

The Asymmetry Objection Rides Again: On the Nature and Significance of Justificatory Disagreement¹

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1. Introduction

According to political liberalism, ‘the exercise of political power is only legitimate when grounded in a constitution, the essentials of which citizens “may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason”’.² This principle of liberal legitimacy represents the most prominent contemporary understanding of what Jeremy Waldron calls ‘the fundamentally liberal thesis’ about the justification of state policy.³ When exploring the consequences of this principle, political liberals argue that political power can be legitimately exercised on matters of justice but not on matters concerning the good (i.e. human flourishing or other comprehensive metaphysical or theological issues; for short, in what follows, we will use the terms interchangeably).

In response, the asymmetry objection to political liberalism states that the doctrine - in allowing legitimate state action on justice but not the good life - treats disagreement about justice and about the good life in an arbitrarily asymmetric way. That is, according to the objection, both justice and human flourishing are subject to reasonable disagreement and there is no principled way to allow legitimate state action in pursuit of justice but not in pursuit of the good. If accurate, this objection shows that political liberalism is either incoherent or sets an implausibly high bar for legitimate state action.

Our aim in the paper is to dispute a recent solution to the asymmetry objection devised by Jonathan Quong. As Quong explains in his authoritative work on political liberalism, the asymmetry objection leaves political liberals with a number of options.⁴ First, for example, they can argue that there is no reasonable disagreement about justice and it is for this reason that legitimate state action on matters of justice is possible. Quong himself rejects this response. He asks us to consider the case of abortion, which he thinks is the proper subject of justice. A range of positions on the permissibility of abortion, he argues, are reasonable. Quong’s view goes here hand in hand with Rawls’ own suggestion that there are a number of reasonable liberal positions on matters of justice which might be held by reasonable citizens. Given that society must eventually pursue one of these conceptions, it appears necessary to show how action remains possible despite such reasonable disagreement. Furthermore, Quong even rejects the suggestion that disagreement over justice is always less likely

than that over the good life. As he illustrates, there is little disagreement about the harms of excessive alcohol consumption even when the dispute concerns simply human flourishing.⁵

Second, political liberals can bite the bullet and follow Gerald Gaus in accepting that state action on justice is illegitimate in the face of disagreement, just as state action in pursuit of the good is illegitimate given disagreement. That is, according to Gaus, state action is legitimate only when there is agreement between all reasonable people. Indeed, the agreement must be such, argues Gaus, that everyone recognizes a given principle of justice as ‘conclusively justified’, i.e. everyone has a reason to prefer the principle to all alternatives.⁶ In response, Quong argues that, were such a standard to be adopted, then no sufficiently action guiding principles of justice would be agreed on at all (and thus no legitimate state action on justice would be possible). This is because, he argues, to reach an agreement we must stay at a high level of abstraction (e.g. ‘all must have their fair share’); as soon as we attempt to ‘zoom in’ to outline the tangible, action-guiding implications of the abstract principle, no principle is universally preferred relative to all other options.⁷

Finally, political liberals can attempt to show that the seemingly asymmetric treatment of both types of disagreement - on justice and on the good - is not asymmetric because it tracks a deeper distinction. This is Quong’s strategy. We will outline the strategy, in sections 2 and 3, before suggesting, in section 4, that it exposes Quong to a dilemma whereby he must either opt for an extremely demanding and unrealistic account of disagreements over justice or he cannot answer the asymmetry objection. In sections 5 and 6 we will consider Quong’s possible rejoinders and argue that neither of them succeeds.

While our focus in this paper is on Quong’s ingenious attempt to save political liberalism, our argument poses problems for political liberalism more generally. This is because the asymmetry objection arises for any theorist committed to both (1) a substantive and not universally shared conception of justice, and (2) that state policy ought not to be based on disputed conceptions of the good. As these two commitments are the defining features of political liberalism, all political liberals must grapple with the asymmetry objection. Therefore, if we are correct and Quong’s account fails, political liberals must seek to find another solution. At present no such solution seems forthcoming,

not least because of Quong's own compelling arguments against rival political liberal strategies.⁸ In light of this, we conclude that the project of excluding matters of the good from politics faces a serious internal problem, which has not been, and perhaps cannot be, adequately addressed.

2. Quong's solution

To explain why reasonable disagreement over justice does not bar legitimate state action, while barring state action on the good, Quong distinguishes between two types of disagreement: foundational and justificatory.

Foundational disagreement is disagreement in which 'the participants do not share any premises which can serve as a mutually acceptable standard of justification'.⁹ The disagreement is 'at the level of ultimate convictions or principles'; 'there is no deeper standard of justification that [the participants] accept that could serve as the basis for adjudicating their dispute.'¹⁰ To illustrate an instance of foundational disagreement, Quong offers the example of Mike and Sara who disagree on the justice of recreational drug use. Mike appeals to God's word to argue for his position. Sara, on the other hand, is an atheist who holds the Scanlonian view that morality only applies to our relations with other individuals. She thus believes that actions such as recreational drug use, provided they do not harm third parties, cannot be wrong.

