

On Distinguishing Publicly Justified Polities from Modus Vivendi Regimes

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Abstract: This essay develops a novel account of the distinction between a publicly justified polity and modus vivendi regimes by appealing to the ideal of congruence in public reason liberalism. A fully publicly justified polity is one whose laws are supported by congruent “first-personal” and “second-personal” moral reasons to internalize laws as personally binding on those subject to them. Regimes approach modus vivendi status to the extent that their laws fail to be justified by either type of reason, or where first-personal and second-personal reasons fail to justify internalization.

Keywords: public reason; public justification; social morality; congruence; second-personal reasons; second-personal normativity; liberalism; modus vivendi

Many political philosophers believe that just and legitimate forms of political order must rest on *reason* rather than force. A political order that relies on force, it is sometimes said, cannot treat persons as free and equal, as it requires that some dominate and oppress others. A political order that relies on force also lacks authority, as people have no reason to comply with state dictates other than to protect themselves from harm. The state becomes an alien force, preventing citizens from identifying with their government. Further, political orders that rest on force cannot provide various political goods, such as stability over time. We find these claims in both continental political theorists like Rousseau, Kant, and Hegel, and Anglophone philosophers like the British idealists and contemporary Rawlsians. My point in this paper is to ~~show how~~ public reason liberalism ~~gives us~~ an account of the ideal of resting political order on reason rather than force. Specifically, I explain how the idea of *congruence* in public reason helps us to understand how reason can be the basis of political order. If we hope to understand what it means to rest politics on reason, we must understand the nature of the reasons involved and how they hang together, or congrue.

In light of this aim, I will appeal to the language of moral reasons, an idea much broader than the notion of reasons to which various public reason liberals appeal. Consequently, I will forgo basing my analysis on

accounts of the congruence ~~of reasons~~ found in the literature, including the view advanced by John Rawls. The model I defend here should enable us to evaluate whether particular accounts of the relation of justificatory reasons, like the Rawlsian view, properly articulate the ideal. This is why we require a *generic* characterization of the reason relation, one that will allow us to analyze particular accounts. Given my aim, then, canvassing the public reason literature is neither required nor helpful.¹ Rather, my analysis deploys conceptions of first-personal and second-personal reasons drawn from P.F. Strawson, Kurt Baier, Stephen Darwall, and Gerald Gaus that are seldom discussed in the literature.²

I shall contend that the ideal form of justification in public reason obtains when persons endorse a publicly justified law via congruence between what I shall call their “first-personal” and “second-personal” reasons to *internalize* a law.³ Congruence obtains when these two types of reasons fit together to form a justification for the law that not only justifies a person in *complying* with the law, but also justifies her in making the law her own, to see it as an expression of her rational will. The congruent law is one that the agent authorizes as binding on herself, such that her failure to comply leaves her, by her own lights, at fault. This conception of congruence, I believe, explains what it means for a social order to rest on reason rather than mere power or force. A social order rests on reason rather than force when each person’s first-personal and second-personal reasons lead her to endorse and internalize the vast majority, if not all, of a polity’s legal requirements.

My goal in this paper is to describe the *ideal* relation of public justification, the relations at which public justifications aim. To put it another way, my goal is to ~~characterize~~ what makes a public justification normatively excellent. I am not providing one more conception of the reasons that can justify coercive laws, but rather an account of the ideal relation between coercion and reasons that I believe is implicit in the public reason tradition. Seldom do pieces in the public reason literature distinguish ideal, exemplary public justifications from nonideal justifications. The

¹However, I have reviewed the public reason literature in Fred D’Agostino and Kevin Vallier, “Public Justification,” *The Stanford Encyclopedia of Philosophy* (Winter 2013 edition), Edward N. Zalta (ed.), <http://plato.stanford.edu/entries/justification-public/>.

²I use the terms “first-person” and “first-personal” interchangeably in this paper. I also use the terms “second-person” and “second-personal” interchangeably.

³My use of the term “second-person reasons” owes much to Stephen Darwall’s notion of the “second-person standpoint,” though the idea I employ is somewhat different. See Stephen Darwall, *The Second-Person Standpoint: Morality, Respect, and Accountability* (Cambridge, Mass.: Harvard University Press, 2006).

attempt to set out *grades* of public justification has not been pursued.

My argument unfolds in nine sections. In section 1, I introduce the challenge of distinguishing between the types of reasons we have to comply with ~~regimes based on a modus vivendi~~ and those of a publicly justified polity. To deepen the distinction, I introduce the two expository ideas of first-personal and second-personal reasons in section 2. I interpret public reason liberalism as prescribing second-personal reasons and comprehensive doctrines as composed of first-personal reasons in sections 3 and 4. In section 5, I explain why public reason needs a notion of internalization and why both first-personal and second-personal reasons are required to justify internalization. Given that my conception of congruent justifications specifies the ideal form of public justification, I contrast it with two less than ideal forms of public justification—consensus and convergence views—in section 6. In section 7, I explain how an individual's relation to a law can mature as her reasons change from modus vivendi-based reasons to less than ideal public justifications to congruent justifications. In section 8, I explain why I think the notion of congruent justifications developed here gives us what Rawls originally wanted from his account of congruence. I conclude in section 9.

