justice that exists at the core of a society that allows for important political disputes to be fairly solved. Rawls himself states, with reference to shared political values, “It is this last condition of reasoned reflection that, among other things, distinguishes public justification from mere agreement.”¹⁷ Mere agreement is nothing more than when two or more people agree on a certain point or argument, regardless of the reason. Public justification aims at agreement due to the shared values that exist within a political culture. Here Rawls shows the true importance of justifying political positions by presenting reasons anyone could reasonably accept.

It is also important to note the distinction between public justifications and simply valid arguments from given premises. Rawls notes that while public justifications are valid arguments, valid arguments alone do not fill the role public justifications do. The invaluable part of public justifications is that they are not only valid arguments but also

¹⁶ Rawls, *Justice as Fairness*, 27.

¹⁷ Rawls, *Justice as Fairness*, 29.

appeal to a certain set of political beliefs that serve to make the justifications reasonably acceptable to all parties. In this way public justification goes beyond both mere agreement and valid arguments from given premises.

Section 2: Why the Principle is Compelling

In the previous section, I discussed the nature of the principle of public justification, and went into some detail describing the aims and scope of the principle. Now that I have made clear exactly what the principle of public justification is, I will discuss why it is worth considering as a political principle, and, more importantly, why it worth defending. I cannot hope to be exhaustive in my list of all the compelling aspects of the principle, but I intend to present the most important strengths of public justification and demonstrate why this principle is valuable as both a philosophical and political tool.

The first main strength of the principle of public justification is that it serves as an alternative to tyranny and oppression, and when utilized properly the principle does not allow for tyranny or oppression of any sort. The very nature of public justification renders impossible the sort of totalitarian coercive rule that can be imposed on the populace of a nation unwillingly. When this principle is used within political discourse, and when those with political authority feel compelled to offer public reasons for their decisions, then not only is some degree of transparency assured, but also there are grounds for any decisions being made to be reasonably agreed to by the populace. The use of the principle of public justification ensures that, at a minimum, any significant exercise of political authority will appeal to some sort of fundamental political value in the society's political culture. This is in contrast to authoritarian or theocratic regimes,

that make political arguments and decisions that many citizens cannot reasonably agree to. In other words, the utilization of this principle by those with political power lends itself to ensuring and maintaining a minimum level of freedom within any given society. This aspect of public justification, though simple and straightforward, is a significant point in its favor.

A second way in which the principle of public justification is compelling is that it provides a way to plausibly 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, in which there is a political culture of such profoundly divided adversarial fervor that a resolution between the two sides seems completely unfeasible. Joshua Cohen echoes this sentiment when he notes the "...pathologically polarized state of political discourse in the United States."¹⁸ He goes on to state that the intention of politics is to confront and overcome important, 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."¹⁹ In essence, the principle of public justification helps 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

¹⁸ Joshua Cohen, "Politics, Power, and Public Reason" (paper presented at the UCLA Legal Theory Workshop, Los Angeles, California, April 17, 2008) 2.

¹⁹ Cohen, "Politics, Power, and Public Reason." 3

comprehensive doctrine. Were politicians and pundits to accept this burden of respect, we could very plausibly escape the current 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 a principle worth defending.

A third reason that public justification is appealing lies in the distinction between the rational and the reasonable. As a method for justifying political positions and authority, public justification as presented by Rawls prioritizes the reasonable over the rational. This means, as mentioned previously, that the use of this principle encourages citizens to act in the spirit of fairness and cooperation as opposed to their own exclusive rational self-interest. To some, myself included, the appeal to discussion between reasonable people without emphasizing acting in strictly rational ways lies in the avoidance of prisoner's dilemma-type situations, as mentioned in the previous section. 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 because it presents a less adversarial, more cooperative method of dealing with political disagreements. Additionally, the priority of the reasonable encourages and works toward a sort of political discourse that is less inherently individualistic. Those who work to be

reasonable as opposed to solely rational will work with the goal of cooperation and genuine progress in mind, rather than purely individual goals. This sort of political environment does away with some of the aspects of, for example, American political discourse that can be most frustrating. A reasonable political environment aims not for the cutthroat mudslinging and adversarial nature of contemporary politics, but for agreement, compromise, and prosperity. For many, this sort of political discourse is infinitely preferable to one in which rational self-interest and individualism is prized, leading to dishonest and pandering politicians. The priority of the reasonable that inheres in the principle of public justification is, for the aforementioned reasons, a considerable point in the principle's favor. Because it creates an environment focused on the genuine resolution of political issues in reasonable and productive ways, public justification is a compelling 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 societies that have some sort of fundamental contract or agreement as part of their basic structure. A very real issue for this sort of society is that several generations after the founding agreement, the society will be comprised of citizens who were not party to the original contractarian agreement. In this sort of state, once the fundamental agreement or contract has been made, 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 legitimacy of the society's leadership and principles dissipate. In other words, 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 forebears. Public justification becomes appealing in this circumstance because it provides a plausible means for this sort of society to change according to the wills of its citizens without a fundamental threat to its stability or legitimacy. Through the presentation of public reasons and appeals to fundamental political values established in the founding document or agreement of the society, the particulars of this compact can be changed such that all citizens can reasonably accept the new document or agreement. This is highly preferable to the various alternatives in such societies, such as the founding document or agreement fading into obsolescence or illegitimacy. 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. The principle of public justification allows for fundamental founding agreements that exist at the heart of these societies to be changed in reasonable ways that maintain both stability and political legitimacy. In this way public justification is a compelling principle to those who adhere to contractarian conceptions of statehood.

A fifth compelling factor regarding public justification and its primary vehicle, public reason, is that it serves to maintain and ensure political legitimacy. Rawls explains what exactly is meant by political legitimacy when he writes, "...political power is legitimate only when it is exercised in accordance with a constitution the essentials of which all citizens, as reasonable and rational, can endorse in the light of their common human reason."²⁰ One of the strengths of public justification is that it serves to engender political legitimacy by making uses of political power reasonably acceptable to all those who are subject to its coercive force. Rawls explains that, "...while political power is always coercive...in a democratic regime it is also the power of the public, that is, the

²⁰ Rawls, *Justice as Fairness*, 40.

power of free and equal citizens as a corporate body.”²¹ What is meant here is that in spite of the coercive nature of any use of political authority, it can also be legitimate provided that it aligns with the values and shared beliefs of the citizens as a whole, these values being found in the shared political culture of that society. Public justification ensures this legitimacy in the same way that it acts to prevent tyranny and oppression as mentioned earlier. When a political authority uses public reasons when deciding and defending their actions, all citizens have grounds to reasonably accept that particular exercise of political power. Even when there is not agreement with the use of political power, the fact that there was a basis for reasonable agreement because of the very nature of a society’s political culture is sufficient to ensure political legitimacy. That public justification can be and is so conducive to political legitimacy is a strong point in its favor.

A sixth reason why the principle of public justification is worth endorsing and defending relates to the way in which citizens act with regard to each other when presenting public reasons. In a political environment similar to that which exists in the United States, not only is there an alarming lack of reasonable discourse and agreement but also a considerable lack of respect between the citizens making political arguments. For example, when political arguments are made that appeal to a comprehensive doctrine of the good, there is the implicit demand that all others in the conversation defer to one’s conception of the good. Even assuming all conceptions of the moral good in such a situation are reasonable, there is considerable disrespect shown to those who hold conflicting comprehensive doctrines, and political discourse of this nature will lead to rapid disagreement as well as alienation and division. With regard to such a situation,

²¹ Rawls, *Justice as Fairness*, 90.

and indeed most instances in which public justification is not being used, the principle has a considerable strength: the use of the principle of public justification shows by its very nature a minimum level of respect for one's compatriots. A citizen who utilizes the principle shows that he or she recognizes the fact of reasonable pluralism, and therefore recognizes the significance of an opponent's comprehensive doctrine to their worldview. Additionally, the presentation of public reasons demonstrates that one holds their political opponents to be both reasonable and rational compatriots, and that they are worth the effort required to come to an agreement. As these examples show, the use of public justification demonstrates and also engenders a certain level of respect for one's compatriots. Such respect is both intuitively useful in minimizing divisive political conflict and for being conducive to getting actual political work done. Ensuring respect toward one's compatriots helps to maintain a political environment in which divisiveness is minimized and political progress is encouraged.

At this point I think it is helpful to clarify the role of the principle in solving genuine political issues such as the aforementioned partisan divide. I do not propose that the use of this principle would immediately and forever guarantee agreement between all parties in every political arena, as that is clearly implausible at the very least. Rather, one of the great strengths of public justification is that it provides and ensures that there can be reasonable agreement between parties. This is not to say reasonable disagreement is impossible in the face of public reasons, because reasonable disagreement does and will occur. What is important is that by using public justification political authorities and citizens alike can appeal to shared aspects of a political culture and by doing so present arguments that can be reasonably accepted by their opponents. It is an insufficient

critique of the principle to claim that disagreement seems to persist in the face of what appears to be the use of public justification, because the principle does not purport to solve all political disagreements. Rather, the fact that there will be an ever-present possibility for reasonable agreement among members of a society because of the shared political culture is what is most important about this principle. A lack of agreement is not indicative of the principle's failure.

With regard to this aforementioned issue of disagreement despite the use of the principle, Rawls presents the concept of the burdens of judgment, which he defines as being, "...the sources of reasonable disagreement ...among reasonable persons..."²² These are the explanations for why reasonable people will disagree, and why disagreement will persist in political discourse, in the face of the proper use of public reason and public justification. Rawls gives a fairly comprehensive list of these obstacles to agreement even if reasonable agreement is possible. Among the burdens of judgment are: the fact that the empirical evidence relevant to a political situation can be complex or conflicting, that different considerations in any given situation can be given different weights by those involved, leading to conflicting judgments, that most concepts are vague and that we might have reasonably different intuitions regarding a certain concept, leading to disagreement, that the ways in which evidence is weighed and moral views are shaped are affected by our lived experiences, which will vary between reasonable persons, and lastly that there are distinct moral considerations on each side of any given conflict, rendering an overall assessment difficult to make.²³ All these factors explain why reasonable disagreement can and will persist despite the proper use of the

²² Rawls, *Justice as Fairness*, 35.

²³ Rawls, *Justice as Fairness*, 36.

principle of public justification. It is for these reasons, then, that a lack of agreement is not a valid critique of public justification. Rawls goes on to clarify that he is not trying to “...imply a philosophical doctrine of skepticism”²⁴ but simply that reasonable disagreement will exist in spite of the proper utilization of public justification. Although, for the aforementioned reasons, public justification is a compelling principle, it does not purport to engender a perfect political society.

The principle of public justification, on the whole, holds that when presenting arguments relating to important political decisions or when justifying the use of political authority, one should appeal to values that all can reasonably accept, values that inhere in the political culture of the society. In order to better ground this principle, Rawls presents several auxiliary concepts when explaining public justification: political justice, reasonable pluralism, the priority of the reasonable, and public reason. The first, political justice, is a goal that public justification aims for. Political justice is a moral concept that applies to the basic structure of society, requires no adherence to any particular conception of the moral good, and is uniquely aimed at values that inhere in a given society’s political culture. The fact of reasonable pluralism, as Rawls call it, holds that in free democratic societies, there is an inevitable plurality of reasonable but incompatible comprehensive doctrines. The priority of the reasonable, a concept within public justification, gives primacy to reasonable action and thought, best understood as conducting oneself in a way that aims at fair and respectful cooperation with one’s compatriots. Lastly Rawls discuss public reason, which in this context is best thought of as the vehicle for public justification. When a citizen presents political arguments that appeal to values fundamental to the political culture of their society, they are presenting

²⁴ Rawls, *Justice as Fairness*, 36.

public reasons. Public reason is the type of reason used by those presenting publicly justifiable arguments. These auxiliary concepts are all important for understanding and contextualizing the public justification.