Justificatory disagreement is disagreement in which the 'participants share premises'¹¹ that serve as a mutually acceptable standard of justification, but they nevertheless disagree about certain substantive conclusions'.¹² In our world, according to Quong, relying only on a mutually acceptable standard of justification will likely mean, in effect, that the participants abstain from relying on 'sectarian' (i.e. non-free-standing) doctrines. To illustrate an instance of justificatory disagreement, Quong offers an example of a dispute over whether the government is permitted to force the Catholic Church to ordain women. Tony, we are told, believes that the egalitarian reasons for hiring should not apply to social clubs and associations, of which the Catholic Church is one. He also believes that forcing the Church to ordain women would compromise the weighty value of religious freedom. By contrast, Sara believes that equality of opportunity requires ordaining women priests and this value

outweighs any competing concerns. According to Quong, although they disagree on what the government should (be permitted) to do, '[t]hey share the same broad view of what counts as a good reason'.¹³ When Tony advances his argument, he 'has no reason to believe that his argument is appealing to any values or principles that Sara, as a reasonable citizen, cannot accept'.¹⁴ In fact, according to Quong, Tony and Sara can accept the other person's argument as 'a reasonable example of public justification, although they do not believe it is the most reasonable public justification'.¹⁵

According to Quong, those subject to merely justificatory disagreement can still be reasonably expected to endorse whichever policy - out of the range of policies they disagreed about - has been reached through a fair procedure (e.g. voting¹⁶), even though they disagree with it (and can reasonably reject it in the sense that they think a different policy is superior).¹⁷ By contrast, those subject to foundational disagreement cannot be expected to do so and hence coercing them according to a view they do not share would be illegitimate.

The justificatory/foundational distinction is supposed to solve the asymmetry objection because, according to Quong, it maps onto the distinction between, on the one hand, reasonable disputes about justice and, on the other, about the good life. That is, for Quong, reasonable disputes about justice are by definition subject to justificatory disagreement. To briefly see why consider the following. On Quong's view, reasonable citizens, by definition, accept the fact that burdens of judgment imply that some other citizens will reasonably hold a different comprehensive doctrine; they also accept certain substantive commitments on values: they are committed to the freedom and equality of all citizens and to constructing a fair society. Accepting the above means that the citizens are also committed to public reason: (1) sincerity; (2) appeals only to free standing, political values (rather than conceptions of the good) and (3) a plausible balance of the free-standing, political values.¹⁸ In effect, although the participants may disagree on 'the exact weight or ranking of those values or principles', the values they rely on are 'mutually acceptable'.¹⁹ Hence, argues Quong, the disagreement among reasonable people on justice is necessarily justificatory.

By contrast, according to Quong, disagreement among reasonable people about the good life is 'normally' or 'almost certainly' subject to foundational disagreement and, if it is not, at least, in a

pluralist society, such disagreement could be foundational.²⁰ That is, even if all citizens agree that alcoholism is bad for the same reasons, they could have, in fact, appealed to different conceptions of the good to explain the harm of alcoholism.

So it is because justificatory and foundational disagreement map, respectively, onto reasonable disagreement about justice and about flourishing, that we can expect reasonable endorsement of (procedurally fairly selected) policies on justice but not on flourishing. Summarised:

1. Burdens of judgment apply to thinking about both comprehensive issues (including the good) and to matters of justice (a premise of the asymmetry objection and accepted by Quong).
2. Legitimate state action is compatible with justificatory disagreement but not foundational one.
3. Disagreement about justice between reasonable people is (necessarily) justificatory.
4. Disagreement between reasonable people about conceptions of the good is almost always foundational.
5. Therefore, it is likely the case that legitimate state action is compatible only with disagreement on justice but not with disagreement about conceptions of the good.²¹

3. The Objection from Agreement on a Fair Procedure

At this point, it could be objected that even those whose disagreement is foundational could also have a reason to endorse whatever policies would carry democratic support. That is, those subject to a foundational disagreement *may* still agree to settle their disagreement by a vote (or through some other fair procedure), and if they do, this gives them a reason to endorse outcomes of the procedure and that, in turn, licenses the promotion of the good. So state action on the good can be legitimate too.

But Quong rejects this move. He thinks that a purely procedural reason to endorse a policy would not be appropriately liberal. As he explains, ‘perfectionist policies, even if they achieve second-order impartiality in the form of procedural legitimacy, will fail to meet the liberal standard of legitimacy when assessed at a first-order level. The justification for perfectionist policies must be, at bottom, perfectionist, and thus will not be acceptable to all reasonable persons....[The requirement

that justification appeals to substantive values acceptable to all reasonable persons] is what makes political liberalism distinctively *liberal*, rather than procedural or majoritarian'.²²

Let's accept, for now, that a liberal solution to the problem of disagreement requires that state policies can be justified to all relevant parties otherwise than merely with reference to an agreement on fair procedures. This highlights the following question: Why can those subject to justificatory disagreement be reasonably expected to accept a policy that they voted against if not because of their agreement that a policy should be democratically chosen? Or, put differently, why is the fact that a policy can be justified with reference to one's ultimate principles, even if one rejects the policy oneself, a good enough (liberal) reason to accept the outcome?