1. Modus Vivendi Regimes and Personal Reasons to Comply

Public reason liberals since Rawls offer their theory as an alternative to a regime based merely on a modus vivendi. Sometimes modus vivendi regimes are understood as regimes whose stability is based primarily on a contingent balance of power, rather than the fact that people can see themselves as its authors.⁴ This is why modus vivendi regimes are said to rest on mere force rather than reason. In contrast, a publicly justified polity should be stable based on the moral reasons of persons rather than a balance of power. David McCabe, who defends a version of modus vivendi liberalism, argues that political liberals draw too hard and fast a distinction between our pragmatic reasons to follow laws under a modus vivendi regime and our principled reasons to follow laws in a publicly justified polity. The only way to draw such a distinction is to accept the “power-independence” assumption, which holds that “one’s endorsement of some policy or principle is morally grounded only if one would not support a different policy or principle under a different balance of power.”⁵ On the power-independence assumption, a regime can only be pub-

⁴John Rawls, *Political Liberalism*, expanded ed. (New York: Columbia University Press, 2005), p. 147.

⁵David McCabe, *Modus Vivendi Liberalism: Theory and Practice* (New York: Cambridge University Press, 2010), p. 126.

licly justified if citizens would ~~only~~ support their favored laws if power relations differed. McCabe rightly points out, however, that every regime's stability depends on power balances because our moral judgments are contingent on power arrangements, and it is hard to imagine laws ~~that~~ were not contingent in this way. For instance, we might support a law based on the fact that our favored party is out of power, but my reasons for such support are surely consonant with living in a publicly justified polity. I agree with McCabe that it is harder to distinguish our pragmatic reasons for supporting laws under a *modus vivendi* regime from our principled moral reasons for supporting laws in a publicly justified polity. A *modus vivendi* gives us powerful reasons to act. Thus, if we are to characterize a publicly justified polity correctly, we need an account of the specific sorts of reasons that publicly justified polities generate that *modus vivendi* regimes, by and large, do not.

In my view, the reasons prescribed by publicly justified polities have two features: ~~(i)~~ they are reasons to follow legal rules *both* because they advance one's conception of the good *and* because they are publicly recognized as just or fair, and ~~(ii)~~ they are reasons to *internalize* the rules, not merely reasons to *comply* with them. In publicly justified polities, citizens should see laws as authorized by their fundamental value commitments. Only when laws are publicly believed to advance the common good, treat all fairly and equally, and so are worthy of internalization do they make a full contribution to a publicly justified legal order. Thus, laws characteristic of *modus vivendi* regimes can be distinguished from laws characteristic of publicly justified polities in three ways: (i) *modus vivendi* laws may be seen as advancing personal good, but doing so unfairly, (ii) *modus vivendi* laws may be seen as fair but not as advancing each citizen's good, or (iii) *modus vivendi* laws may not be worthy of internalization, just mere compliance. I will refine and defend these conditions first by distinguishing between reasons of personal good and publicly recognized deontic reasons, and then between mere compliance and internalization.

2. First-Personal and Second-Personal Reasons

I begin developing my account of congruence by explaining the two types of reasons that comprise the congruence relation: first-personal and second-personal reasons. An account of both types of reasons lays the foundation for a formal characterization of the ideal of congruence by explaining how personal ideals are related to justified or unjustified social moralities.

My account of first-personal and second-personal reasons owes sev-

eral debts. First, and perhaps most obscurely, I rely on P.F. Strawson's distinction between "individual ideals" and "social morality."⁶ Individual ideals are "pictures of ideal forms of life" that "take the form of descriptive statements about man and the world"⁷ that in turn "govern the choices and decisions which are of the greatest importance to men" because they specify a set of values and norms that are themselves of great importance.⁸ Accordingly, individual ideals are complexes of beliefs, desires, values, commitments, norms, projects, and plans. These elements frequently fit together so as to compel our devotion, to draw us to their beauty. In contrast, a social morality is a system of "rules or principles governing human behaviour which applies universally within a community or class."⁹ These rules form "systems ... of recognized reciprocal claims that we have on one another as members of human communities, or as terms of human relationships, many of which could scarcely exist or have the character they have but for the existence of such systems of reciprocal claim."¹⁰

I also draw on Rawls's distinction between the two moral powers of persons to be rational and reasonable.¹¹ Both rationality and reasonableness are conceived of as virtues of persons. A person is rational when she uses her "powers of judgment and deliberation" to seek "ends and interests peculiarly [her] own."¹² She is rational because she adopts and affirms interests and ends, and selects adequate means by which to do so; she adopts "the most effective means to ends" or rather selects "the more probable alternative, other things equal."¹³ Rational persons are not restricted to means-end reasoning, however, for they "may balance final ends by their significance for their plan of life as a whole, and by how well these ends cohere with and complement one another."¹⁴ In general, the idea of a rational person is tied to having "a capacity for a conception of the good," which is the ability "to form, to revise, and rationally to pursue a conception of one's rational advantage or good."¹⁵ Persons are reasonable under two conditions. First, they must be "ready to propose

⁶P.F. Strawson, *Freedom and Resentment and Other Essays* (New York: Routledge, 1974), p. 29.

⁷Ibid.

⁸Ibid., p. 31.

⁹Ibid., p. 33.

¹⁰Ibid., p. 47. This description of social morality owes much to Kurt Baier, *The Moral Point of View: A Rational Basis of Ethics* (Ithaca: Cornell University Press, 1958), and Gerald Gaus, *The Order of Public Reason* (New York: Cambridge University Press, 2011).

¹¹Rawls, *Political Liberalism*, pp. 48-54.

¹²Ibid., p. 48.

¹³Ibid., p. 50.

¹⁴Ibid., p. 51.

¹⁵Ibid., p. 19.

principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so,” and be willing to discuss the terms they propose.¹⁶ Second, citizens must recognize the burdens of judgment—the factors that inevitably lead citizens to affirm different but reasonable comprehensive doctrines.¹⁷ Citizens are unreasonable when they fail to meet either condition, that is, by refusing to offer fair terms of cooperation or refusing to comply with them after they have been agreed upon. Citizens can also be unreasonable if they insist that other citizens affirm their comprehensive doctrines.