After the particulars of public justification are made clear, its merits must then be presented in order to demonstrate its value as a principle. I present six primary reasons for why the principle is valuable and compelling. Public justification serves to avoid tyranny and oppression, presents a way around deeply divisive political disputes, creates a more cooperative political environment by prioritizing the reasonable over the rational, serves to maintain stability and legitimacy in societies with a founding document or contract, engenders political legitimacy through its very use, and lends itself toward the creation of a political environment in which all members have and show respect for each other. It must be mentioned, however, that the proper use of the principle, despite its strengths can still result in perfectly reasonable disagreement. As I demonstrate in the next chapter, there are ways to deal with this. Although one of the aims of public justification is agreement, the lack of agreement cannot be presenting as a compelling example of the principle's failure. In the next chapter, I will present some examples of the proper use of public justification so as to ground discussion of the principle, as at this point it is quite abstract.

Chapter 2: Examples of Public Justification

Because of the abstract nature of the principle of public justification and political philosophy as a whole, it is valuable to present a more concrete example of the principle in action (or overtly not in action) so as to ground later argument and discussion in something a little more solid. I will begin this chapter with a hypothetical example and explanation of a use of public justification that, because of its proper use, leads to agreement on a fundamental political issue. This will serve to highlight what the principle looks like in a less abstract way than in the previous chapter. I will follow this account with a demonstrative example of a proper use of public justification that, despite the principle, does not result in agreement. I will cite relevant burdens of judgment and demonstrate that despite the compelling nature of the principle, it can still fail to result in agreement even if used correctly. Because of this, any defense of public justification will benefit from a proposal for how to deal with such a situation. After the example of public justification failing to result in agreement, I will attempt to present a method of fairly and reasonably dealing with the resulting disagreement that is consistent with the spirit and aim of the principle.

Section 1: Example of Successful Use of the Principle

My first example will be of a proper use of the principle of public justification that results in agreement regarding an otherwise divisive political issue. For the purposes of this example I will use the “right to die” controversy that has emerged relatively recently in American politics. The essence of this issue is relatively straightforward. Proponents of this right argue that any autonomous, mentally healthy adult should be able

to control the circumstances of their own death, particularly with regard to long-term, chronic, or terminal diseases. This issue is most often encountered in the case of people forced to spend their lives in a hospital living with a chronically painful disease. The proposed right to die, then, is that people with terminal and painful conditions, should they meet certain criteria, have the right to physician assisted suicide. One example of a relatively successful implementation of the right to die is Oregon's Death with Dignity act, which allows for a limited implementation of physician assisted suicide so as to end patients lives when they feel that their life is no longer worth living. One particularly notable, dramatic, and well-known instance of controversy over this right is the story of Dax Cowart, a man who was in a car accident that resulted in severe burns, blindness, and other injuries. Following the accident, which occurred in 1974, Cowart survived but insisted on not being treated (so as to die) because he did not want to go through with the incredibly painful treatments associated with severe burns, and because he did not want to live with such extensive injuries. Dax's pleas were ignored and his story is now a widely-discussed real-world example of one's right to a sort of physician-assisted suicide and is often required reading in introductory bioethics classes. I will not entertain any particular instance of the use or invocation of this right, but will explore a hypothetical situation in the United States in which this issue is being discussed.

Imagine then that at some point in the 21st century the United States Congress is considering a bill that would allow for terminally ill patients who meet certain criteria of autonomy and mental health to request, if there was a willing physician, to administer a dose of a lethal substance that causes the patient to fall unconscious and quickly and painlessly die. Let us say that this bill is called the Right to Die Act, and is highly

controversial, as many people find it to be unacceptable. Protests and counter-protests have been formed in response to this bill, as some people find it offensive and abhorrent while others argue that the right to die should have always been a right, and to deny it is to undermine someone's autonomy and freedom.

The debate for and against the Right to Die act goes on and on, with opposing arguments taking many forms. A multifaith religious block argues that they find it offensive to imply that there is ever a situation in which it is better to be dead. They hold that life, and everything that comes with it, is a divine gift, and it is disrespectful to the Almighty to refuse that gift and willingly take one's own life. Suicide, regardless of the pain one is in, is an act of despair in which one turns their back on God, and to make such an act not only tacitly acceptable but legally encoded is abhorrent, and should never be allowed. What's more, this group claims that many Americans share their views, and for those reasons the right to die should never be enshrined in law.

Other legislators decry the legalization of assisted suicide, but for different reasons. Some say that they are not religious, but they simply feel that to give up in the face of considerable challenges is wrong. People who opt to end their life are abandoning their families and loved ones. Others claim that it simply does not feel right to allow people to end their own lives. They hold that life is always worth living and that all experiences in one's life are preferable to nonexistence. Numerous other reasons are given for why it is morally wrong to commit suicide, and why the Right to Die Act should be discarded.

Equally fervent are the supporters of the bill. Many claim that it is morally wrong to take such control over people's lives away from them. They hold that autonomy and

liberty are of utmost importance and that it is unjust to tell people that their judgments about their own lives are misguided is offensive and almost evil. Others cite personal experience with painful or otherwise debilitating chronic diseases and argue that nobody is being helped by being forced to stay alive. The debates drag on and no progress is made. Many in the legislature feel strongly that everyone has a moral right to control their own destinies and should be allowed to end their lives if they feel it is not worth living. They are answered by their opposition, who claim that there is inherent moral value in life and continuing one's life in spite of diversity. No progress is made, and all participants become more and more frustrated as they remain divided over this issue. It is at this point that one proponent of the Act, a senator, has an idea, and stands up to address the legislature.

She suggests that they have been addressing this issue incorrectly, and claims that the arguments presented are never going to convince anyone on the other side. There are people of differing religions discussing this issue. There are people who hold that life is the greatest moral good, where others hold that self-direction and autonomy are paramount. People already have these religious and moral beliefs, and their minds are not going to be changed over the course of a few debates. To appeal to one's religious or moral beliefs is going to prove entirely ineffective when trying to make such a monumental political decision, as many people will necessarily disagree with you and you will, in all likelihood, not convince them. This senator claims that instead of appealing to these beliefs and getting caught up in the divisive nature of important political decisions, the group must try to cooperatively come to some sort of consensus,

or at least appeal to principles that will not rely on changing someone's fundamental moral worldview.

She suggests that instead the supporters of the bill should appeal to political values, as all members of the legislature share an investment in the political values of the United States. Therefore, she claims that both sides should support or oppose the bill based on values they share by virtue of being part of the American political culture. As a proponent of the bill, this senator goes on to argue in favor of the Right to Die Act by saying that freedom and liberty are core American political values, as seen in the fight for independence as well as in the Bill of Rights. She cites the Declaration of Independence, which states that liberty and the pursuit of happiness are among the fundamental rights of all people, and claims that this demonstrates how each person should have the ability to determine their own destiny and judge for themselves their contentedness with their existence, even if this means ending it. She goes on to argue that in the spirit of self-determination and personal liberty, the Right to Die Act would never impinge upon another's rights, nor would it ever be brought to bear in order to coerce any person, patient or doctor, to act against their will. This bill, the legislator concludes, can be embraced by any American on these bases, and for that reason should be passed.

The legislature considers this and determines that it is indeed true that they needed to look past their personal moral considerations in order to view the bill as a political object, and consider whether this right is something that should be granted to the American populace on the basis of American political culture. After further discussion, the majority of the legislature agrees that the new reasons presented in favor of passing the bill are reasonable and do not derive from a moral perspective, but rather a more

broad American political viewpoint. They agree to earnestly try to come to a consensus regarding the Right to Die Act, and determine that, after more long debate, they can accept the political reasons for encoding the Act into law. The Right to Die Act passes, and becomes a right that all Americans are able to enjoy.

This is what a successful implementation of the principle of public justification would look like. Under consideration is an important political matter: a new legal right is potentially being granted to the populace. At first the legislators are presenting reasons and arguments that appeal to their personal comprehensive doctrines, and as such are failing to persuade their compatriots. This is because, due to the fact of reasonable pluralism, there will always exist a multitude of incompatible comprehensive doctrines, and appealing to one to convince someone with a differing conception of the good does not give them the opportunity to reasonably accept one's arguments, as it in essence demands that they defer to a different conception of the moral good. This is one of the reasons for the divisive disagreement over the bill. The unnamed senator then decides to argue in favor of the bill by presenting public reasons, which are reasons that all of the legislators, regardless of their conception of the good, could reasonably accept. She did this by appealing to shared values within the American political culture, which all participants were part of, and therefore all had grounds to reasonably accept the subsequent arguments. All participants acted reasonably and determined to try to use this common ground of political justice to cooperate and come to a sort of consensus. By acting reasonably and considering public reasons such as the American adherence to political liberty and self-determination, a majority of legislators were able to come to an agreement on this important political issue. A politically just solution was found for the

Right to Die Act which allowed for the implementation of this right that was politically suited to the American people. This is what a proper and successful use of the principle of public justification would look like, and it is situations such as these that make the defense of the principle a worthwhile endeavor.

Section 2: Example of Unsuccessful Use of the Principle and Potential Solution

Now that an example of the proper and successful use of public justification has been made, I will present an example of the principle when it is properly used but still does not result in success. I will then briefly discuss what to do in such a situation, and show that the lack of agreement in situations such as these does not undermine the strength of the principle as a whole.

For this example I will use the issue of the right to have access to a safe and legal abortion, as that is an issue that is and has been prevalent in American political and social culture, and agreement has yet to be reached on the subject. The 1973 court decision *Roe v Wade* is demonstrative of just how divisive and entrenched this issue is. For the sake of a straightforward example I will not delve into the particulars of most of the arguments made by the Supreme Court justices, and will instead mention arguments insofar as they are useful for presenting this example.

Consider, then, the case of a hypothetical America, nearly identical to the America we currently inhabit, in which the right to have access to the abortion medical procedure is being discussed in the Senate, much in the same way as the bill in the previous example was. Arguments are made by each side, from religious, moral, and otherwise differing perspectives. In essence, many arguments are being given in support

of and against the legalization of this right, but they are not given using public reason, and as such are not publicly justifiable. For the reasons mentioned earlier, such as the fact of reasonable pluralism, these nonpublic reasons cannot be reasonably accepted by the disagreeing parties, no matter how reasonable they are being in terms of their attempts at fair cooperation.

Then, as in the previous example, one senator convinces the group to use public reason and give publicly justifiable arguments in favor of their respective positions. The senators do so, as in the previous example, and begin to present arguments that their detractors could reasonably accept by appealing to shared values within the American political culture. The proponents of the bill, including the senator who suggested the adherence to the principle of public justification, make similar arguments as those presented by defenders of the Right to Die Act. They appeal to the fundamental values of liberty and self-determination and claim that America is founded on the right to freely choose one's own life path so long as it does not interfere with the freedoms of others. Others argue, as the Supreme Court did in 1973, that the right to privacy that all Americans support and enjoy includes and extends to a woman's right to control over her own pregnancy. These public reasons given for the right to have legal access to the abortion procedure are politically just and appeal to underlying values that exist in American politics, and as such all engaging in the debate could reasonably accept these arguments.

However, although they see these arguments as being more persuasive than those being offered previously, those who oppose the right to have legal access to the abortion medical procedure persist in their disagreement. They claim that although the arguments

presented are reasonable, they still do not succeed in making the right in question sufficiently compelling. Several reasons are cited. Some say that after considering all the new arguments, they still feel that the moral importance of, for example, preserving the life of a fetus overrides a woman's right to privacy and self-determination. Other discuss how, as did the dissenting opinions in the *Roe v Wade* case, they disagree with the political and legal judgments being made and how the details of this right apply to particular constitutional factors. Others cite how their personal experiences regarding the right to have an abortion lead to them believe that the decision is vitally important in a woman's life, and that they tend to often have regretted having terminated the pregnancy. Various other reasons are cited, and the Senate is unable to come to any sort of consensus regarding this issue. As in contemporary America, the issue persists in being divisive, and a general agreement is never made.