Following Rawls, Quong might answer that anyone whose ultimate principles have been taken into account, but who, nonetheless, loses a vote, has no good reason to insist that the policy that had won the vote be replaced with her preferred policy. In Rawls's words, 'What would be the objection' [that those who lose could successfully advance]?'²³ In the following section, however, we will argue that the distinction between justificatory and foundational disagreement does not, in fact, offer Quong the resources he needs to explain why it is always reasonable to expect endorsement from the losers of a vote in cases of justificatory disagreement but not foundational one.²⁴

4. Two Readings of Justificatory Disagreement: Coarse or Fine?

Quong's position, at least as presented above, requires disambiguation. One ambiguity concerns the issue of how wide the disagreement can be so that it still qualifies as justificatory rather than foundational. In this section we will suggest two possibilities, which we will call the coarse and the fine-grained views (or coarse and fine views for short²⁵).

On the coarse account of justificatory disagreement, it is enough that parties to the dispute agree on some important values or principles; even if they disagree about various other values their disagreement remains justificatory. That said, in line with political liberal desiderata, no party is allowed to appeal to contested sectarian views of the good. In the context of disagreement between reasonable citizens about justice, this would imply that the parties: recognize (general) freedom and

(general) equality as valuable; are committed to fair co-operation under circumstances of burdens of judgment; and are committed to all the necessary implications of these commitments, i.e. to public reason. Call this the agreement on basic values (or commitments). With the agreement on basic values in place, citizens might then disagree on whether any further, specific political value is indeed a value but their disagreement remains justificatory in virtue of their acceptance of the basic values alone. So, for example, Alice might suggest that privacy even at work is a value and Rob might dispute it, but their disagreement remains justificatory as long as they agree on the basic values.

There is some reason to think that Quong accepts this coarse account of what justificatory disagreement involves. For example, Rob and Alice in their dispute on privacy at work can still be taken to fulfill the requirement of agreement on the ‘*ultimate* convictions or principles’²⁶ since they can each claim that the value of privacy at work, or its lack, is compatible with the basic general values of freedom and equality. Also, no one is offering any non-free-standing values in support of their position, so the disagreement meets the requirement of non-sectarianism.

Consider next the fine account of justificatory disagreement. On this reading, for disagreement to be justificatory the parties must accept as values all the values offered by fellow citizens within whom they dispute a given policy; it is not enough if they merely agree on the basic values.

There are also several considerations suggesting that Quong adopts this alternative account. For instance, in the context of the justificatory disagreement between Tony and Sara, Quong argues that Sara can be reasonably expected to endorse the argument she disagrees with (and rejects) because it is ‘a plausible justification, based on a clearly identifiable political value *to which Sara is firmly committed*’ (emphasis ours).²⁷ That is, Quong relies on the fact of Sara’s actual commitment to the value of specific freedom advocated by Tony - a value that goes beyond the basic values. In addition, Rawls - whom Quong presents as his model on this issue - himself suggests that parties to the dispute on abortion consider the issue (at least) ‘in terms of these three important political values: the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens. (There are, of course, other important

political values besides these.)’.²⁸ The values listed by Rawls also seem to go over and above merely the basic values.

These two accounts of justificatory disagreement leave Quong with a dilemma. On the one hand, if he adopts the fine account then it is no longer clear that all disagreement about justice that appears reasonable is justificatory disagreement. We should expect, instead, that some such disputes will be foundational as some parties to the dispute will likely assert specific values that go beyond the basic values that all reasonable citizens must accept. Taking this route would reveal Quong to have offered a highly demanding account of reasonable citizenship, which might prove problematic in light of his own concerns about matching a conception of liberalism to our real world observations about political debates.

On the other hand, if Quong adopts the coarse account, then it is not clear that we are in the presence of a disagreement, in which all parties really do share a common framework sufficient to generate the need to endorse whichever policy is selected in a procedurally fair way. It is unclear, that is, why those who lose out (once votes have been cast) really have a reason to endorse the winning policy. After all, they can no longer be told - the way Sara could have been - that the policy is truly based simply on the clearly identifiable values to which they are ‘firmly committed’. What the parties share is merely agreement on the most important values together with a commitment that, in the presence of such agreement, any further disagreement can be resolved by a democratic (or otherwise fair) procedure. But then those subject to foundational disagreement could adopt a similar approach: they could claim that just as long as they too agree on the most important values - freedom, equality, fairness and burdens of judgment - they should also be allowed, if they wish, to settle any remaining disagreement on the less important, sectarian values in a procedurally fair way.

In the remainder of the paper, we consider two possible replies Quong might offer that would allow him to escape this dilemma. The first response rests on Quong’s view that reasonable citizens must have a ‘plausible’ balance of political values. The second draws on the thought that disagreements about justice amongst reasonable citizens are necessarily interpretive rather than brute disagreements. We argue that both responses fail.