Rawls and Strawson recognize two sets of normative reasons: (i) a source of reasons deriving from a person’s individual ideal or her conception of the good, and (ii) a source of reasons deriving from recognized rules of social morality or from a person’s sense of justice understood in terms of her willingness to propose and abide by fair terms of social cooperation. However, my distinction is more general than Rawls’s, in virtue of focusing on the moral and not merely the political, and more normative than Strawson’s, in virtue of describing the justification of social moralities and not merely their descriptive properties. For this reason, I acknowledge my debts up front and proceed to develop my own view.

I define a first-personal reason as a teleological or goal-based reason that motivates us to seek certain ends and the means toward realizing them. First-personal reasons are not necessarily prudential, instrumental reasons or reasons of self-interest. They can also take a deontic form where the final end or ideal in question recommends or requires acting justly, righteously, dutifully, and so on. Thus, first-personal reasons can be thoroughly moral in the sense that they impose categorical, that is, nonhypothetical, moral requirements. In other words, while first-personal reasons are essentially attractive or teleological and so frequently issue hypothetical imperatives, they can ground categorical imperatives to act in accord with the requirements of one’s ideal. To illustrate, consider reasons to act in accord with a religious ideal. The great religious ideals emphasize the pursuit of transcendent goods, but they also place deep, thoroughgoing duties to the weak and marginalized on their adherents. So first-personal reasons, such as being a good Christian, can require doing one’s duty to assist the needy. This example also helps us to appreciate that first-personal reasons can refer to social or collective ideals as well.¹⁸ First-personal reasons can therefore support visions of what a

¹⁶Ibid., p. 49.

¹⁷Ibid., pp. 54-58.

¹⁸I thank David Estlund, Charles Larmore, and an anonymous referee for encouraging me to stress this point.

social morality should be. In this way, our personal moral vision may include the promulgation of social-moral rules.

Second-personal reasons issue from socially recognized rules that in turn imply relations of reciprocity. They are reasons to follow, comply with or reject publicly recognized rules of conduct applied to all based on whether those rules pass the test of the moral point of view. We can flesh out the idea of a second-personal reason, then, first by characterizing the system of rules to which such reasons are attached, and second by offering an account of the test of the moral point of view.

We first describe the system of social-moral rules that:

- (i) promotes social organization and human welfare,
- (ii) requires social enforcement and social recognition,
- (iii) consists of imperatives and duties that typically override self-interest, and
- (iv) implies reciprocity of claim.¹⁹

This system of what Gaus has called “social-moral” rules is a precondition for social order.²⁰ Any complex social order requires such rules if organizations are to exist and human welfare is to be promoted. The rules establish behavioral expectations that must be generally observed. Thus, a society’s social-moral rules share common features that limit and ban most forms of killing, stealing, lying, and so on, along with rules that specify how permissible action should proceed.

Second, social-moral rules impose socially sanctioned demands recognized by members of the relevant moral community. The demand is not only recognized and approved of by a society, but members are willing to enforce the rule. Thus, social rules specify required actions and license demands that others comply. Accordingly, they permit and sometimes require others to sanction violations. When John violates a rule of social morality, Reba is permitted to blame or coerce him in response, thereby directly or indirectly imposing a social cost on him in the service of preserving the social-moral system. Without the ability to exact punishment, social morality could not withstand violations, and therefore could not perform its core function of promoting and sustaining social organization.

Social-moral rules can only ground social enforcement if they are socially recognized. A rule is socially recognized when it is public and

¹⁹Strawson also holds that social-moral rules apply universally within a group and exhibit considerable variation, despite containing common core elements.

²⁰Gaus, *The Order of Public Reason*, pp. 2-13. I should stress here that I do not mean to wed myself to other features of Gaussian public reason.

taken by members of a society to apply to them all. Without social recognition, a social-moral rule cannot coordinate persons with distinct ends. This is due ~~in part~~ to the fact that social enforcement of the rule becomes ~~especially~~ difficult in the absence of public recognition. For example, imagine that John does not recognize a social-moral rule that Reba takes to apply to him. If John violates the rule, Reba cannot appropriately hold John accountable for violating it, as he was unaware that the rule was in force. If Reba holds John accountable anyway, her social enforcement will not give him an incentive to follow the social-moral rule in question, as he will not associate her punishment with his violation of that rule. Conversely, if John recognizes the rule and violates it, Reba could blame or ostracize John in ways that would reinforce John's recognition of the rule. In this way, when rules are socially recognized, they can become the object of general compliance, which in turn reinforces recognition of the rule. An important implication of social recognition is that second-personal reasons to comply with these rules are grounded in the actual recognition and practice of social conventions. The reasons issued by social morality only apply to a person in virtue of her recognition of the rule and her membership in the community to whom the rule applies.

Social-moral rules take the form of requirements or imperatives. That is, they are not prudential rules or hypothetical imperatives. They are simple, categorical requirements that apply to one regardless of interest (even if they can sometimes be overridden). They prescribe a type of deontic reason that creates duties that hold independently of one's goals and aims. Social-moral rules must take this form. As Strawson observes, this system of demands means that people must be ready to recognize and comply with such demands "even when this recognition cannot plausibly be said to be in one's own interest."²¹ Unless individuals are prepared to set aside their particular interests to follow these rules, social-moral rules cannot perform their crucial organizational and cooperative functions. Given that our goals conflict, we must sometimes acknowledge reason to restrain ourselves from acting on our goals. Socially recognized and enforced moral rules provide us with such reason. Though the system of socially recognized rules works to the benefit of the community, individual rules can often require that persons refrain from doing what they think best, so the recognition of the benefits of the system as a whole provides insufficient reason for each person to follow the rules in most cases.²² It is not enough to motivate persons to comply with each particular rule. And while the system of rules may advance our pursuit of

²¹Strawson, *Freedom and Resentment*, p. 42.