In the preceding example public justification was correctly implemented but reasonable disagreement persisted. Although those who disagreed with the right to have legal access to the abortion procedure had reasonable grounds for agreement with those who supported the right, they still did not agree. Can we conclude from this that these people are unreasonable? We cannot, because having reasonable grounds for agreement does not preclude reasonable disagreement. To claim that the opponents of the right to a legal abortion are unreasonable in this scenario would undermine the entirety of the principle of public justification. As mentioned in chapter 1, Rawls presents a group of concepts he calls the burdens of judgment, which are essentially grounds for reasonable disagreement. Rawls cites several of these burdens to demonstrate how reasonable people can disagree even when they have reasonable grounds for agreement. Examples

of these burdens include disagreement over the nature or specifics of empirical evidence, the differing weights we attribute to various moral issues, and the subtle impact our lives and experiences have on the way we form judgments. As Rawls notes, "...many of our most important political judgments involving the basic political values are made subject to conditions such that it is highly unlikely that conscientious and fully reasonable persons, even after free and open discussion, can exercise their powers of reason so that all arrive at the same conclusion."²⁵ So, as I have discussed earlier, even under the most plausible of ideal conditions, when people are willing to cooperate to reach a conclusion, are reasonable, and utilize public reason to present publicly justifiable arguments, disagreement will still occasionally result. This is simply due to the nature of people and the pluralism that exists in free societies. Alone, disagreement does not demonstrate the failure of the principle of public justification. However, there should be some way to deal with this sort of situation, wherein an important political decision needs to be made and disagreement persists. This situation is not an entirely unlikely one, and as such this defense of public justification needs to be able to propose some sort of action.

When determining how the principle of public justification could be useful in a situation where reasonable disagreement continues, the solution must meet certain criteria. The first and most basic criterion is that any response must itself be publicly justifiable. Should public justification not be able to meet its own demands, as is discussed later, it results in a failed principle. I discuss this argument in detail in chapter 3, so for now it suffices to say that any course of action to be utilized when disagreement is persisting must itself be publicly justifiable. Second, any course of action must plausibly lead to some sort of finalized situation. Even if there is no considerable change,

²⁵ Rawls, *Justice as Fairness*, 36.

this course of action would have to justifiably be able to reach a point wherein some sort of final state for any given issue is achieved.

Bearing these criteria in mind, the first possible course of action to take in case reasonable agreement is the result of a proper utilization of public justification is to consider the status quo, particularly with regard to how publicly justifiable it is. Especially in situations such as the example given earlier, when a new right or law is being proposed, if no agreement can be reached despite there being grounds for reasonable disagreement, then a consideration of the status quo will be the best option. The most important aspect of this potential course of action is to ensure that the status quo is itself publicly justifiable. This does not mean that everyone agrees on the status quo. In order to be publicly justifiable, the circumstances of the status quo must be based on values that could be reasonably accepted by all reasonable citizens. For example, if the status quo is a law that prohibits reasonable religious practices or requires that people act in a way that is consistent with a particular comprehensive doctrine, then it cannot be considered publicly justifiable. If it is not, then there needs to be more debate so as to reach a consensus regarding a static state of the right or law in question. If this appears to be an unreasonable and time-consuming tactic, then it is worth considering the fact that the current state of affairs is, by definition, politically unjust. If the status quo is not publicly justifiable, if it is not reasonably acceptable to reasonable people, then it is of the utmost importance that it be changed. If the status quo is publicly justifiable then it is sufficient, due to the burdens of judgment resulting in reasonable disagreement. This tactic meets the second criterion because the status quo, should it be publicly justifiable,

is an acceptable final state, and is plausible because no major changes would have to be made to maintain the status quo.

An alternate possibility, perhaps if there is no status quo to refer to or the status quo is entirely obsolete or not publicly justifiable, is to resort to a sort of majority decision, either in the legislature or among the populace. This ensures public justifiability because it is highly likely that the political culture of a free society will value the communal decision aspects of democracy, and because any incarnation of this, be it a popular vote or a majority decision among elected officials, would at a very minimum be representative of the overall opinion on any given issue. This outcome would result in, if nothing else, a relatively temporary final state as there is a means to make some sort of decision. It is also quite plausible to set up a temporary, emergency vote. At this point there is a status quo that is reasonably acceptable to reasonable citizens that can be lived with until a better result is achieved through public debate and the presentation of public reasons.

Hopefully the above examples of public justification help to solidify what the principle means and what it looks like. The examples were meant to be quite general and straightforward so as to illustrate the important aspects of the principle in action. This more specific discussion of the principle I am defending will help in later sections when potential weaknesses of the principle must be dealt with. When public justification is used correctly and works, then it results in, at a minimum, a compromise or cooperative effort that serves to do genuine political work. When the principle is used correctly but does not result in agreement, because of the burdens of judgment, then some sort of publicly acceptable common ground must be found, usually a resort to the status quo. If

for whatever reason there is no status quo to fall back on, then a majority decision can be used as an emergency option, provided that such a vote is consistent with the political values of that society. Now that there are publicly justifiable alternatives to a state in which an agreement cannot be made, further showing that disagreement alone is insufficient to show that the principle of public justification is weak or has failed in some way. At this point examples of public justification have been made clear, and I will continue by demonstrating the ways in which this principle can be defended against its detractors and how its weaknesses are not so glaring so as to render it an implausible or useless principle.

Chapter 3: Reasonableness as Unrealistic and Self-Defeating Concerns

Public justification, as I have now demonstrated, is a useful and compelling principle. It has been made clear what the principle stands for, and what it was meant to accomplish. Additionally, I have presented an array of strengths of the public justification to clarify why it is a principle worth defending. However, as with all political and philosophical principles, public justification has some weaknesses that must be addressed. In this chapter and the chapter that follows, I will present objections to and critiques of the principle of public justification and its vital auxiliary concepts such as public reason. By defending the principle against these critiques, I can both address the weaknesses of public justification and demonstrate how the principle should be endorsed in spite of these weaknesses.

In this chapter I will confront objections presented by contemporary thinkers Robert Westmoreland and Steven Wall. I begin with these two objections because they both address two problematic concerns but do so within distinct approaches with different conclusions. The objections offered by Westmoreland and Wall both, in differing ways, critique the principle on the basis that it undermines itself as a result of its own principles. Westmoreland's concern, which I will address first, is that public justification undermines its own goal of being a nonpartisan, neutral principle, and actually ends up being a highly sectarian principle. Westmoreland argues that Rawls' conception of the reasonable and the burdens of judgment are not representative of the ways in which most people think. From this Westmoreland concludes that Rawls' idea of the reasonable confines acceptable political discourse to those who are adherents to Rawls' liberalism. In essence, Westmoreland claims that public justification's use of the reasonable results

in only those who agree with the principle being legitimate participants in political discourse.

Wall's critique of the principle also addresses the concern that the features of public justification actively undermine the principle. For Wall, the fact public justification, as a part of Rawls' liberalism, does not offer an absolute or true justification for itself means that it needs to present an alternative justification for its own use. Since public justification does not and cannot insist on its own truth, Wall argues that the principle must either be itself publicly justifiable, or that it must be shown that the principle does not need to meet its own demands. He argues that neither of these can be convincingly done, and as a result public justification fails on its own terms, and is self-defeating. Since public justification does not insist on its own correctness in an absolute sense, it must justify itself according to its own demands, or show that it does not need to meet its own demands. Wall argues that the principle can do neither, and as a result is self-defeating. In this chapter I will address Westmoreland's and Wall's concerns, and in doing so will demonstrate that the principle can overcome these potentially damaging problems.

Objection 1: Public Justification is Sectarian, Does Not Represent Common Views

The first objection I will address in this chapter comes from Robert Westmoreland. In his article, "The Truth About Public Reason," Westmoreland argues that public reason, despite its purported aims, ends up being part of the problem it is trying to solve. As Westmoreland says in his introduction, with regard to public reason, "I argue that...once important confusions are removed from versions actually accepted

by certain writers, they are no more public, and no less sectarian, than many of their conservative opponents.”²⁶ In essence, Westmoreland argues that public reason fails in its attempts to be morally and politically neutral and instead becomes the same as any conception of the moral good. This, if true, entirely undermines the purpose of public reason and public justification and as such must be refuted if the principle is going to be of any genuine use.

Westmoreland begins by presenting a conception of public reason that is sufficiently consistent with that presented in chapter one, and so there is no need to discuss or alter it. He discusses the way in which public reason does not engage with the truth value of the matter with regard to any political discussion, as matters of truth can only be agreed upon within comprehensive doctrines. Given the fact of reasonable pluralism, truth cannot be publicly agreed on, and as a result public reason and public justification do not concern themselves with it. Westmoreland then presents two different conceptions of public reason. The first, which he calls pure populism, is not a position that most thinkers would accept as remotely workable. As he describes it, pure populism “...would give veto power to the thoughtless, the unreasonable, and the perverse, and would make state action practically impossible.”²⁷ This principle is presented to show the “far end” of public reason, not to present a position that Westmoreland seeks to defend. Westmoreland also presents a position he refers to as qualified populism, which is “Actual acceptance by the reasonable.”²⁸ This is the public reason Rawls endorses and that I have been defending throughout this project. The critique emerges when Westmoreland presents a dilemma that he claims public reason

²⁶ Robert Westmoreland, “The Truth about Public Reason,” *Law and Philosophy* 18 (1999): 274.

²⁷ Westmoreland, “The Truth about Public Reason,” 278.

²⁸ Westmoreland, “The Truth about Public Reason,” 278.

gets mired in. As he presents it, "...a potential dilemma must be negotiated: either the conception of reasonableness is populist enough but unsupportive of the desired liberal principles of justice, or it is linked closely enough to such principles...but insufficiently supported by the public..."²⁹ The dilemma Westmoreland outlines has two options for Rawls' standard of reasonableness: either it applies to enough people, but cannot support principles such as political justice, or it can support these principle but ceases to represent the views of the citizenry of the society. In the latter case, as Westmoreland discusses, the conception of reasonableness stops doing any meaningful work, because it cannot be supported by citizens. In other words, since Rawls' standard of reasonableness is not representative of how most people think, it ceases to become a usable aspect of public reason. In essence, reasonableness ceases to be public, and as such cannot be used as a standard in public reason and public justification.

Westmoreland continues by arguing that qualified populism, the sort of public reason that I am defending, becomes "...impaled on the second horn."³⁰ In other words, Westmoreland feels that public reason's conception of reasonableness cannot do the work it is meant to do because it is inconsistent with the standards of reasonable people. Specifically, Westmoreland brings up the burdens of judgment, which I discussed earlier. Recall that the burdens of judgment are the reasons Rawls presents for why reasonable disagreement occurs, even if there are also reasonable grounds for agreement. Among these reasons are differing weights applied to moral issues, differences in life experience, and variations in interpretations of empirical facts. Westmoreland argues that the burdens of judgment, when paired with Rawls' conception of reasonableness, cease

²⁹ Westmoreland, "The Truth about Public Reason," 280.

³⁰ Westmoreland, "The Truth about Public Reason," 280.

entirely to represent the way the public thinks. As he puts it, "The problem is...that belief in the burdens of judgment is not part of a popularly accepted condition of reasonableness."³¹ Essentially, the standards of reasonableness and the acceptance of the burdens of judgment by the general populace are unrealistic, and therefore useless. Westmoreland argues that ordinary people do not accept the burdens of judgment and therefore will not accept that there are grounds for reasonable disagreement. As a result, according to Westmoreland, the average person will insist on the rightness of their judgments and experiences. If Westmoreland is right, then the principle cannot function. In earlier example I proposed of a successful use of public justification, rather than agreeing with the senator who suggests they use public reason, the rest of the senate would simply insist that their views were correct. Further, they would claim that those who disagreed with them were being unreasonable. Because of this, Westmoreland argues, the Rawlsian position is forced to describe these people as unreasonable, and claims that they cannot and should not participate in the political process.

What Westmoreland concludes about public reason from the aforementioned dilemma is that Rawls' liberalism is essentially forced into a corner. Westmoreland argues that unless the burdens of judgment and the standards of reasonableness are altered in some way, then public reason becomes sectarian in exactly the opposite way that it intends to. As Westmoreland notes, "The disagreement problem plagues the most fundamental conception of qualified populism that of 'liberal impartiality' or public reasonableness itself."³² Since the standard for reasonable disagreement is not popularly held, public reason, if nothing is changed, only permits those who do hold its conception

³¹ Westmoreland, "The Truth about Public Reason," 280-281.