5. The Appeal to Plausibility

The commitment to public reason includes, according to Quong, the commitment to offer only plausible arguments, i.e. arguments that recognize all the relevant, political values at stake in a given debate and assign them at least some minimally acceptable weight. Similarly, as Rawls explains, public reason asks that citizens be able to explain their vote to one another in terms of a reasonable balance of public political values...'.²⁹ Thus, for example, any plausible argument on abortion must likely (though, as Rawls explains, not certainly) weight the value of women as equal higher than the competing values at stake in the context of abortions relating to the 1st trimester of pregnancy.³⁰

If we add plausibility to the mix of requirements for justificatory disagreement then whether a disagreement is justificatory requires, at a minimum, not only that the parties to the dispute share the basic values but that they agree on all specific relevant values - or, at least, recognize the values advanced by others as relevant - and assign them a minimally acceptable weight.

However, this appeal to plausibility leaves us with two problems. First, it is unclear when the parties to the dispute must recognize that their interlocutors genuinely offer them reasons that - because they fall within the plausible range - they must accept as appropriate. For example, suppose that Tony insists on giving a greater weight to the value of religious associations being able to select whom to employ than to the value of non-discrimination, or suppose that he insists on assigning a greater weight to the value of the equality of women as citizens than to the value of the life of the fetus in the 2nd trimester. Sara might strongly disagree. If she does, why must she endorse the policy she rejects if Tony wins the vote? After all, Sara may disagree more strongly regarding the weighting of these values than she does, say, with Joseph, regarding the existence of some sectarian values. Why must she accept that she has been given a good enough reason to endorse Tony's policies while she need not accept that she has been given a good enough reason to endorse Joseph's policies?³¹ In essence, while Tony's weighting is deemed plausible, if it is, nonetheless, rejected by Sara, then the appeal to a plausible balance of values seems to reinstate the asymmetry objection (even if in a new place). It now appears that while people cannot be reasonably expected to endorse arguments that rest

on values they reject (hence no legitimate action on the good life is possible), they can be reasonably expected to endorse arguments that rest on a weighting of values they reject.

Quong thus needs to insist that a reference to a disputed weighting is less troubling (indeed, sufficiently less troubling to allow expectations of reasonable endorsement) than a reference to a disputed value.³² But we think such an insistence is mistaken. This is because in many cases the distinctiveness of a doctrine is constituted precisely by a claim of the form that ‘x is more valuable than y’ rather than a claim that ‘x is a value but y is not’. In such cases, asking a citizen to accept a policy based on the disputed weighting just is to ask them to give up their beliefs. Consider, again the dispute over abortion. We suspect that most, if not all, parties to the dispute see some value in a women’s right to control her body and some value in the life of the foetus. The difference between the pro-life and pro-choice positions can thus be entirely one of weightings, and it is this difference that has such a profound importance to many citizens. But this means that the appeal to plausibility will only work if the plausible range of weightings is sufficiently narrow to mean that no reasonable citizen would ever be forced to jettison beliefs fundamental to his or her doctrine. However, we think that this would be a pyrrhic victory as it would pretty much eliminate the possibility of disagreement on matters of justice; after all, reasonable citizens would now be required to agree on a very narrow range of weighting of their values. The solution would also brand too many positions as unreasonable: Our experience of liberal societies suggests that there are many disputes over weightings, in which people’s deepest beliefs are at stake, but such disputes would now be deemed unreasonable.

The second problem for political liberals with the appeal to plausibility is that it allows perfectionists to recast their view in a way that makes state action in pursuit of the good legitimate. Consider Joseph Chan’s suggestion of a ‘moderate’ perfectionism, which does not seek to use state power to promote a single (contested) comprehensive doctrine, but does suggest it is legitimate to use state power to promote more widely shared values. Chan writes: ‘Compare, for example, the lives of two persons: John, who is wise, upright, talented in music and philosophy and has a good family and a few very good friends; Mark, a drug-addict, who spends all his time chasing after elusive drug

pleasures at the expense of all other goods. I think no reasonable person would dispute the judgement that John's way of life is more worthwhile than Mark's'.³³

In response to this kind of argument, Quong reminds us that '[r]easonable persons, as defined by Rawls, are only united in their view of society as a fair system of social cooperation between free and equal persons, and their acceptance of the burdens of judgment - they do not share any broader moral theory. The challenge for a perfectionist who wishes to press this objection further is thus to try and find one or more areas of disagreement about the good life that would be justificatory when considered from the perspective of all reasonable people'.³⁴ He believes that no perfectionist can meet this challenge given the breadth of reasonable disagreement present in society.

However, Quong may have made this challenge unduly demanding. Since the criteria of plausibility are left unspecified, it seems open to Chan to claim that no reasonable person with a plausible balance of values can believe Mark's drug-driven lifestyle to be better than John's.³⁵ Chan could then make the second (presumably correct) claim that, therefore, no reasonable person who deems Mark's life better than John's exists since there is no plausible balance of values favoring Mark's way of life to John's. This method of argument seems precisely analogous to Quong's suggestion that reasonable people must offer only plausible weightings of political values. However, this would mean that there could be some occasions when a state can legitimately act for perfectionist reasons.