²²*Ibid.*, p. 39.

our final ends and ideals, this consideration alone is insufficient to motivate someone to engage in moral behavior, as her first-personal reasons will sometimes conflict with social morality.²³ People follow the rules, by and large, because they are seen as justified on some non-first-personal basis.

Finally, social-moral rules have a built-in notion of reciprocity. The rules do not make exceptions for anyone who is a member of the group that recognizes the rule. A universal feature of social-moral rules and the system they compose is ~~for this reason~~ “the necessary acceptance of reciprocity of claim.”²⁴ If the rule holds for member X it, **mutatis mutandis**, holds for member Y. When someone fails to follow the rule, another has ground for complaint in part because she would be held to account for violating the rule herself. The rules must apply to all persons, and consequently ground relations of reciprocity between persons, for, if Reba is to hold John accountable for violating a social-moral rule, she can be held accountable on the same terms.

We must now distinguish social morality from *justified* social morality. Only a justified social morality can prescribe reasons of social morality. I assume a justified social morality is one that survives the scrutiny of the moral point of view. On the familiar Rawlsian account of the moral point of view, justified social-moral rules must survive the original position test implicit in the idea of liberal democracy. Constructing the moral point of view begins “by looking to the public culture itself as the shared fund of implicitly recognized basic ideas and principles” that we can formulate “into a political conception of justice congenial to our most firmly held convictions.”²⁵ We need not adopt Rawls’s specific test here, though the relevant set of moral points of view must be consonant with public reason liberalism generally, given the subject of this essay.

For the remainder of the paper, I shall refer to reasons of social morality as second-personal reasons, as these reasons are distinctively social, based in common recognition, license ~~to~~-blame, ~~and the like~~, ~~and pass the test of the moral point of view~~. Such reasons are imperatival, categorical, reciprocal, and reversible. In this way, they are opposed to first-personal reasons of individual ideal, which do not by definition require social recognition. It is in this sense that first-personal reasons are private.²⁶

²³Ibid., p. 37.

²⁴Ibid., p. 41.

²⁵Rawls, *Political Liberalism*, p. 8.

²⁶In this paper, I take no stand on whether second-person reasons exhaust reasons of right. There may, for instance, be additional moral reasons that hold, independent of context.

3. Public Reason Liberalism and Second-Personal Reasons

To show that my distinction is useful within the public reason literature, I will now map public reason and comprehensive doctrines onto the second-personal/first-personal reason distinction. Here I understand public reason liberalism as consisting in the description and identification of second-personal reasons. Public reason liberalism prescribes second-personal reasons in virtue of (i) exhibiting the four features of a social morality, and (ii) providing a justificatory test that articulates a moral point of view. I take the Rawlsian version of political liberalism as my model. Notice that my more generalized analysis allows me to demonstrate that the Rawlsian view is a species of a genus of reason relations. Were we to stick with Rawls's conceptions, we would have trouble extending his account to characterize related positions in the literature.

Rawls understood liberalism as a political conception of justice.²⁷ The political conception is a set of principles reached through the original position. It is political because it is a "module" that must fit within all reasonable comprehensive doctrines, and so must be acceptable to all who affirm a reasonable comprehensive doctrine. Thus, when the political conception is the object of an overlapping consensus, it is a source of common regard and recognition, and so provides the framework for social cooperation. In this way, a political conception promotes social cooperation and social welfare, the first feature of a social morality.

A political conception must also be *publicly* justified by meeting a "publicity" condition.²⁸ Therefore, it must not only fit into each reasonable comprehensive doctrine but must be recognized as such by adherents of other such doctrines. Otherwise, the rules and principles on which political institutions are based are defective. Without publicity, people will not know the rationales for their institutions and so cannot be reconciled to their fellows who live under them. We can plausibly interpret publicity as a kind of social recognition. Justified rules and principles of political conduct must be the object of public recognition to be fully valid. Further, the political conception is the object of social enforcement beyond mere legal penalties. As is well known, the political conception imposes an ethical norm that governs public deliberation about constitutional essentials: the duty of civility. This duty holds (in its final form) that citizens must be prepared to provide political or shared reasons to support their positions.²⁹ Citizens must speak in publicly recognizable terms or

²⁷Rawls, *Political Liberalism*, p. 11. Of course the conception is liberal in virtue of prescribing liberal rights and institutions.

²⁸Ibid., p. 387. Publicity for Rawls has three levels: see *ibid.*, p. 67.

²⁹Ibid., p. 444.

face moral censure from their fellows. A political conception thus exhibits the second feature of a social morality: its rules are the subject of social recognition and enforcement.

Members of a well-ordered society are said to have two moral powers, as we have seen above. It is in virtue of citizens' reasonableness and their closely related capacity for a sense of justice that they will constrain the reach of their first moral power, a rational capacity to pursue a conception of the good. Consequently, citizens will acknowledge the normative force of rules of conduct that restrain their self-interested pursuits. Political conceptions thereby issue imperatives that place restraints on the goals that citizens may permissibly pursue. In imposing these restrictions, a political conception thereby displays the third feature of a social morality by consisting in duty-prescribing imperatives that typically override ~~self-interest~~. What's more, a reasonable person is one who recognizes reciprocal claims made by her fellow citizens in virtue of embracing a political conception. A reasonable person is one who is willing to comply with the political conception when others are prepared to do likewise. A political conception thereby implies reciprocity of claim, manifesting the fourth feature of a social morality.