³² Westmoreland, "The Truth about Public Reason," 284.

of reasonableness to participate in politics. By extension, only those people can give publicly justifiable arguments. As a result, public reason and its proponents undermine the idea of impartiality, as only those who adhere to the tenets of public reason, now that it can be shown not to be widespread, are justifiably participating in politics.

Westmoreland argues that this causes public reason to allow only its adherents to justifiably participate in political discussions and decisions, making it a lopsided and partisan position. If this is true, then public reason fails as a neutral, fair system, and therefore is an unsuccessful principle with regard to its own goals. It is for this reason that Westmoreland's critique is potentially damaging and must be answered.

I respond to Westmoreland's critique by engaging his discussion of reasonableness and the burdens of judgment. Westmoreland characterizes Rawls' liberalism as being either unworkable or overly partisan because of the way in which the standards of reasonableness are conceived. Westmoreland also criticizes the burdens of judgment as being unrealistic with regard to how most citizens of free societies think. However, Westmoreland is mistaken in how he thinks about the burdens of judgment and Rawls' standard of reasonableness. To begin, Westmoreland is incorrect in his assertion that most people would not accept the burdens of judgment. Reasonable disagreement is by no means an uncommon occurrence, although they certainly do not frame it in the same way Rawls does, a sufficient portion of the population is willing to concede that because of factors such as differing personal experience, smart and civil people will disagree. Additionally, Westmoreland is incorrect when he argues that Rawls' conception of reasonableness does not accurately represent the way most people think and act. It seems here that Westmoreland is misconstruing what it means to be reasonable, and what

the standards for reasonableness are. Westmoreland seems to be arguing that reasonable people are at all times willing to discuss their beliefs with others, are always open to new ideas without fail, and are willing to rethink their core beliefs based on rational discussion. A related argument that Westmoreland makes is that since people are not reasonable in this respect, they also would or could not accept Rawls' conceptions of reasonable disagreement. To answer this critique, I say that Westmoreland presents an implausibly high standard for reasonableness, which would be problematic were it to actually represent the constraints of reasonableness that Rawls argues for in his political liberalism. A more accurate conception of Rawls' reasonableness emphasizes, most importantly, the willingness to work cooperatively so as to do the important work of politics. Rawls' conception of the reasonable also requires that people be ready to compromise or come to a consensus. Although it could potentially be argued that Rawls' standard of reasonableness is too high, the reasonableness presented by Westmoreland to demonstrate that most people fall short of the mark is inaccurate and far too strict. Under political liberalism's reasonableness, many more people can be thought of as reasonable.

Overall, Westmoreland presents a potentially damaging critique of public reason: he argues that public reason fails in its aim to be impartial and nonpartisan, and results in favoring those who have already accepted its conceptions of reasonableness.

Westmoreland charges that public reason's conceptions of reasonableness, in addition to its expectations for reasonable disagreement, could not be accepted by the majority of the citizens of any modern democracy. As a result, Westmoreland claims, Rawls' liberalism will only allow for its own adherents to make acceptable political arguments. I demonstrated that Westmoreland's concerns do not threaten the principle of public

justification. I showed that Westmoreland's argument regarding the implausibility of Rawls's reasonableness to be inaccurate. Westmoreland makes this argument using an unrealistically high standard for reasonableness that is not that endorsed by or representative of Rawls' liberalism. Rawls' liberalism defines reasonableness in a less stringent way, which undermines Westmoreland's claim that reasonableness does not accurately describe most people. In these ways I have shown that Westmoreland's concerns regarding public justification are unfounded, and do not prove to be problematic for the principle of public justification.

Objection 2: Public Justification Is Self-Defeating

The next 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 itself 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 in order to justify itself as a principle for determining the legitimacy of political authority. If public justification cannot meet its own demands, then it is counterproductive and serves only to undermine itself. This is an important critique to consider because, if true, the principle is not only shown to be weak, but unusable. As is evident, then, those of us who defend the principle must be able to demonstrate that the concerns voiced by Wall do not materialize.

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.”³³ 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 is one in which a conclusion is reasonably acceptable to those it is being presented to, as has been discussed. 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. As Wall explains, “If an exercise of coercive political authority can be given a cogent correctness-based justification, then why is this not sufficient for legitimacy? Why must it also be publicly justifiable?”³⁴ In other words, Wall argues that public justifications are entirely gratuitous if any given exercise of political authority can be justified because it is “right” or can be shown to be correct in an absolute sense. As has been made clear, the position of public justification with regard to itself is that it is not right or true in an absolute sense, but rather that political legitimacy is determined through reasonable principles rather than ones that depend on truth. Clearly, then, as there is not a correctness-based justification for the principle at hand, then there must be a public justification for it.

³³ Steven Wall, “Is Public Justification Self-Defeating?” *American Philosophical Quarterly* 39 (2002): 385.

³⁴ Wall, “Is Public Justification Self-Defeating?” 387.

Wall continues by explaining that this can be resolved by claiming that public justification serves to mark the outer limits of our freedom³⁵, 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, and therefore why a public justification will, and should, serve.

Wall argues that despite the appeal of the reconciling feature of public justification, it is still not an inherently correct theory of political legitimacy. This, Wall explains, “...is why it is reasonable to say that [public justification] stands in need of justification.”³⁶ In other words, as discussed above, 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.”³⁷ 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, that public justification does not apply to itself, 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, or legitimate, but then not offer a reason to accept

³⁵ Wall, “Is Public Justification Self-Defeating?” 387.

³⁶ Wall, “Is Public Justification Self-Defeating?” 388.

³⁷ Wall, “Is Public Justification Self-Defeating?” 387.

the constraints of public justifiability. Wall offers that proponents of the principle have the option of replying that it is immaterial whether or not public justification is publicly justifiable; all that matters is that the use of political authority could be publicly justifiable to them. In reply to this possible response, Wall argues, this "...assumes that people can be given a reasonably acceptable justification for coercive political authority, independently of whether they have been given a reasonably acceptable justification for the condition that legitimates it."³⁸ This undermines the point of public justification, and does not help the argument. This does not get us anywhere.

Wall proceeds by discussing how since the first option, to make the principle not apply to itself, does not work, we must proceed to the second option. This is that public justification is itself publicly justifiable, and so is able to meet its own demands. In particular, Wall conceives this position as claiming that public justification can justify itself on the basis of shared political values. As Wall articulates this argument, Rawls attempts to "...anchor [public justification] on considerations that [he claims] are embedded in the shared political culture of modern democratic societies."³⁹ Specifically, Wall refers to the principle of equal respect as the value that exists in the political culture of contemporary free societies. Wall refutes this second claim against the self-defeat of public justification, that it can be justified publicly through values that permeate all modern democracies, in two ways. First, he claims 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. As Wall says, "...it may be argued

³⁸ Wall, "Is Public Justification Self-Defeating?" 388-389.

³⁹ Wall, "Is Public Justification Self-Defeating?" 390.

that the principle of equal respect is not part of the shared political culture of modern democratic societies.”⁴⁰ In essence, Wall argues that this claim is empirically false. If Wall is correct, then this line of argument would result in there being at least some reasonable people in contemporary democratic societies who could not reasonably accept the theory of public justification. If Wall is correct, then in the examples of proper use of the principle presented in Chapter 2, the senator’s appeal to public justification would fail. She would be unable to find sufficient common ground in the American political culture to base her arguments, and as a result would simply be unable to present public reasons to her opponents. Second, 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. Again, as Wall articulates the position, “...it may be said that, even if all those who live in these societies have reason to accept this principle, they do not have reason to accept the particular interpretation of this principle that is needed to justify [public justification]...”⁴¹ In this case there would be so much disagreement about the shared value, that value would be too thin a concept to appeal to when giving public reasons. With regard to the first argument, Wall explains that it would be difficult to argue this either way, because of empirical difficulties involved in determining the true extent of values in existent political culture. He concedes that maybe, “Pitched at a sufficiently abstract level...”⁴² some shared value could exist. However, Wall clearly feels that the second argument is stronger, and more threatening to the principle of public justification publicly justifying itself. He argues that should equal respect exist in all free political cultures, people would very likely accept wildly varying

⁴⁰ Wall, “Is Public Justification Self-Defeating?” 390.

⁴¹ Wall, “Is Public Justification Self-Defeating?” 390.

⁴² Wall, “Is Public Justification Self-Defeating?” 390.

conceptions of it. As a result, Wall argues, “Reasonable people who accept the principle of equal respect under some abstract description can and do reasonably disagree over which interpretation is the best one.”⁴³ So, even if equal respect does permeate the political cultures of modern democracies, it would not be sufficient to stop public justification from being self-defeating.

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. He admits that public justification could serve to be instrumentally valuable insofar as it promotes stability. Wall also explains that those instrumental values could be found in other principles, and in any case would not do the work of making public reason meet its own demands. Additionally, Wall 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 are valid options for the proponent of public justification, they do not refute the overall claim that public justification is self-defeating. This is not a tenable position for the purposes of this work, to accept that public justification is occasionally self-defeating. For this reason I must successfully refute arguments Wall has made above.

In order to successfully defend the principle of public justification against Wall’s highly problematic critique, I need to demonstrate that the principle is able to meet its own demands, and in that way is not self-defeating. Wall presents two options for doing this. I could argue that public justification does not apply to itself, and as such can be justified in another way, that would not require it to meet its own demands. Failing that, I can argue that public justification is itself publicly justifiable and therefore can meet its

⁴³ Wall, “Is Public Justification Self-Defeating?” 390-391.

own demands so as not to be self-defeating. If I can successfully argue either, then I save public justification from being a failed principle. In what follows, I will do both.

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 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. Wall holds that public justification must be justified in some way to be a genuinely compelling and useful principle. One of these ways is to claim that it does not apply to itself, so that it does not need to meet its own demands. Wall argues that this tactic will not work, because this would require another rationale or justification, and then that would not be acceptable to all reasonable persons. I respond, however, that public justification does not need to meet its own terms because it is an isolated principle. To justify it using a separate principle would be to subordinate public justification to that other principle, and in that case, why not use that other principle to justify political arguments and to legitimize use of political power? That would undermine any use of public justification. Instead, I argue that public justification need not meet its own demands because it is not its own subject. The principle is aimed at justifying political arguments and uses of political power, not at selecting or determining political principles. To phrase it differently, public justification is applied to two things: arguments or reasons offered in a discussion of important political questions, and the use and reasons for the coercive power of the state. Public justification is not within its own purview. It is not meant to deal with itself. Public justification is not a political argument, used to

determine important political issues. It is one level removed from that, and as a result should not be used with regard to the selection or justification of political principles.

To respond to this argument Wall might reply that public justification is still a principle to be chosen as a way to deal with political arguments and political legitimacy. How would the principle be selected and justified? I respond that this reply is correct, and public justification must still be selected as a political principle, as must the entirety of Rawls' political liberalism. But principle selection is distinct from the selection and justification of arguments during a political discussion. Principles exist prior to the presentation of arguments, as used by people and societies as a whole. Why should political liberalism, or public justification in particular, be selected? Well, as Wall notes and Rawls agrees with, there is no specific rationality-based argument or truth-based argument for the acceptance and use of the priority of the reasonable and the principle of public justification. It does not claim to be "the rational choice" or a necessarily true theory. However, it can and should still be selected on the basis of its instrumental value. The uses of the principle, as outlined in detail in chapter 1, include the fact that the priority of the reasonable itself is compelling, as well as the way in which public justification is conducive to free societies, and the maintenance of equal respect for the comprehensive doctrines of others. These are compelling reasons for the selection of public justification as a political principle. And since there are convincing reasons to choose Rawls' liberalism as a principle, then public justification can come into play and then serve to set constraints on political arguments and discussions, as well as the uses of political power. Since public justification does not apply to itself, but there are still

reasons to select it as a principle, it does not need to meet its own demands, and can be shown to not be self-defeating.