One possible reply to this thought, suggested in Quong's work, draws on the fact that even though reasonable people might agree to some specific (plausible) conclusion - e.g. that drug addiction is an empty way of life - they will not have the same reasons for their belief. So, for example, a utilitarian might prefer John's way of life because it maximises a person's hedonic welfare, a Muslim because drug use is prohibited in the Quran, etc., and this disagreement on reasons disqualifies their agreement as a basis for legitimate state action.³⁶

However, this response is not, in fact, available to Quong. After all, the basic thought of political liberalism is that various reasonable citizens can each come to accept the overlapping consensus on basic liberal values for very different reasons, including utilitarian and religious reasons.

Quong thus cannot claim that a single moral framework is necessary for there to be justificatory disagreement, or else there could not be any *political instances* of justificatory disagreement.

At this point, Quong might point out that we are wrong to think that an overlapping consensus over the good is analogous to an overlapping consensus over matters of justice. This is because on his view, legitimacy requires shared *reasons* not merely shared conclusions. This line of argument has been defended by Quong against the proponents of the so called convergence model of public reason, most notably Gerald Gaus and Kevin Vallier.³⁷ Quong argues that only genuinely shared reasons are acceptable, since otherwise citizens do not offer fellow citizens fully sincere reasons for their beliefs.

However, this reply will also not do. First, it is unclear in what sense, on this view, the reasons between citizens must be shared. After all, Quong cannot claim that all genuinely ultimate reasons people have for their views be shared. A utilitarian will eventually hold that the idea of society as a fair scheme of co-operation is itself justified because it promotes welfare while a religious believer might hold that God commands us to live on fair terms with our fellow humans. So when a reasonable utilitarian suggests that a certain policy is justified because it is required by reciprocity, what she really means is that acting in a reciprocal way will tend to maximize utility. Conversely, when a reasonable believer in divine command theory suggests a policy instantiates reciprocity, and should therefore be pursued, he should be interpreted as suggesting that the policy coincides with God's wishes for reciprocal behavior. While a debate between these two citizens revolves around a shared value, it is not true that they can sincerely offer reasons that will be shared by their interlocutor all the way down. Given that Quong cannot appeal to ultimate justifications, it is unclear why a religious believer and utilitarian could not agree to a similar mid-level overlapping consensus on say, the idea people should respect themselves, and appeal to this as a shared reason.³⁸

Instead, Quong can be thought to suggest that all appeals to plausibility must be derived from larger theories, but we doubt this must be the case. As Chan explains, when comparing the lifestyle of a drug addict and a well-rounded person, no reasonable person could prefer one to another and '[t]his sort of local comparative judgment need not presuppose any comprehensive doctrines'.³⁹ This idea strikes us as right. On this account, the belief that drug use is a worse way to spend one's life is most

often a judgment that is justified entirely by strong ethical intuitions. Of course, we may expect that someone's localized ethical beliefs cohere with their conception of the good, at least loosely, but this is not the same as the former being derived from the latter. And we might not even think that in cases of incoherence people would, or should, always drop localized beliefs in favour of their comprehensive doctrines. For instance, if it transpired that being a Kantian or a member of a given religion required embracing daily drug use as the best way to live, many people would drop this comprehensive theory rather than embrace this connotation (though many would adopt the theory too). Where two or more people hold a free-standing ethical belief of this kind, the belief itself is fully shared since there is no deeper level on which the parties disagree about this dispute.

6. Brute vs. Interpretive Disagreement

Quong's final strategy for escaping the asymmetry objection might require us to think of justificatory versus foundational disagreement not in terms of the amount of agreement but in terms of the character of the agreement. Let us explain. As noted above, Quong's account of justificatory disagreement is offered in the context of his wider account of political liberalism. This is significant because Quong holds a novel, post-Rawlsian account of political liberalism, and features of this account inform the role and nature of justificatory disagreement. When describing the debate between Tony and Sara, Quong notes both that they share basic values, and that they offer their various public arguments as a 'sincere interpretation of that ideal'.⁴⁰ Building on this feature of the example, Quong might suggest the following: while foundational disagreements are over brute facts and/or values, justificatory disagreements concern instead interpretations of a shared (basic) principle or value. On this view, disagreement about justice must rely on reasons that are interpretations of our basic liberal commitments; all conceptions of justice, and all relevant criteria for judging institutions and policy proposals, should be understood as different ways of cashing out these core liberal commitments. We will call this the interpretative (view of) disagreement.