Rawls ~~obviously~~ provides a justificatory test of extant social moralities, namely, the original position model. Insofar as institutional practices satisfy the two principles of justice, they are politically justified and ~~thereby~~ have normative force. When a ~~social~~ morality passes the test of the original position, ~~that social morality~~ has genuine normative force and prescribes valid moral reasons for action. Our political issues can be resolved by socially recognized rules that pass Rawls's justificatory test. **Given** the deep structural similarities between a Rawlsian political conception and a justified social morality, I believe it is fair to conclude that political conceptions prescribe second-personal reasons. ~~Now,~~ not all political liberalism are Rawlsian, but to the extent that they share these features with Rawls's view, we can place them in the reasons-framework I ~~am developing~~. Some versions of political liberalism, therefore, can be understood in terms of second-personal reasons.

4. Comprehensive First-Personal Reasons

We can understand comprehensive doctrines as complex wholes of first-personal reasons that ~~form pictures of~~ ideal forms of life associated with, say, transcendent or supernatural ends. These commitments generate especially strong first-personal reasons, so strong, in fact, that personal identities are frequently constituted by acknowledging and complying with such reasons. ~~Thus, public reason liberals make social moral demands~~

~~that require adherents of comprehensive doctrines to act in ways that some may believe they have deep first-personal reasons to reject.~~

~~I must stress that~~ comprehensive commitments should not be understood as essentially parts of a society's social-moral rules, as this would conflate first-personal and second-personal reasons. Comprehensive ideals certainly make claims on the content of social morality, but they are not best ~~interpreted~~ as socially recognized systems of rules that apply to all members of a given society. While comprehensive doctrines, such as religions, often prescribe ends for all persons, their associated requirements do not ground relations of reciprocity with nonmembers. For instance, members of specific religions typically do not hold others *responsible* for failure to comply with their preferred norms. Muslims may be repulsed when Christians eat pork, and they may attempt to coerce Christians not to eat pork, but they do not typically maintain that anti-pork consumption rules ground relations of reciprocal blame and holding responsible.

Importantly, first-personal and second-personal reasons can easily conflict. Perhaps the most familiar case of this is the tension between religious citizens and the principles of restraint defended by many public reason liberals. Some religious critics have insisted that principles of restraint, like Rawls's duty of civility, restrict the expression of religious commitment in illiberal ways and force persons of faith to violate their integrity.³⁰ Restraint burdens religious citizens unjustifiably because it requires that they not live an integrated religious life, one that applies religious principles to one's private *and* public social roles. In our terms, the religious critics claim that the widespread enforcement of specific social-moral rules (principles of restraint) requires some citizens to refrain from acting on their core first-personal (in this case, religious) reasons. This is perhaps the paradigmatic problem that public justification is meant to solve. A publicly justified law is one that each person can endorse given her first-personal reasons; that is what it means to say, for instance, that a political conception of justice is fully justified to each reasonable comprehensive doctrine.³¹ In my terms, a law is publicly justified ~~only~~ when its imposition does not entail a clash between the second-personal reasons supporting the law and the first-personal reasons to resist it.³²

Assigning such power to comprehensive reasons raises a concern

³⁰I have reviewed this literature elsewhere in detail. See Kevin Vallier, *Liberal Politics and Public Faith: Beyond Separation* (New York: Routledge, 2014), chap. 2.

³¹Though, as I argue below, an ideal public justification invokes both first- and second-personal reasons.

³²This is a necessary condition; I give sufficient conditions below.

about unreasonable comprehensive doctrines. We can imagine, for instance, someone who takes herself to have overriding first-personal reason to kill infidels or to perform a disfiguring circumcision on her daughter. In both cases, we think this first-personal reason has little weight in rebutting the force of second-personal reasons to obey just and legitimate laws. While such hard cases hold great interest for public reason, I believe that addressing them here would detract from the main line of argument.³³ My aim instead is to articulate an aspect of the ideal of public reason and public justification, not answer counterexamples to the project as a whole. For my purposes, then, I need merely explain why first-personal reasons have great weight on a public reason view.

5. Compliance and Internalization

As I argued in section 1, citizens of a *modus vivendi* regime have reason to follow its laws, but they lack reasons of the right kind. First-personal and second-personal reasons help to explain why this is.

At base, a *modus vivendi* regime might pass and enforce a law that some citizens see as incompatible with their individual ideals, but they obey the law anyway because they fear legal retribution. In one sense, they have sufficient reason to comply with the law, but they would not see the law as *fully justified to them* based on their own values. So publicly justified laws must be those that people see as advancing their values in some way or another. Thus, publicly justified laws must be based in part on first-personal reasons.

However, laws justified based *purely* on first-personal reasons would also fall short of ideal public justification. This is because people would support the law based solely on the fact that it advances their own ideals and not because the law is publicly recognized as fair or just to others. Publicly justified laws should be seen as worth following not merely because such laws advance Reba's good, but because she believes it treats all fairly or equally, and in a public fashion. This is so not merely because there is value in having fair and just laws, but because a regime whose laws were based solely in first-personal reasons cannot be stable in the right way. There will be many occasions where it will not be clear how laws advance our personal good. If we have merely first-personal reasons to comply with laws, then in those cases we will no longer take ourselves to have reason to comply.

³³For an excellent discussion, see Chad Van Schoelandt, "Justification, Coercion, and the Place of Public Reason," *Philosophical Studies* (2014), DOI 10.1007/s11098-014-0336-6.

If laws are also publicly justified based on second-personal reasons, then we will take ourselves to have reason to comply with laws because they are fair or just, even when it is not obvious how the law advances our individual or social ideal. Imagine, for instance, that a law is passed by a political party that John voted against. John opposes the law because he believes the law sets back his ideal. However, John also recognizes that the opposing party gained power through a legitimate, fair, legal process with which he has reason to comply because the *public decision-making procedure* is both fair and recognized as such. In this case, public reason liberals will arguably want to claim that the law is publicly justified. But, by supposition, John lacks sufficient first-personal reasons to support the law. If so, we need second-personal reasons to carry the justificatory day.