At this point I have already demonstrated that public justification is not self-defeating. However, suppose my previous argument is unsuccessful. Wall gives us the option of demonstrating that public justification does apply to itself and can meet its own demands. Wall argues that public justification cannot meet its own demands because there is insufficient ground in the political cultures of modern democratic societies for the principle to justify itself. I dispute this, and respond to this objection by showing that public justification is in fact 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, and I suspect citizens of other democracies too, still share fundamental intuitions 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."⁴⁴ We have a sense of basic liberties as defined by our constitution. This commonly-held conception of justice,

⁴⁴ Rawls, *Justice as Fairness*, 5.

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 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]."⁴⁵ 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, failing that, I have already established that an exercise of public justification does not guarantee that

⁴⁵ Wall, "Is Public Justification Self-Defeating?" 390.

agreement will be reached. 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.”⁴⁶ 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.

Wall presents a very troubling critique of public justification, that not only might it be a weak principle, but it might in fact be self-defeating, as such completely fails. Wall argues that since public justification cannot be justified on grounds that it is either inherently true or a necessarily correct principle, then it must justify itself through other means. Wall presents two options: that public justification does not apply to itself, or that the principle is itself publicly justifiable. Wall proceeds by claiming that neither of these options are viable for defenders of the principle, and as a result the principle lacks justification and is therefore a failed position. I respond to Wall’s critique by demonstrating how it can be argued that public justification does not apply to itself, and, failing that, that the principle can indeed meet its own demands and is not in fact self-defeating. I demonstrated that, given the first option to defend the principle, public justification does not apply to itself because it is not within its own scope. Public justification, as a political principle, exists outside of political arguments and as such must be chosen as a principle before being used to justify itself. There are good reasons

⁴⁶ Rawls, *Justice as Fairness*, 32.

to select it as a principle for the pursuit of political justice, and as a result is a compelling position that does not apply to itself. Failing that, I also successfully showed how public justification can indeed justify itself by demonstrating that there are sufficient grounds for it within modern democratic societies. Despite Wall's arguments, I showed that the political cultures of modern free societies did contain sufficient agreement in which public justification can ground itself, and therefore meet its own demands. If either of these two arguments I make are correct, then Wall's critique of the principle is unsuccessful, and I demonstrate that public justification is not self-defeating.

In this chapter I addressed two thematically similar critiques. Both objections held that some aspect or feature of the principle of justification caused it to undermine itself such that it was unable to achieve its goals. Robert Westmoreland argued that the reasonableness constraint that inheres in Rawls' political liberalism, along with the burdens of judgment, fail to accurately and realistically describe actual persons. In other words, Westmoreland argues that Rawls would be forced to describe the vast majority of people as being unreasonable, and as a result Rawls would have to bar them from participating in political discourse. Because of this conception of the reasonable, Westmoreland claims that public justification, despite its nonpartisan goals, is in effect a highly sectarian principle. I answered that Westmoreland's conception of the reasonable was inaccurate, and that he was wrong in claiming that Rawls would be forced to declare the majority of people to be unreasonable. Westmoreland characterized reasonable people as those who are always and without fail open to new ideas and willing to discuss and engage different political ideas, to the extent that they are willing to rethink their core beliefs based solely on rational discussion. In reality, a Rawlsian conception of

reasonableness requires just that a person be willing to work cooperatively and be fair when dealing with their political opponents so as to do the important work of politics. This is not an implausibly high standard, in contrast to what Westmoreland presents, and is representative of most people. Because of this, Westmoreland's concern that public justification fails to be nonpartisan can be shown to be unproblematic. Rawls' reasonableness constraint is descriptive of real people, and functions in the context of public justification exactly as it is meant to.

In a related concern, Steven Wall argued that public justification's refusal to insist on its own truth results in the need for it to justify itself on its own terms. Wall argues that public justification cannot effectively claim to meet its own demands, nor can it be argued to not need to meet its own demands. If one were to argue that the principle does not need to meet its own demands, Wall argues that the principle still stands in need of some sort of acceptable justification. He then goes on to claim that the principle is incapable of meeting its own demands because there is not sufficient ground within modern democratic societies for the principle to appeal to in order to be truly publicly justifiable. I respond that both options are plausible for defending the principle. I argue that the principle does not need to meet its own demands because it is not within its own purview. Principle selection is not what the principle of public justification is meant to deal with, and it is not suited to justifying itself. Wall argues that at this point the principle stands in need of justification, and I argue that the principle has sufficient instrumental value to select it without it needing to be publicly justifiable. Additionally, I argue that public justification can indeed justify itself on its own terms, and refute the claim that there are insufficient shared values in contemporary societies for it to justify

itself. I hold that conceptions of justice and representation of the people are strong enough values to be appealed to such that the principle may justify itself. In this chapter, I was able to successfully demonstrate that objections concerning inherent flaws in the principle that undermine its ability to achieve its aims are not problematic. Although potentially damaging, they do not highlight any weaknesses that cannot be strengthened or that make the principle not worth endorsing. Despite the critiques of people like Westmoreland and Wall, public justification is still a compelling principle.

Chapter 4: Insularity Concerns, the Truth, and a Note on Instrumental Value

In the final chapter of this work I will address two additional related critiques of the principle of public justification that concern an objection made frequently with regard to Rawls' work. This objection is, in essence, that Rawls' political liberalism, particularly with regard to the priority of the reasonable, is overly insular. This term comes up frequently in this chapter, and it is meant to refer to the issue that Rawls' liberalism cannot justify itself to those who are not already adherents to its principles. Another way to consider this issue is that some accuse Rawls of justifying the priority of the reasonable by appealing to the reasonable. It is a "begging the question" sort of concern, and holds that the tenets of political liberalism cannot be argued for persuasively without appealing to those very principles they are trying to justify. In essence, the insularity problem is that public justification, and Rawls' political liberalism as a whole, cannot be argued for persuasively without appealing to the concept of the reasonable, which results in an argument that is not compelling unless one has already accepted the priority of the reasonable.

The first objection I will address in this chapter is presented by Bruce Brower, who for the most part presents the insularity objection as I described in the preceding paragraph. Brower argues that public reason cannot be justified to non-liberals because public reasons are defined by Rawls in terms of the reasonable. Brower examines several values that can be used to justify public reason, such as political justice and equal respect, but ends up rejecting them all as means to successfully overcome this insularity issue. He argues, among other things, that the tenets of reasonableness undermine equal respect.

His objection does a good job of encapsulating this sort of worry that public reason is only interesting to those who have already accepted the priority of the reasonable.

The second objection I confront in this chapter, and the final one in this work, is presented by David Estlund. He shares Brower's concern regarding insularity, but approaches it differently. Estlund also argues that Rawls' political liberalism is overly insular, and claims that this is because the principle does not require that its position is necessarily true. Without admitting the truth into its justification, as Estlund articulates it, political liberalism (and by extension public justification) cannot hope to persuasively justify itself to those who do not already find it compelling. Estlund argues that the principle must change such that it insists on its own absolute truth. Without doing so, Estlund feels that public justification cannot do any actual work or accomplish its stated aims.

In what follows I will address the two aforementioned critiques, as well as one final point. At various points throughout this work I mention the instrumental value of public justification as a means to defend it. This conflicts with Rawls' original conception of the principle, as justifying the principle on the basis of its instrumental value means that the principle is useful only as a *modus vivendi*, which amounts to when two disagreeing parties agree to disagree so as to live peaceably. This is not what Rawls wants. He feels (as do I) that public justification should be adhered to out of a genuine allegiance to its tenets, not merely because it is useful or convenient. At the end of this chapter I will address this concern and explain how the instrumental value of the principle can be invoked without fundamentally threatening real allegiance to the principle.

Objection 3: Public Justification is Insular, Cannot be Justified to Non-Liberals

The first critique of the principle of public justification I will address in this chapter comes from Bruce Brower of Tulane University. The general form of Brower's argument, as presented in his article "The Limits of Public Reason," is that public reason, and by extension public justification, fails to be compelling to those who have not accepted the priority of the reasonable. In other words, Brower worries that public reason is overly insular such that it is only a persuasive position to those who have already accepted it. Brower presents several ways in which he feels that public reason, and also public justification, can make up for this insularity such that it can still justify itself. He presents five options in all, and these arguments in defense of the standard of the reasonable come from varying sources. In the interest of presenting both a somewhat streamlined overview of Brower's stronger concerns as well as spending a reasonable amount of time and space in this section addressing those concerns, I will not entertain every option Brower presents. I will explain in detail and refute what I feel to be the two most important and pressing tactics to avoid issues of insularity and begging the question. By successfully addressing these two of Brower's points, I demonstrate that there are two different ways that public reason can justify the priority of the reasonable to those who have not already accepted it. Thus, I can successfully defend against Brower's overall critique of public reason without having to address each point he raises individually.

Brower begins by examining the concept of the reasonable. It is here where he first presents the "begging the question" sort of worry that is often leveraged against Rawls' political liberalism. Brower presents the basic concept of the reasonable in an acceptable way, and there is no need to discuss it further. Brower then looks to public

reasons and argues that the reasonably acceptable requirement that the principle is based on is almost circular. Brower then argues that "...if we define public reason in terms of the reasonable, we define it in terms of the desire for public reasons."⁴⁷ Brower goes on to explain that "My worry is that public reason defined in terms of the reasonable is very weak; it requires of public reasons only that they be acceptable to those whose highest motivation is to act on public reasons."⁴⁸ The essence of this concern is that Rawls is attempting to justify the priority of the reasonable and the doctrine of presenting acceptable arguments to reasonable citizens by appealing to the reasonable. In this way, Brower argues that the concept of public reason is very weak because it can only justify itself to those who have already accepted its requirements. He goes on to explain that Rawls fails to give a rational justification for public justification, and instead can only give a reasonable one, which Brower holds to be problematic for the aforementioned reason. Brower articulates the core of his critique when he notes that he wants to determine "...whether the reasonable and the associated demand for public reasons can be derived from considerations that do not merely presuppose the publicity constraint."⁴⁹ Brower then presents several ways in which he feels Rawls could respond, and why those reasons are insufficient.

Brower first approaches this by examining the political, and in particular he seems to be addressing the concept of political justice. Brower notes that Rawls attempts to reinforce the principle of public justification by arguing that presenting public reasons promotes stability and cooperation. However, Brower notes, stability is distinct from justice, and that while stability and cooperation can serve as good reasons to accept

⁴⁷ Bruce W. Brower, "The Limits of Public Reason," *The Journal of Philosophy* 91 (1994): 9.

⁴⁸ Brower, "The Limits of Public Reason," 10.

⁴⁹ Brower, "The Limits of Public Reason," 11.

political liberalism, they do not justify the priority of the reasonable, because stability serves distinct purposes and engenders different sorts of values or doctrines than reasonableness. Additionally, noting the distinction between rational and reasonable justifications mentioned earlier, Brower notes that in the case of political justice too there is only a reasonableness-based justification, not a rationally-based one. His most potentially damaging argument, though, is that "...political liberalism is not merely the acceptance of a political *modus vivendi*, between competing theories of the good; it is itself a moral theory, even if not a comprehensive doctrine."⁵⁰ The distinction here between comprehensive doctrine and moral theory is largely irrelevant; if Rawls' political liberalism is a normative moral theory, then it actively undermines itself because it also claims that the best way to make fundamental political decisions and establish political legitimacy is to not appeal to conceptions of the moral good. If the principle itself can be shown to be a conception of the moral good, then it is internally inconsistent, which does not make for a strong or compelling principle. Brower concludes this section by arguing that Rawls' recourse to the political is no less problematic than appealing to the reasonable, as appealing to the political essentially, for Brower, *is* an appeal to the reasonable. As Brower articulates it, "Thus, appeal to the political is based on appeal to the reasonable, which we saw could not provide an interesting argument for the priority of the right."⁵¹ By referring to the right here Brower is referring to the priority of the reasonable (over the true or morally good). Brower discusses how the appeal to the political cannot save public justification from begging the question, and so moves on to another possible out.

⁵⁰ Brower, "The Limits of Public Reason," 13.

⁵¹ Brower, "The Limits of Public Reason," 13.