On the standard view offered by Rawls, the overlapping consensus is the product of various kinds of agreements between comprehensive doctrines. Various comprehensive doctrines each come,

by different paths, to agree on a specific liberal conception of justice. Quong believes this account to be flawed, since it is subject to a serious dilemma: either the overlapping consensus is superfluous since reasonable people will, by definition, accept the political conception of justice, or the overlapping consensus is ‘political in the wrong way’ and bends the principles of justice to meet the demands of illiberal citizens. Instead, he suggests that the overlapping consensus occurs over basic liberal principles. Specifically, this includes a conception of society as a fair scheme of co-operation for the benefit of its members, the values of freedom and equality and an acceptance of the existence of the burdens of judgement and hence the impossibility of agreement over any one comprehensive doctrine. According to Quong, ‘these principles then serve as *the basis* for citizens to develop their more particular conceptions of justice’ (emphasis ours).⁴¹ This ‘internal’ account of the overlapping consensus (‘internal’ because political liberalism has only the goal of showing how liberalism is a consistent doctrine, not to persuade non-liberals to sign up to the view) meets the dilemma for the standard view since the overlapping consensus is neither superfluous as the common ground is necessary for citizens to reason together on justice, nor political in the wrong way as the shared ground must be liberal by definition.⁴²

Therefore, on Quong’s view, reasonable discussions of justice are all in some sense built upwards; they are interpretations of the overlapping consensus on ‘a conception of society as a fair system of co-operation between free and equal persons’.⁴³ Note that the fact that all other political claims must follow from the basic values gives disagreements about justice a specific character that is in stark contrast to our standard political debate. In standard political debate, we generally take citizens to be making brute claims about whether a given policy will create some valuable good, or protect a given right. Assessing those claims requires simply assessing whether the good really is valuable, or whether people really do have these rights. On the interpretive view, political claims are not (at least not merely) brute claims of this kind. Instead we assess them in terms of how well they reflect the shared commitments to the basic liberal values. The fact that, on Quong’s account, all reasonable disagreements about justice are justificatory and interpretative means, then, that all parties to the dispute share basic values and disagree only on how to interpret their implications.

However, merely showing that an interpretative view is possible, and endorsed or implied by Quong, does not undermine our objections; there must be independent reasons to think that an instance of coercion justified with reference to a disputed interpretation of the basic values is any less problematic than an instance of coercion justified with reference to a disputed brute value. We think, however, that even merely interpretative justificatory disagreements can be just as troubling as foundational ones.

Consider the example of debates over U.S. constitutional law. Debates over the correct meaning of constitutional phrases seem to possess the essential qualities that Quong singles out as crucial in a justificatory disagreement. Specifically, both sides have a shared framework and questions. Furthermore, debates over constitutional law seem to qualify as instances of interpretative disagreement. First, there is no sense in which the correct interpretation of a document is correct only to some people; if it is correct, then it must be correct for all. Second, there are at least some principles that all parties agree on in light of the first amendment. Indeed, despite the very real controversies that exist over constitutional debate, the agreement between the parties both on specifics and guiding principles is relatively deep. For instance, all reasonable judges agree that the first amendment sets a hard constraint on government action, and agree about the outline of this constraint, e.g. that the constitution prohibits the U.S. government from banning newspapers or specific articles, or criminalizing protest. Disagreements in this case are confined to (relatively) peripheral issues, such as flag burning, which arise because of the difficulties of interpreting the shared principle: in this case whether symbolic actions count as speech in the relevant respect. Finally, all parties to the dispute accept that if the arguments presented by rivals really were the correct interpretation then it would be a valid reason for action by the courts or other bodies.

And yet it is unclear that debates over the correct interpretation of the constitution, despite the fact that they coexist with so much agreement and despite the fact that they can proceed only through certain moves, really differ in a morally salient way from foundational debates. It is simply not the case that all sides to the dispute can see the force (and relevance) of the different arguments offered by others and that they disagree only on relatively minor issues concerning the weighting of different

considerations. Instead, various sides take positions which are predicated on the falsity of rival views. For instance, originalists argue that the constitution must be interpreted as literally as possible, whereas Dworkinians argue that the document should be interpreted in light of best moral principles. What is significant for our purposes here is that, from the perspective of a strict originalist, the arguments of a Dworkinian judge have no weight and they do not even amount to the right kind of reason. For them, bringing in a moral notion is a mistake in exactly the same way as bringing in moral notions to interpret a hardware manual would be, that is, irrelevant, whether or not the moral claims are accurate.

Quong might object that the above merely shows that disputes about the constitution are not genuine instances of justificatory disagreement of the type he envisages for disputes about justice in a well-ordered society. But this reply will not do for two reasons. First, it seems odd to think that constitutional debates would not fit Quong's ideal; Rawls himself did use constitutional debates as a model for debates in public reason, arguing that the Supreme Court is the 'exemplar of public reason'.⁴⁴ Second and more importantly, we have no reason to expect any less disagreement about basic liberal values than we find over constitutions.

Quong could dodge this objection by opting for an account of justificatory disagreement which is both interpretive and fine grained. This would imply that the parties to an interpretive disagreement would agree much more specifically on both the core of the values or principles, and the various ways these principles could be faithfully interpreted. This solution would imply - as Quong requires - that all parties to a reasonable dispute about justice are able to appreciate the reasons offered by their interlocutors. However, the price of this move is severe, since it involves radically narrowing the breadth of reasonable justificatory disagreement. It would suggest, for example, that many competing accounts of legal reasoning, and at least some widely held and seemingly liberal egalitarian views of distributive justice, would have to be demarcated as necessarily unreasonable. And while showing that these views are unreasonable would fend off the asymmetry objection, to be persuasive this move would require Quong to produce a compelling independent reason to believe that they were indeed unreasonable. That is, Quong cannot claim that, simply *because* the views are

subject to a foundational disagreement, at least one must be necessarily unreasonable. But no such reason seems available. Indeed, debates over the constitutional law seem paradigmatic cases of (epistemically) reasonable disagreements about justice. It is precisely the existence of cases like this that triggers the asymmetry objection:⁴⁵ an objection that continues to undermine political liberalism.