Let us suppose, then, that both first-personal and second-personal reasons are required for a law to contribute to the formation of a publicly justified polity. Even so, the best public justifications do something more: they justify the internalization of a law rather than mere compliance. Gaus distinguishes between reasons to comply with rules and reasons to internalize rules in his ~~own~~ work on public reason.³⁴ Someone conforms to a rule or law just when she takes herself as having reason to follow it, but she internalizes the norm when she takes it to be “personally binding,” which will often generate guilt when a person fails to meet the requirement “even if by so doing she gets what she wants.”³⁵ The person who complies with the rule based on a simple balance of reasons may well refuse to accord the law authority over him and so refuse to see himself as an author of the law. Again, a person can have a balance of reasons to comply with laws in a *modus vivendi* regime: she sees herself as having good reason to avoid legal penalties. But *that* is not the ideal of public justification. Instead, a publicly justified polity is one where people endorse the rules as their own, that is, they internalize them and regard them as personally binding.

I follow Gaus as understanding internalization as involving the reactive attitudes and responsibility claims, where a failure to comply with an internalized law licenses both John and others to *resent* John and hold him *responsible* for violating the law. If John has internalized the law, then, in an important sense, he *knows better* than to violate it. He accepts the law as morally binding on his actions, not merely as posing an external threat if he fails to comply. If we justify a law based solely on reasons to comply and do not appeal to reasons to internalize it, then we may as well count reasons to fear reprisal as *justifying*. By appealing to

³⁴Gaus, *The Order of Public Reason*, pp. 202-4.

³⁵*Ibid.*, p. 203.

internalization via the reactive attitudes and our practices of holding responsible, we can distinguish reasons based on a *modus vivendi* from reasons derived from a publicly justified polity. We can internalize a law when it can engage our reactive attitudes and our practices of holding responsible, and so have reason to follow the law as *one of our own*, as one we take as binding on ourselves. We *merely* comply with a law when we have sufficient reason to follow it, but lack sufficient reason to internalize it.

We can now provide a more precise characterization of the ideal of congruence in public reason: a law L is congruently justified for John when (a) he has both first-personal and second-personal reasons to comply with L, and when (b) he has sufficient reason, first-personal or second-personal, to internalize L, to regard it as personally binding. Congruent laws are the building blocks of a publicly justified polity. A fully publicly justified polity—the ideal polity in public reason liberalism—is one where all or nearly all laws are congruently justified. ~~When laws fail to be congruently justified, they can also compose a *modus vivendi* regime.~~³⁶ In fact, we can understand a *modus vivendi* regime as one where some sizeable portion of laws fails to be congruently justified, but which is nonetheless stable and effective. We have, then, a normative basis for distinguishing between *modus vivendi* regimes and publicly justified polities. We know with more precision what it means to base a regime on reason rather than force.

6. Less than Ideal Public Justifications

Congruent justifications are *ideal* public justifications; they are normatively *excellent*. This implies, though, that there are less than ideal public justifications that might render laws legitimate but that fail to meet the standard of congruence. Given that congruence is an ideal, we cannot always demand that laws be congruently justified. Sometimes we may simply have to be satisfied with publicly justified laws that do not have all the features of congruent laws. So it is worthwhile to have an account of these lower grades of justification.

Less than ideal public justifications lack one of the three components of a congruent justification. ~~Thus, there are (at least) three types of less than ideal justifications:~~ (i) justifications based solely on first-personal reasons to internalize a law, (ii) justifications based solely on second-

³⁶Congruent justifications can partly compose a *modus vivendi* regime as well, since a *modus vivendi* regime may have many congruently justified laws, perhaps even a majority of them.

personal reasons to internalize a law, and (iii) justifications based on first-personal and second-personal reasons that do not rise to the level of reasons to internalize a law. ~~We may want to count justifications that lack two of these components as public justifications rather than modus vivendi justifications, but these three options resemble modus vivendi justifications.~~ And option (iii) is incoherent, that is, having a reason to internalize law that is based on neither first-personal nor second-personal reasons. So I will ~~stick to the least suboptimal forms of justifications, the ones~~ that relax only one condition of congruent justifications.

The first two less than ideal public justifications roughly correspond to *consensus* and *convergence* conceptions of justificatory reasons.³⁷ Consensus views require that justificatory reasons be mutually shared or accessible, whereas convergence views merely require that reasons be intelligible. I think the distinction between first-personal and second-personal reasons helps us to put the contrast in a different light. Let us understand both views as *requiring* one type of justificatory reason as part of a public justification, and *permitting but not requiring* the other type. Consensus views *require* second-personal reasons to regard a law as publicly justified, and *permit* first-personal reasons to regard the law as publicly justified. When consensus liberals speak of sharing reasons, I think they want citizens to appeal to reasons that all can recognize or accept as advancing, say, a public conception of justice. While the set of second-personal reasons is broader than the set of consensus reasons, as there may be unshared second-personal reasons, consensus theorists see the attraction of rooting public justifications in reasons to comply with a shared, publicly recognized conception of justice. In contrast, convergence views *require* diverse first-personal reasons as part of a public justification, and *permit* second-personal reasons to regard the law as publicly justified. Part of the point of convergence views is to allow private reasons to figure into public justifications for laws in order to preserve the integrity and liberty of diverse citizens.³⁸ For this reason, convergence views allow diverse first-personal reasons *alone* to justify coercive laws. So long as all coerced have sufficient first-personal reason to endorse a law, then it is justified on the convergence view.