Having rejected the appeal to the political as a way of justifying the priority of the reasonable, Brower looks to the concepts of equality and autonomy to see if they can resolve this issue. Brower examines the way in which Rawls argues that people operate autonomously, and how they show each other equal respect, by presenting public reasons. The essence of Rawls' position is that by presenting arguments that others can reasonably accept, one is respecting others by not asking them to acquiesce to arguments they could not reasonably accept, namely differing conceptions of the good. Brower then claims that "The problem is that the individuals receiving equal respect or acting autonomously seem shorn of the characteristics we ordinarily recognize as deserving respect and acting autonomously."⁵² In other words, Brower is arguing that these standards of respect and autonomy at the very least are not representative of real people and do not describe any sort of person as would actually exist. Brower continues by explaining how the demands of equal respect and reasonableness in general serve to undermine respect and autonomy because they require people to abandon values and beliefs that are deeply important to them. He articulates the core of this claim when he notes that his "...objection is that accepting only public reasons fails to show equal respect for others specifically because one does not take their justifications as important. The requirement of equal respect then, as set out in the principle of public justification, actually serves to undermine equal respect as it demands that people are without recourse to their deeply-held beliefs. Brower continues as he writes, "Treating others equally and acting autonomously...requires us to ignore an important part of our character..."⁵³ Here Brower is reinforcing the idea that in requiring that people not use their conception of the

⁵² Brower, "The Limits of Public Reason," 14.

⁵³ Brower, "The Limits of Public Reason," 14.

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."⁵⁴ This is the heart of the problem with appealing to autonomy and equal respect, as Brower sees it. 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. According to Brower, were the senator in my previous example of proper use of the principle to try to explain why her opponents should present public reasons, she would be doubly unsuccessful. First, her opponents would not find her justifications compelling, unless they were already adherents of public justification. Second, they would be offended that the senator was insisting they ignore values that are fundamental to their identities when discussing political issues. 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, and trying to justify public reason by appealing to respect and autonomy fails. This leads Brower to look for a different way, to see if public reason can still save itself from insularity.

Brower continues by presenting several more ways he sees that public reason could justify the priority it grants to the reasonable. As noted earlier, I am opting not to

⁵⁴ Brower, "The Limits of Public Reason," 15.

address the latter few of these objections, as I feel that those already presented are most important and potentially damaging. Instead, I am looking to those objections Brower gives to public reason that are most plausible for escaping the insularity Brower ascribes to it. I will demonstrate that the arguments Brower presents with regard to the political and equality are faulty, and that there are several ways here that public reason can justify the priority of the reasonable to those who do not find the reasonable appealing.

I will begin my defense against Brower's critique by addressing his concerns regarding the political. Here Brower, as mentioned earlier, suggests that the instrumental use of advancing Rawls' conception of political justice fails to justify the priority of the reasonable because it does not get around the insularity claim. Appealing to political justice and the ways in which it is instrumentally useful, such as by maintaining stability, is a poor tactic because Rawls' political justice also presupposes the reasonable. In addition, it is here that Brower accuses political liberalism of being a moral theory, which is problematic for reasons already detailed. I respond first by arguing that appeals to stability are not meant to demonstrate alone how it is rational to adhere to the priority of the reasonable. Brower agrees that Rawls does not attempt to make rationality-based justifications for the priority of the reasonable. There are other compelling reasons for the acceptance of the reasonable, such as those mentioned in chapter 1. For the sake of argument, I will concede here that Rawls does not present a strictly rational basis for accepting the doctrine of reasonableness. Additionally, let us grant that an appeal to the conception of political justice does include an appeal to the reasonable. What then? There is more to the concept of political justice and its relationship to public reason than Brower is giving credit for. Namely, there are considerable instrumental strengths to the

Rawls' concept of political justice beyond that of stability. For instance, political justice brings with it legitimizing force in addition to being conducive to shared respect in free modern societies. Additionally, Rawls' political justice lends itself to ensuring fairness and the proper use of political authority. These strengths, which ensure that those who hold differing conceptions of the good are not forced to defer to each other's comprehensive doctrine, can be compelling to those who do not accept the demands of Rawls' reasonableness. In this way, an appeal to the political can make public reason and public justification appealing to those who are not convinced by arguments of reasonableness.

Additionally, and also of considerable significance, Brower is incorrect that political liberalism is a moral theory. In particular with regard to Rawls' conception of the political it becomes clear that political liberalism aims for political, as opposed to moral, justice. As mentioned in chapter one, a political conception of justice applies to the basic structure of a society, and not to specific relations within the society. Political justice, then, aims for justice as it is conceived within the political culture of a society, at the very basis of that society, and not as an idea of justice as conceived from a particular moral standpoint. Because of this, political liberalism is itself not a moral theory, but rather a way to go about maintaining a political conception of justice in such a way for adherents to competing comprehensive doctrines to interact. No one comprehensive doctrine provides a conception of justice, because political liberalism ensures that a political conception of justice (not a moral one) is most relevant in public and political discussions. Here it can be shown that political justice and political liberalism as a whole, while concerned with a certain sort of justice, is not a moral theory. This is

because it is aimed at working within the confines of reasonable pluralism, and engenders political discussion that does not rely on moral arguments.

At this point I have shown that Brower's first suggestion, an appeal to political justice, can work to solve the insularity of the reasonable, which is what Brower is concerned about. However, let us suppose for the sake of argument that my previous refutation is unsuccessful at overcoming Brower's critique. He then suggests that proponents of public reason can look to the arguments of respect and autonomy to justify the demands of reasonableness. However, Brower argues that the demands of reasonableness and the argument from respect are counterproductive, and work against equal respect because they require that citizens ignore deeply important or "constitutive" values, namely comprehensive doctrines. This objection is not as strong as it first appears, and it in fact undermines itself. The main worry is that the demands of public justification violate equal respect and, as is the general theme of Brower's article, that public justification is not compelling to those who have not already accepted it. If appealing to equal respect actually works against what proponents of public reason want to argue, what can be done?

A fair way to concretely analyze this objection is to consider a political dialogue between two people and look to see if the issues Brower presented indeed occur. Imagine two citizens involved in a political argument named Abe and Zeke. Abe is someone who wants to make political arguments based on his conception of the moral good, because the values associated with that conception are deeply important. Zeke is a proponent of public justification. He adheres to a comprehensive doctrine that he also cares deeply about but does not seek to ground political arguments in the values of that doctrine, as is

required by the constraints of public reason. Abe claims that society should implement policy A because it is consistent with his comprehensive doctrine's view of the moral good. Zeke responds 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 Brower's argument that public justification cannot support equal respect. 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.

To summarize, I argue 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 fact of reasonable pluralism, which I take to be uncontroversial in a free society, this impasse will inevitably and consistently occur. 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 reasonable comprehensive doctrine to be as valuable and worth adhering to 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.

To conclude, Brower presents a relatively common and worrisome critique of Rawls' political liberalism and public reason in particular: that it is overly insular and cannot justify itself to those who do not already accept the priority of the reasonable. Brower then argues that although proponents of public justification have ways of avoiding this problem, those arguments are unsuccessful and as a result public reason and its justifications are very weak. The two arguments Brower presents that are most important also present the most problems if they fail. Brower claimed that an appeal to the political, meaning political justice, would fail to save public reason from this insularity because an appeal to the political itself contains the demands of the reasonable. I respond that the concept of political justice brings with it many other factors that are instrumentally useful, such as the fact that it serves to engender shared respect between those with differing ideas of the good. These can all be compelling to those who do not accept the demands of the reasonable. Additionally, I demonstrate that Brower's argument that political liberalism is a moral theory falls flat because of his mischaracterization of political justice. Brower also presents the option of appealing to respect, as I did earlier, but then argues that the demands of public justification actually

undermine equal respect because they force people to ignore their own deeply important values. I responded by demonstrating how this was not only incorrect, but that the constraints of public justification actually serve to reinforce shared respect based on Brower's own principles. In these ways I demonstrated that two of Brower's arguments regarding the insularity of the reasonable were incorrect, where proving only one wrong would be sufficient to avoid his concerns. Thus, Brower's critique of public justification, that it cannot justify itself to those who do not already accept the priority of the reasonable, is unproblematic and does not serve to demonstrate any genuine weakness in the principle.

Objection 4: Public Justification is Insular, Must Insist on its Own Truth

The final objection I will address in this project is concerned with similar issues to those presented by Brower. David Estlund in his article "The Insularity of the Reasonable: Why Political Liberalism Must Admit the Truth," questions the circularity and insularity of the argument from reasonableness and in this way makes a "begs the question" argument. The main thrust of Estlund's argument is comprised of two related claims: that the reasonableness constraints imposed by public justification are too insular to do any real work, and that the position that the truth value of any given argument or doctrine is unimportant is untenable. In Estlund's words, his general argument is that "political liberalism must assert the truth and not merely the reasonableness—or acceptability to all reasonable people—of its foundational principle that doctrines are admissible as premises in political justification only if they are acceptable to all

reasonable citizens.”⁵⁵ I argue that the basic tenets of public justification are both instrumentally useful and politically just, and hold an agnostic position with regard to the truth of the principle. Estlund argues that this position, that public justification is politically just and reasonable but is agnostic with regard to its own truth, is flawed because to assert its reasonableness is insular to the point of uselessness, such that it is only compelling to those who have already accepted it. In what follows I will present the specific layout of this case, and then I will demonstrate the ways in which it does not force the principle to change in order to remain viable.

Before continuing, it is important to note that when Estlund refers to Rawls’ political liberalism, he is referring to Rawls’ overall political project, of which public justification and public reason are only parts. However, Estlund’s criticisms, if successful, are highly damaging both to the conception of the reasonable and to the principle of public justification, and it is for that reason that I address his concerns. When Estlund refers to the core concept of political liberalism, he is referring to a considerable aspect of public justification, that the only arguments that should be presented in political discourses are those that can be reasonably accepted by the opposing side and which do not originate in or appeal to conceptions of the good. As he frames it, political liberalism must include, at the very least, the doctrine that, “No doctrine is admissible as a premise in any stage of political justification unless it is acceptable to all reasonable citizens, and it need not be acceptable to anyone else.” Estlund refers to this position as RAN (Reasonable Acceptance Necessary).⁵⁶

⁵⁵ David Estlund, “The Insularity of the Reasonable: Why Political Liberalism Must Admit the Truth.” *Ethics* 108 (1998): 253.

⁵⁶ Estlund, “The Insularity of the Reasonable,” 254.

After presenting his thesis, Estlund embarks on his critique of Rawls's position by addressing what he refers to as the insularity of the reasonable. Estlund presents what he calls the AN principle, which is essentially a deconstructed version of RAN used for the sake of argument. This principle is that "No doctrine is admissible as a premise in any stage of political justification unless it is acceptable to a certain range of (real or hypothetical) citizens C, and no one else's acceptance is required."⁵⁷ Once this is established, Estlund explains how any given AN must be acceptable to its particular C or it fails on its own terms and is self-excluding. He proceeds by discussing how there are no real people who are always reasonable, which means that the RAN position refers to a C group that is either comprised of hypothetical people who are ceaselessly reasonable, or real people only when they are being reasonable.⁵⁸ Estlund concludes from this that the C group for Rawls' political liberalism's RAN is insular.

It is at this point that Estlund presents the first real problem he perceives with public justification. He explains how with a plurality of insular groups, the reasonable among them, there is no way to justifiably give one group "rejection rights" in political justification over another group, because there is no concern for the truth of any given doctrine in Rawls' Liberalism.⁵⁹ As Estlund articulates this problem, "...Rawls also holds that political liberalism may not require the truth of a doctrine for its admissibility. With that move, the view loses any way to select among the plurality of insular groups, and it becomes untenable."⁶⁰ In other words, Estlund holds that public justification is an implausible and fundamentally problematic position because it does not require that

⁵⁷ Estlund, "The Insularity of the Reasonable," 257.

⁵⁸ Estlund, "The Insularity of the Reasonable," 259.

⁵⁹ Estlund, "The Insularity of the Reasonable," 260.