7. Conclusion

Talk of constitutional essentials may give some false hope to those wishing to answer the asymmetry objection. They may attempt ground the asymmetry between justice and the good in the thought that coercion regarding justice is inescapable while it is not necessary on matters of the good.⁴⁶ According to this view, society absolutely needs to have a common, coercive agreement on matters of justice, but no similar need exists for matters of the good. Thus disagreements about justice need to be resolved with the help of public reason, while on matters of the good, each person can simply follow her own conception.

Although this is not Quong's strategy, by a way of conclusion let us show why the asymmetry objection would withstand it. Ultimately, it is simply implausible that society would need a coercive arrangement on all the matters that political liberals would identify as matters of justice. Of course, it seems clear that society needs a common coercive arrangement regarding criminal behaviour and property rights. But a common coercive arrangement may not be necessary for education or healthcare even when their provision is mandated by justice.

This last point echoes the analysis of Gaus. Gaus makes a distinction between required policies and optional policies. Required policies are things which (more or less) all governments have done throughout history, such as providing law and order, defence and the currency. Optional policies are schemes which are sometimes provided by governments, sometimes by the private sector and sometimes by nobody. This includes the provision of healthcare and education, as well as a wide variety of regulatory activities. Gaus believes that many optional policies would fail the test of public justification. He writes "To paraphrase Nozick, so strong and far reaching is the principle of public

justification of optional policies that it raises the question of what, if anything, the state and its officials may do'.⁴⁷

While it is not our purpose here to evaluate Gaus' broader view, the fact that a common coercive arrangement is not inescapable on all matters of justice shows why this attempt to ground the asymmetry will not work for Quong and any other political liberals who defend a substantive conception of justice. The underlying issue at stake in this paper is whether it is consistent to allow the state to adopt a contested – in Quong's case liberal egalitarian – view of justice while holding that state policy cannot be based on contested views of the good. It is this issue that gives rise to the asymmetry objection. In the end, promoting such a contested view of justice will require not only defending contested values but also appealing to them to ground coercion not because it is inescapable but because it is just. For as long as the asymmetry objection remains unanswered, the pursuit of justice opens the door to perfectionism.

¹ We are grateful for written comments to Matthew Clayton, Ben Jackson, Jonathan Quong and the anonymous reviewers for the *Journal of Applied Philosophy*; we also thank the audiences of the Cambridge 'Liberalism without Perfection' conference (March 2013) and of the Nuffield Political Theory Workshop (May 2013).

² Jonathan Quong, *Liberalism without Perfection* (Oxford: Oxford University Press, 2011), p. 195 and John Rawls, *Political Liberalism*, new ed. (New York: Columbia University Press, 1996), p. 137.

³ Jeremy Waldron, 'Theoretical foundations of liberalism', *Philosophical Quarterly*, 37, 147 (1987): 127-50.

⁴ Quong, *Liberalism without Perfection*, pp. 198-203. Quong also considers strategies for side-stepping the objection as well as the view that legitimate state action is possible on matters concerning the good, but we put these aside. Following Matthew Clayton, we can also attempt to claim that while a common policy is needed on matters concerning justice, no common rule is needed on matters concerning the good, but we think this would unacceptably narrow what we take justice to relate to. See Matthew Clayton, *Justice and Legitimacy in Upbringing* (Oxford: Oxford University Press, 2006), pp. 19-24.

⁵ Jonathan Quong, *Liberalism without Perfection*, p. 197.

⁶ Gerald F. Gaus, *Justificatory Liberalism* (Oxford: Oxford University Press, 1996) and Gerald Gaus, 'Coercion, ownership, and the redistributive state', *Social Philosophy and Policy*, 27, 1 (2010): 233-275.

⁷ Quong, *Liberalism without Perfection*, pp. 202-03.

⁸ Cf. Gerald Gaus (see n6) and Steven Lecce, 'Contractualism and Liberal Neutrality', *Political Studies*, 51, 3 (2003): 524-41. For Quong's rebuttal see Quong, *Liberalism without Perfection*, pp. 200-01.

⁹ Quong, *Liberalism without Perfection*, p. 193.

¹⁰ *Ibid.*, p. 205.

¹¹ Quong does not specify if they share all or only some, but what he writes suggests that they must share all ultimate principles.

¹² Quong, *Liberalism without Perfection*, p. 204.

¹³ *Ibid.*, p. 206.

¹⁴ *Ibid.*, p. 208.