When it comes to less than ideal public justifications, I am a convergence theorist. I do not want to insist that a law cannot be publicly justified *at all* unless the justification includes second-personal reasons. However, after considering the matter, I find it hard to resist the position that public justifications are *improved* by the addition of second-personal

³⁷For discussion of the distinction, see Kevin Vallier, "Convergence and Consensus in Public Reason," *Public Affairs Quarterly* 25 (2012): 261-79.

³⁸For a discussion, see Vallier, *Liberal Politics and Public Faith*, chap. 4.

reasons to the justification of a law. As I noted above, a purely first-personal justification for a law may not be stable and can lack the appropriate level of regard for advancing the fair treatment of others.³⁹ But I resist the claim that this deficit means that laws must be regarded as impermissibly imposed if they rest solely on first-personal reasons. That claim seems too strong, as it rules out many opportunities to share moral relations via public justification. Consensus requirements do impose excessively on the integrity and liberty of citizens.⁴⁰ Though consensus requirements permit the addition of diverse reasons to a public justification, they forbid the justification of laws based solely on first-personal reasons, and in some cases that is all that people have. There is no good argument for restricting the use of first-personal reasons to justify a law. But there is good reason to regard public justifications that lack second-personal reasons as less than ideal.

It is worth illustrating my point with Rawls's consensus-based principle of restraint, the duty of civility. Rawls's "wide view" of the duty of civility holds that

reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines are said to support.⁴¹

Importantly, citizens can also introduce comprehensive reasons in order to "witness" by clearly stating their own comprehensive reasons, and they can "reason by conjecture" by appealing to another's comprehensive reasons to demonstrate that a proposal is justified to her.⁴² Further, the duty of civility merely restricts political activity related to constitutional essentials and matters of basic justice. So the wide view is quite permissive. Nonetheless, Rawls's view is a consensus view because it *requires* the use of second-personal reasons to justify laws (in this case, political reasons) and *permits* the use of first-personal reasons (in this case, comprehensive reasons). I agree with Rawls that public justifications that satisfy the duty of civility are sufficient to render laws permissible, but I deny that public justifications that are based solely on comprehensive reasons are not public justifications. Instead, they're simply less than ideal.

Let us now turn to the third form of less than ideal public justifica-

³⁹Though perhaps not in the case where an unshared, second-person reason accompanies first-person reasons, something the convergence view allows but the consensus view does not.

⁴⁰As I argue in Vallier, *Liberal Politics and Public Faith*, chap. 2.

⁴¹Rawls, *Political Liberalism*, p. 462.

⁴²*Ibid.*, pp. 466, 466 n. 57, and 465.

tion, the case where both first-personal and second-personal reasons exist to endorse, but not internalize, a law. To illustrate the case, consider that a citizen could fail to internalize a law because her first-personal and second-personal reasons *conflict* in endorsing a law. Perhaps the law greatly advances an individual's personal good but seems to be slightly unfair. Or the reverse: a law is very fair and nearly fully just but it does not advance the personal good of the citizen evaluating the law. Congruent justifications, as Rawls noted in *A Theory of Justice*, involve a *relation of fit* between the two types of reasons; congruence obtains when there is a "match" between reasons of right and good.⁴³ So a failure of fit between first-personal and second-personal reasons could forestall internalization, but not more mild forms of endorsement. An endorsement falls short of internalization when a citizen sees the law as performing a useful function, but not as worthy of internalization. Sometimes laws can drive a society out of a bad social or legal equilibrium without generating reasons strong enough to warrant internalization.

As Gaus notes, Alf and Betty may converge on a social rule as a "nonmoral, simply social equilibrium; based on their overall interests, they agree that the current rule is better than no social convention at all, but it is not eligible from the moral point of view because it fails to adequately satisfy" the evaluative standards of one or more members of the public.⁴⁴ Thus, that person cannot grant the moral rule "moral authority." Now in Gaus's case, the rule in question is not justified, but in my terms, we can regard the rule as justified based on the fact that it advances the interests of all, but grant that the justification is less than ideal.

One might object to the notion of less than ideal justifications by insisting that public justification is a threshold concept: so long as laws meet the threshold, perhaps by generating enough reasons to comply with the law, then those laws are just or legitimate, full stop. On my view, laws are justified when we have sufficient reason to endorse them, but they are only ideal when our first-personal and second-personal reasons justify and motivate the internalization of a law.⁴⁵ The objector might claim that I am confusing public justification with other ideals, such as fully identifying with one's social order. In reply, I reiterate the intuition that while laws can be permissibly imposed when people have sufficient reason to endorse them, justifications for laws can still be defective in some fashion. If public justifications must merely meet a threshold condition,

⁴³John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 505.

⁴⁴Gaus, *The Order of Public Reason*, pp. 436-37.

⁴⁵In David Estlund's recent terms, I adopt a partition in the idea of legitimacy and a gradient above it. See David Estlund, "Just and Juster," unpublished manuscript.

then we must reject the idea that a public justification can be successful but less than ideal ~~in one of two ways~~. First, we could insist that laws are only publicly justified when they are congruently justified. But this means that laws that fall short of congruence may not be permissibly imposed on citizens. This option seems too demanding. To say that we must abolish all laws that lack congruent justifications makes public reason into an excessively demanding ideal. Alternatively, we might insist that laws are publicly justified when, say, people merely have reason to endorse them and not when they have reason to internalize them. In this case we must deny that either consensus or convergence justifications are improved by adding additional types of reasons to the justification of the law in question. But this seems intuitively wrong. That a law is just and good is better than a law being merely good or merely just. Further, ideal public justifications help us ~~to~~ specify the way in which these less than ideal justifications are distinct from modus vivendi justifications. That is, the criteria we use to distinguish a public justification from a modus vivendi justification, say, the appeal to internalization or first-personal or second-personal reasons, imply that congruence is a superior form of justification. Thus, laws that are internalized expressions of our good *and* our sense of justice are the best or most justified laws.⁴⁶

7. Moving Towards Ideal Justifications

I recognize that the distinction between ideal and less than ideal public justifications is new to the literature, so allow me to develop an example of how someone moves from modus vivendi reasons to follow the law, through less than ideal public justifications, towards ideal public justifications.