⁶⁰ Estlund, "The Insularity of the Reasonable," 260.

arguments or doctrines are true for them to be justifiably admissible in public political discourses. This lack of a truth requirement results in the absence of any justifiable way to privilege one group over another as that group that must be appealed to, as the group of “reasonable people” are in Rawls’ political liberalism. Estlund explains the core of his position when he says

Now for the central problem with this avoidance of truth. When a particular version of C is put forward in versions of AN, it must not be claimed to be the true or correct version of C, the one that makes AN true. All that can matter about AN and its version of C is whether it is admissible, but by political NTN its truth does not bear on that question.⁶¹

To clarify, Estlund’s use of political NTN refers to political liberalism’s position that there is no truth necessary to when considering what arguments are admissible in the context of political justifications. This argument is the most important, and most potentially damaging, claim that Estlund makes. He adds that “Insularity is indeed a requirement for the coherence of any version of AN.”⁶² Although an overall less problematic claim, this is also an issue that must be addressed. In essence Estlund is making claims similar to Brower’s: that public justification cannot justify the priority granted to the reasonable to those who themselves do not accept Rawls’ conception of the reasonable.

Estlund continues this line of argument by explaining how the aforementioned problem of truth damages political liberalism’s status as a theory of legitimacy, one of the aims of the principle of public justification. As Estlund frames it, “If...it is supposed to be a theory of legitimacy, it is committed to the truth of its foundational doctrine about the authoritative group and not merely to that doctrine’s admissibility on other

⁶¹ Estlund, “The Insularity of the Reasonable,” 261.

⁶² Estlund, “The Insularity of the Reasonable,” 261.

grounds.”⁶³ Political liberalism, and by extension the principle of public justification, needs to appeal to some sort of truth in order to act as a theory of legitimacy. Specifically, Estlund holds that it needs to demonstrate that reasonableness is the true basis for legitimate political discourse, and that reasonable people are the group that political arguments must be directed at. Because political liberalism insists on not basing acceptable arguments on truth, there is no way to justify the priority of the reasonable. In the examples of public justification I give in chapter 2, nobody would accept the argument that they should use public justification to come to some sort of agreement about the issue at hand. They would claim that they have no reason to accept this principle, as it does not even claim that it is true! Estlund argues that Rawls’ political liberalism can be largely successful in its original goal by basing itself in the truth. His argument continues in that direction, but I will not address it here because I will refute the primary reasons Estlund gives for public reason’s need to admit the truth. If I can successfully defend Rawls’ insistence that political liberalism does not need to rely on true arguments for the purposes of political discourse, then the remainder of Estlund’s argument for the ways in which such political liberalism could be changed so as to incorporate a foundation in true arguments is unnecessary.

In order to defend the principle of public justification against Estlund’s criticisms, I must demonstrate that three separate arguments are either incorrect or do not actively damage the public justification. First, I will need to answer Estlund’s claim that political liberalism, and by extension public justification, faces an “impervious plurality of insular groups available to do the work of group C...”⁶⁴ I need to demonstrate that there exists a

⁶³ Estlund, “The Insularity of the Reasonable,” 262.

⁶⁴ Estlund, “The Insularity of the Reasonable,” 268.

justification, or at least a reason, to present arguments that could be accepted by reasonable people as opposed to any other given group. Second, I will need to refute Estlund's claim that political liberalism's insistence on avoiding issues of truth undermines its ability to effectively generate and demonstrate political legitimacy. Lastly, I have to answer Estlund's argument that because of the aforementioned insularity problem, political liberalism and therefore public justification is untenable without admitting a concern for the truth into the criteria for acceptable arguments in political discourse.

Before embarking on a refutation of Estlund's main points, I must address one more remark Estlund makes with regard to the doctrine of appealing to reasonable citizens. He questions the viability of even discussing reasonable citizens as a group with rejection rights because they might not exist. Estlund discusses how reasonable citizens can either refer to people when they are being reasonable, or to a hypothetical group that is always reasonable. Estlund notes that "...no one is unfailingly reasonable..."⁶⁵ and instead suggests that this group could instead refer to "...people-when-reasonable or to hypothetical people who are always reasonable."⁶⁶ Although Estlund does not pursue this particular issue that public justification's C group might not actually exist, it is still a possible weakness of the principle and as such I should attempt to refute it. If reasonable citizens are either hypothetical or nonexistent, what does it mean to present arguments that can be reasonably accepted by them? I respond to this by arguing that, as I argue above, Estlund mischaracterizes the issue and is presenting two possibilities where a third option is actually the correct one. While it is of course true that nobody is unceasingly

⁶⁵ Estlund, "The Insularity of the Reasonable," 259.

⁶⁶ Estlund, "The Insularity of the Reasonable," 259.

reasonable, nobody is unceasingly anything. That fact alone does not force us to consider reasonable citizens as illusions or hypothetical people. Estlund seems to imply that in order to be considered more than a temporarily reasonable person, one must always be reasonable, which is patently not the case. A given citizen of a society can be characterized as reasonable if they are habitually reasonable, with occasional lapses. That, certainly, does not seem to be implausible. It is common practice to characterize people as possessing a certain quality without implicitly asserting that they always embody that characteristic. There are reasonable people who are occasionally unreasonable yet who persist in being overall, reasonable people. This group does exist, and its temporary or hypothetical nature cannot be said to be a weakness for public justification.

Estlund accuses political liberalism of being overly insular because of its reliance on and weight given to the priority of the reasonable and reasonable citizens in particular. To begin, Estlund is making a mistake when he refers to the foundational principle of political liberalism. As Estlund characterizes it, the principle of public justification holds that political arguments must be reasonably acceptable to all reasonable citizens, which is unproblematic. However, he goes on to equate this basic claim with his acceptance necessary (AN) principle for which the C group, the group to which arguments must be acceptable, is comprised of reasonable citizens. He then gives this C group in any AN principle what he calls rejection rights, which apply to people when their "...objections are decisive simply owing to whose objections they are..."⁶⁷ He places these rights in what he calls the insularity requirement, which states that "Each member of C must

⁶⁷ Estlund, "The Insularity of the Reasonable," 259.

recognize the rejection rights of all and only members of C.”⁶⁸ So, for public justification, all reasonable people recognize the rejection rights of all other and only other reasonable persons, according to Estlund’s characterization of it. The insularity problem rests on the claim made by political liberalism, and therefore public justification, that reasonable people are the only group that can object to and then reject arguments presented in public political discourse.

The problem here is that Estlund is presenting a view of political liberalism that is not actually political liberalism, and is at best making a mistake. Reasonable people are not the C group because they exclusively hold rejection rights over the entirety of public political discourse. The very discussion of rejection rights misses the point of public justification, as the principle does not hold that public reasons must be acceptable to reasonable persons because reasonable persons might otherwise reject those arguments. There are no rejection rights in public justification. Rawls advocates the priority of the reasonable both because it is instrumentally valuable in political affairs and because it is politically just. Instrumentally, the ideal of the reasonable, as I discussed in chapter 1, includes within it being willing to cooperate and work fairly with others so as to achieve political ends that are desirable for all. Politically, making arguments that could be reasonably accepted by all reasonable people within the society is just both because it is respectful and because it ensures that only appropriate values are presented as reasons, namely values that inhere in the political culture of the society. It is true that Rawls’ political liberalism does not claim that there is any inherent metaphysical truth in the appeal to the reasonable. Reasonable citizens are not selected because they as a group meet a certain set of criteria that allows them to legitimately reject arguments presented

⁶⁸ Estlund, “The Insularity of the Reasonable,” 259.

in political discourses. Estlund's approach to and framing of the issue is inaccurate. Reasonable citizens neither have rejection rights nor are they the group that must be appealed to because of some special status they have. The principle of public justification holds that arguments presented in political discourse should be able to be accepted by reasonable people because of the instrumental value of prioritizing the reasonable and because doing so is politically fair and just.

These arguments show why the problem of insularity that Estlund presents is not really a problem. There is not an "impenetrable" plurality of groups to choose between for the C group of public justification because, quite simply, that is not how the principle works, or purports to work. Public justification as a principle does not choose a group because of their virtues and assign them particular importance in the realm of political discourse. As I have already demonstrated, the idea of rejection rights is not a concept that belongs in this discussion. Political liberalism holds that justifiable arguments are those that are presented as reasonably acceptable by reasonable citizens because of the strengths of the reasonable, which I detail in chapter 1. There is not a plurality of C groups to choose between because political liberalism through public justification offers compelling reasons for the priority of the reasonable, which can be persuasive to those who have not already bought into the idea of the reasonable. The insularity argument that Estlund presents, then, is not really an issue. The strengths of the priority of the reasonable, along with the instrumental and politically just virtues associated with public justification's choice of C group, allow the principle to hold its ground with regard to reasonable citizens without having to worry about plurality or insisting on a true view.

Now that the plurality critique has been shown to be unproblematic, I must address Estlund's claim that avoidance of a truth stance undermines public justification's ability to act as a principle of political legitimacy. Estlund asks how political liberalism can purport to be a theory of legitimacy if it is not committed to the truth of its own most fundamental claims. The answer to this is the same as the answer to the issue of truth in terms of the value or priority of reasonable citizens: public justification acts as a theory of political legitimacy because its instrumental uses and the ways in which it accords with political justice. Public justification can act as a useful theory of political legitimacy despite its agnostic position with regard to its own truth because of the ways in which the priority it confers on the reasonable lead to and ensure politically just uses of political authority. In essence, public justification, while not arguing for its own truth, still is a compelling principle for political legitimacy for reasons mentioned in chapter 1. It ensures politically just uses of political power and justifies itself through the instrumental and political uses of the reasonable.

The final aspect of Estlund's critique of political liberalism is the issue of truth itself. Estlund argues that the insularity of the group of reasonable citizens, the group that political arguments must be acceptable to in order for reasons and arguments to be publicly justifiable, forces political liberalism to ground itself, to at least a minimal extent, in some sort of absolute truth. However, as I demonstrated earlier, the insularity issue no longer poses a problem, because Estlund's mischaracterization of political liberalism and the particular role of the liberal citizen. Estlund argued that the impenetrable insularity of groups such as reasonable citizens made it such that political liberalism had to base its choice of reasonable citizens as the group with rejection rights

in some sort of true doctrine. As I demonstrated, though, the conception of rejection rights is misleading and inaccurate, and Estlund's mischaracterization of political liberalism resulted in the successful refutation of his insularity critique. Because the insularity of reasonable citizens as Estlund conceives of it is a non-issue, the remainder of his argument, that political liberalism, and therefore public justification, must admit the truth into its self-conception. Estlund's argument that political liberalism needs to incorporate a mooring in the truth relies on his insularity argument. If that is, as I have demonstrated, no longer an issue, then there is no longer any ground on which Estlund can base an argument that public justification needs to incorporate the truth. Because of this, Estlund's critique no longer offers any sort of compelling change or weakness that public justification must account for.

To conclude, David Estlund's critique of political liberalism, which could be extended to public justification, presented three potential problems. Estlund tried to show that the standard of the reasonable and of reasonable citizens was, as he put it, impenetrably insular. It could neither be compelling nor persuasive to those who had not already accepted the priority of the reasonable. Additionally, Estlund argued, political liberalism had no way to justify its core tenet: publicly justifiable arguments must be acceptable to all reasonable persons, and because of this was hopelessly insular. His second concern was that the lack of emphasis on public justification as a true doctrine resulted in it failing its role as a principle of political legitimacy. Estlund's third and final argument was that the aforementioned insularity issue forced political liberalism to change itself such that it invested, to some degree, in the fundamental truth of its position. However, as Estlund notes, Rawls' position is that it is the purview of comprehensive

doctrines of the good to discuss matters of absolute truth, and for that reason political liberalism cannot be authentically changed in the way that Estlund advocates. I was able to show that because of the strengths of the reasonable, its instrumental value, and its use with regard to political justice, in addition to Estlund's general mischaracterization of political liberalism, Estlund's critiques can all be shown to be unproblematic. Political liberalism can indeed justify the position of reasonable citizens, public justification can still fulfill the role of a theory of legitimacy, and political liberalism therefore does not need to admit the truth.