¹⁵ *Ibid.*, p. 212. Note that Quong does not require citizens like Sara to actually accept the policy, or even to accept the reasons given. What matter is that Tony can reasonably expect her to accept public reasons as valid reasons, and thus Sara's disapproval is not problematic for the purposes of the principle of liberal legitimacy.

¹⁶ If the justificatory disagreement persists, citizens can vote (*ibid.*, p. 210).

¹⁷ Quong admits that in such a case each argument is reasonably rejectable but argues that legitimacy requires only - more modestly - that the argument a state acts on be such that one 'could reasonably be expected to endorse' it. *Ibid.*, 209.

¹⁸ Cf. Rawls, *Political Liberalism*, p. lv n31 and p. 243 n32.

¹⁹ Quong, *Liberalism without Perfection*, p. 207.

²⁰ *Ibid.*, p. 193.

²¹ By 'state action' we refer only to coercive acts such as the enforcement of laws/tax policies etc. As noted at the outset, the political liberal principle of legitimacy only applies to coercion and hence is our focus here.

²² Quong, *Liberalism without Perfection*, p. 210.

²³ Rawls, *Political Liberalism*, pp. 243-44.

²⁴ It might be too strong to suggest that Quong always expects endorsement from the losers, since in some cases a permanent minority within a liberal society might reasonably wish to secede rather than consistently lose in fair elections. An interesting discussion of this issue is offered Loren E. Lomasky, 'The paradox of association', *Social Philosophy and Policy*, 25, 2 (2008): 182-200. For our purposes it matters that, on Quong's view, the losers have no grounds to suggest that the result is illegitimate in any individual instance of a justificatory disagreement.

²⁵ For economy of expression we will refer to coarse and fine disagreement, where the former stands for coarse justificatory disagreement (i.e. an instance where there is agreement on core values) and the latter for fine justificatory disagreement (i.e. an instance where there is agreement that goes beyond core values).

²⁶ Quong, *Liberalism without Perfection*, p. 205.

²⁷ *Ibid.*, p. 209.

²⁸ Rawls, *Political Liberalism*, p. 243 n32.

²⁹ *Ibid.*, p. 243.

³⁰ *Ibid.*, n31.

³¹ Notice that this objection does not require that Sara sees the weighting Tony offers as more implausible than whatever sectarian claims Joseph might make. The objection requires only that while Sara accepts the weighting as plausible, and even more plausible than other weightings, she still does not recognize the weight assigned to the value by her interlocutor as a good enough reason for her to change her conclusion. (In effect, the Gaussian model of conclusive justification rears its head again.)

³² The possible Rawlsian response that the political values are very great values so it is legitimate to enforce these values even when rejected, and legitimate to enforce a weighting of the values that passes some test of plausibility, is what we thereby dispute as a persuasive political liberal position. Cf. John Rawls, 'Reply to Habermas', in his *Political Liberalism*, p. 428.

³³ Joseph Chan, 'Legitimacy, unanimity, and perfectionism', *Philosophy and Public Affairs*, 29, 1 (2000): 5-42, pp. 13-14. See Simon Caney, 'Impartiality and liberal neutrality', *Utilitas*, 8, 3 (1996): 273-293, p. 278 and his 'Liberal legitimacy, reasonable disagreement and justice', *Critical Review of International Social and Political Philosophy*, 1, 3 (1998): 19-36, p. 28 for similar points.

³⁴ Quong, *Liberalism without Perfection*, p. 216.

³⁵ Our point is not that a reasonable person must believe this but that this is the plausible view once plausibility can be used to carve out a sub-set of positions.

³⁶ Indeed, when addressing the possibility of reasonable disagreement over the good, Quong's only example is individuals who share a Scanlonian view of morality, not people who merely share certain beliefs about what is good (Quong, *Liberalism without Perfection*, p. 216).

³⁷ Gerald Gaus and Kevin Vallier, 'The roles of religious conviction in a publicly justified polity', *Philosophy and Social Criticism*, 35, 1-2 (2009): 51-76.

³⁸ Indeed, in a recent defence of moderate perfectionism developed by Franz Mang, a perfectionist state can only promote policies based on views of the good that do not suppose a wider doctrine. Franz Mang, 'Liberal neutrality and moderate perfectionism', *Res Publica* (forthcoming).

³⁹ Joseph Chan, 'Legitimacy, unanimity, and perfectionism', p. 14.

⁴⁰ Quong, *Liberalism without Perfection*, p. 206.

⁴¹ *Ibid.*, p. 217.

⁴² *Ibid.*, p. 190.

⁴³ *Ibid.*

⁴⁴ Rawls, *Political Liberalism*, p. 231.

⁴⁵ Debates such as these (over whether to have universal basic income or whether to have the death penalty) are introduced by Quong to show why we must accept that there is reasonable disagreement over matters of justice. Quong, *Liberalism without Perfection*, p. 197.

⁴⁶ We thank an anonymous reviewer. We are also grateful for discussion of this problem to Matthew Clayton.

⁴⁷ Gerald Gaus, *The Order of Public Reason* (Cambridge: Cambridge University Press, 2012), p. 535.