A Note on the Instrumental Value of the Principle of Public Justification

At several points in this project I have used the instrumental values associated with the principle of public justification in defending against critiques. However, this is potentially problematic because justifying a principle based on its instrumental value implies that the principle is merely convenient, and perhaps temporarily so. Adhering to public justification based on its instrumental value is accepting as merely a *modus vivendi*, which is not true adherence to a principle like public justification. Rawls does a good job explaining a *modus vivendi* when he explains it in the context of two states with mutually exclusive or conflicting interests. As he says, under these circumstances, "Both states, however, are ready to pursue their goals at the expense of the other, and should conditions change may do so."⁶⁹ The analogy here is that when a principle is adhered to as a mere *modus vivendi*, then that principle could be discarded at a moment's convenience, which is not how one acts if they are genuinely persuaded by the principle. Rawls wants public justification to be adhered to with genuine allegiance, in the context

⁶⁹ Rawls, *Justice as Fairness*, 192.

of what he calls an overlapping consensus. What Rawls means by overlapping consensus is that "...the political conception is supported by the reasonable though opposing religious, philosophical, and moral doctrines that gain a significant body of adherents and endure over time from one generation to the next."⁷⁰ This is clearly not the case when the principle is accepted merely for its instrumental values. How can this problem be solved if public justification is for many a mere *modus vivendi*, as I seem to be arguing?

I concede that some of my arguments, if successful, only result in public justification being accepted as a *modus vivendi*. However, this does not mean the principle cannot be persuasively defended as a real principle. Rawls suggests that principles that initially are accepted only as a *modus vivendi* can plausibly become part of a genuine overlapping consensus. As Rawls explains, "...as citizens come to appreciate what a liberal conception achieves, they acquire an allegiance to it, and allegiance that becomes stronger over time... With this we have an overlapping consensus."⁷¹ In essence, my arguments that political liberalism and public justification have instrumental value, and as a result are compelling to many sorts of people, do admittedly make them persuasive as a mere *modus vivendi*. However, they are still compelling theories because of their instrumental value. I argue, as Rawls does, that those convinced by my instrumental arguments could very plausibly come to believe in and adhere to the principle of public justification with genuine allegiance, in the context of an overlapping consensus. In this way, my use of the instrumental value of the principle does not ultimately have any adverse effect on my defense of public justification.

⁷⁰ Rawls, *Justice as Fairness*, 32.

⁷¹ Rawls, *Justice as Fairness*, 194.

The insularity issue is a genuine and pressing problem for Rawlsian thought, and it is for this reason that I must address it and show that it does not in fact render the principle of public justification unworkable. Bruce Brower presented a fairly standard insularity concern, and argued that the tenets of public justification, such as the standards of reasonableness, could not be made compelling to those who had not already accepted these concepts as persuasive. Brower argues that there are several possible values that could serve to make the principle compelling, such as political justice or equal respect. However, after examining them, Brower determines that none of these values can be used to justify the principle to those who do not already find it compelling, as political justice itself is still insular and that equal respect is actually undermined by public justification. I respond that political justice has sufficient instrumental value, such as its legitimizing force, that it can be made appealing to those who are not adherents to Rawls' liberalism. Further, I argue that not only does the principle not undermine equal respect but actually is conducive to it, as public justification is meant to work within the fact of reasonable pluralism, and ensures that no comprehensive doctrine is prioritized over any other, provided they are reasonable.

David Estlund also presents an insularity-related worry, but is particularly concerned with the fact that Rawls' political liberalism, and by extension public justification, does not insist on its own truth. Estlund argues that political liberalism cannot justify itself to non-adherents because without being true, it can only appeal to its own tenets, as Brower argues. Estlund goes from there to argue that political liberalism and public justification must take the position that they are true positions, especially when they are acting as principles for determining political legitimacy. I respond that the

strengths of the priority of the reasonable, in concert with Estlund's mischaracterization of Rawls' political liberalism with regard to the concept of the reasonable, render Estlund's arguments unproblematic. The instrumental value of public justification and an accurate understanding of the idea of reasonableness are sufficient to determine that public justification need not admit the truth

Conclusion

The purpose of this project was to demonstrate the ways in which political philosophy can serve to solve genuine political problems. Public justification in particular is a political principle that I feel can do good political work. Both the principle itself and the concepts attached to it, such as the priority of the reasonable, are useful ideas that I feel are worth defending. As is evidenced by recent political climates, particularly in the United States divisiveness and partisanship plague political discussions such that it feels as though no progress can be made. I feel there is a good case to be made for principles such as public justification and their efficacy in contemporary political environments. By presenting justification in a positive light, explaining the principle, and discussing why it is such a compelling principle, I can help to show how the concepts presented by Rawls in this context can do genuine political work and help us move toward a more cooperative and efficient political system.

In this work, I began by introducing the principle itself. I explain how public justification as a principle holds that when making important political arguments, or when justifying certain uses of political power, one should only present certain sorts of reasons. In particular, when making these sorts of arguments, one should not appeal to their conceptions of the moral good, or what Rawls calls comprehensive doctrines. This principle holds that if citizens appeal to their comprehensive doctrines of the good, such as their religious beliefs, then against whom they argue to do not have any way to reasonably accept their arguments. Rawls here presents what he calls the fact of reasonable pluralism, which holds that in contemporary democratic societies, there will exist a multitude of reasonable comprehensive doctrines and that this is unavoidable.

While not a bad thing, this does ensure that so many conceptions of the good exist that presenting political arguments that appeal to any one of these will result in arguments that the majority of citizens cannot reasonably accept.

Rawls' answer to this, and the meat of the principle of public justification, is that one should not appeal to these moral conceptions of the good when making political arguments for the aforementioned reason. Rather, the principle holds that one should appeal to values that exist within the political culture of that society, such that all participants in the political conversation have reasonable grounds to accept any given argument. While this does not guarantee agreement, as I discuss in later sections, it does have many strengths. In the first sections I also presented several auxiliary concepts that are not themselves part of the principle, but do help to contextualize public justification and are important to understanding the goals and content of the principle. Among the concepts I presented are the facts of reasonable pluralism, the concept of the reasonable and its distinction from the rational, and what is meant by political, as opposed to wholly moral, justice. A last concept I explored, and among the most significant, is public reason. Public reason is the sort of reason used by citizens making publicly justifiable arguments, as well as the sort of reason used by political authorities when given reasons for their uses of their political power. It is best thought of as a vehicle for public justification, and any critique offered against public reason is as good as a critique of public justification.

After presenting the actual content of the principle, I then examined the reasons why I chose to defend the principle. I presented six reasons for why I thought the principle of public justification was worth defending and a convincing principle on the

whole. These strengths of the principle demonstrate why it is a principle worth endorsing and why I should even bother with defending it. Among the strengths of the principle presented in this section include the ways in which the principle helps to avoid tyranny and oppression as well as ensure political legitimacy. Additionally, I examined the ways in which public justification can solve highly divisive political issues that occur in contemporary political climates, and how the prioritization of the reasonable helps further this end, among others. Enumerating these strengths served several purposes. I was able to show why the principle of public justification was a strong one, and worth defending. Additionally, I could demonstrate the ways in which proper use of the principle could serve to fix contemporary political problems, or at the very least alleviate problematic political discourses occurring in modern democratic societies.

In Chapter 2, I presented two examples of public justification in order to ground my discussion of the principle in a clearer, less abstract context. The first example I gave demonstrated how successful implementations of public justification might look. This was an example of the principle being used both correctly and successfully. The second example demonstrated proper but unsuccessful use of the principle of public justification. Additionally, I examined what could be done in such a situation. I suggest that falling back on the status quo, provided that it was publicly justifiable, was a viable option should no other decision be reached despite the presentation of public reasons. Failing that, I propose the possibility of an emergency vote amongst either the legislature or the populace to establish a tentative status quo, provided that such a vote was consistent with the political values of the society.

In Chapter 3, I addressed objections presented by Robert Westmoreland and Steven Wall, who both voice concerns that fundamental aspects of the principle cause it to undermine itself such that it fails to meet its stated ends. Westmoreland claimed that the conception of reasonableness that Rawls presented, along with the need for reasonable persons to accept the burdens of judgment, did not accurately represent real people. This means that, according to Westmoreland, Rawls is forced to claim that the vast majority of people are unreasonable, and therefore cannot and should not participate in fundamental political discussions. The only people who can justifiably take part in political discourse are those who accept political liberalism. This makes the theory, despite its nonpartisan aims, highly sectarian. I answer Westmoreland by arguing both that his conception of reasonableness is too strict and not representative of Rawls' understanding of it, and that he is wrong in claiming that most people are unreasonable according to Rawls' definition. Because the reasonable is much more plausible than what Westmoreland presents, public justification cannot be said to be sectarian.

Steven Wall's objection to the principle was similarly founded. He was concerned that Rawls' refusal to give a correctness-based justification for public justification might lead the principle to be self defeating. Since it does not claim to be inherently correct, the principle must now be justified in some other way, and Wall argues that it must either meet its own demands or be shown to not have to meet its own demands. Wall continues by claiming that neither case can be convincingly made, and as a result the principle cannot be justified by any means, including according to its own terms. To this I respond that a plausible argument can be made for either case. I claim the public justification does not need to meet its own demands or be justifiable on its own

terms because political principle selection is not what public justification is for. The principle was only meant to legitimize political power and determine the proper sorts of arguments in political discussions, and as such the principle is not within its own purview. Alternatively, I argue that public justification can in fact meet its own demands, and that despite Wall's claim to the contrary, there do exist sufficient shared values within the political culture of contemporary democracies that public justification would have something to appeal to. In this way, I show that Wall's concerns about the self-defeat of public justification do not in fact damage the principle.

In Chapter 4 I conclude by addressing two final objections that are concerned with the insularity problem, which is a consistent issue for Rawlsian thought. In essence, this concern is that Rawls is unable to justify the priority of the reasonable to those who are not already convinced by it. The first objection offered here, presented by Bruce Brower, has this very concern. Brower suggests several ways that public justification can be justified to those who do not accept the priority of the reasonable, such as an appeal to political justice or equal respect. However, Brower determines that none of these options work, as appealing to political justice itself involves an appeal to the reasonable, and because the principle actually serves to undermine equal respect. In response, I argue that an appeal to political justice itself is sufficient to avoid the insularity claim, as there are sufficient instrumental goods associated with political justice, such as legitimizing force. In addition, I successfully argue that an appeal to equal respect can also serve to escape the insularity issue, as public justification, despite Brower's argument to the contrary, in fact serves to protect and engender equal respect. Because of these

instrumental strengths of public justification, Brower's insularity argument is not a concern.

The final objection I address, also worried about the insularity of Rawls' political liberalism, is presented by David Estlund. Estlund argues that public justification's failure to insist on its own truth and correctness results in the same problem that Brower is concerned with. Estlund then argues that public justification must admit the truth and take the position that it is a true principle. I respond to this by arguing that a combination of the strengths of public justification in addition to Estlund's mischaracterization of the principle, particularly with regard to what it means to be reasonable, overcomes the insularity concern and can make the principle compelling to those who have not accepted its tenets. Here I am able to persuasively argue that public justification does not need to insist on its own truth.

On the whole, I feel that the principle of public justification is a compelling one, and can serve to do genuine political work. Its central tenet, that political arguments should not appeal to comprehensive conceptions of the moral good and instead should appeal to shared political values such that all could reasonably accept the arguments being made, is very capable of helping to solve issues such as volatile partisanship and political environments lacking in shared respect, to name just a few. Political philosophy overwhelmingly tends toward the abstract, but I am convinced that Rawls' principle of public justification has real-world applications and can solve genuine political problems. It is for this reason that I chose to endorse and defend this principle. I was able to show not only that it is a compelling principle for a variety of reasons, but that it continues to be a strong principle in spite of arguments to the contrary, and that objections aimed at its

most glaring weaknesses fail to do any real damage. The fact that public justification is not only compelling but also robust indicates that it deserves to be implemented such that it can help to do the very important work of politics.

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