Consider Maria, a Roman Catholic owner of a mid-sized retail business. Maria is subject to a much higher level of tax than she would like. ~~She has broader ambitions:~~ she would like to grow her business and provide a higher standard of living for her family, and so resents her high tax rate. She considers herself a law-abiding citizen, and would rather not be forced to pay legal penalties or perhaps go to jail if she were to engage in tax evasion. At the moment, then, Maria is only in compliance with present tax law. She regards herself as having strategic reason to comply with tax law, but little reason to endorse it and still less reason to internalize it. If she could get away with tax evasion reliably, she would do so. In this case, Maria has mere reason to comply with the law and positive reason not to internalize it.

⁴⁶I thank an anonymous referee for raising this objection.

But now suppose that Maria begins to pay a bit more attention to Pope Francis's recent calls for social justice for the global poor (echoing ~~decades if not~~ centuries of Catholic teaching). Francis emphasizes the need for a humane economy that does not enrich the few at the expense of the impoverished many. Maria, in response, begins to think more about how her society could better serve the poor. She comes to believe that a combination of charity and generous social insurance would increase the justice of her society. And she realizes that, as a fortunate and blessed businessperson, she is in a position to provide the social resources necessary to finance extended social insurance. She gradually comes to see paying her taxes not merely as a legal necessity, but as a moral duty to fulfill her duties of solidarity with her fellow citizens. However, in this state, Maria merely regards the laws as just and does not see them as advancing her good, and so does not deem the law worthy of internalization. The law is publicly justified to her based on her second-personal reasons of justice, but the public justification is lacking. She agrees with a Catholic justification for redistribution of wealth, but still resents or laments the law. The tax payments are justified, but they *hurt*.

As time progresses, however, Maria begins to experience her tax payments as more than a burdensome religious duty but as advancing *her* good because she can see the tax payments doing good for others. As a Catholic, she comes to see the tax law as advancing her good in virtue of advancing the common good. Thus, she begins to internalize the law as an authentic expression of her commitments. She will feel significant guilt if she attempts tax evasion now, because she believes that the law is fully justified. She will hold herself fully responsible, without legitimate grievance or complaint as she may have before. In this case, the law is congruently justified to Maria. Maria sees her Catholic commitments as comprising her individual ideal, and so giving her first-personal reason to exercise her Catholic commitments in her economic life. Further, she regards the law as just, and so as having second-personal reason to comply with it, though also based on her Catholic conception of the common good. Her first-personal and second-personal reasons fit together, and she has reason to internalize the law without regret.

8. Capturing the Rawlsian Ideal of Congruence

The conception of congruent justifications that I have developed is related to, but distinct from, Rawls's conception. Rawls is especially focused on avoiding a conflict between our conception of the good and our sense of justice. I focus instead on having first-personal and second-personal

reasons to internalize a law. My view, I think, clarifies what is good in Rawls's account and rejects what is less helpful. Let us briefly review Rawls's account of congruence to vindicate my claim.

In *A Theory of Justice*, Rawls described congruence as tying together “the concepts of justice and goodness.”⁴⁷ Congruence plays a critical role in resolving a problem in Part III of *A Theory of Justice*, the problem of conflicts between an individual's sense of justice and her conception of the good. Rawls thought that members of a well-ordered society may find that their sense of justice (expressed in Rawls's two principles) conflicts with the achievement of intrinsic goods (identified by Rawls's conception of the person). If such a conflict exists, then persons may find it practically irrational to comply with their sense of justice, thereby rendering justice as fairness unstable, even under favorable conditions. Congruence is postulated as the resolution of the conflict where each person endorses her sense of justice (and the principles that constitute its best expression) from within her conception of the good *apart from* the explicitly recognized good of justice. In other words, a person has a “thin theory of the good,” the list of goods she endorses minus the good of complying with her sense of justice.⁴⁸ Congruence obtains when an agent endorses the good of justice based on her thin theory of the good. Rawlsian congruence is therefore a relation of fit between two types of reasons: reasons to comply with the two principles, and reasons to pursue great goods of love, friendship, excellence, and the like. When congruence obtains, each person has sufficient reason to comply with her sense of justice because she counts in her list of goods the good of justice.⁴⁹

Rawls later decided his account of congruence was unrealistic, because it rested on an excessively monistic conception of the good and the person.⁵⁰ Yet Rawls's concerns about congruence extend into *Political Liberalism*, where he insists that a political conception of justice must be “either congruent with, or supportive of, or else not in conflict with” reasonable comprehensive doctrines.⁵¹ Rawls remained concerned to show that our reasons of right and reasons of good do not conflict. He always sought to unify practical reason by showing that our sense of justice issues demands compatible with the normative force of our conceptions of

⁴⁷Rawls, *A Theory of Justice*, p. 498.

⁴⁸*Ibid.*, pp. 348-49.

⁴⁹In fact, Rawls thought that the good of justice was already represented in the thin theory but under a different description. Weithman describes this claim in terms of an argument from a “diversity of descriptions.” See Paul Weithman, *Why Political Liberalism? On John Rawls's Political Turn* (New York: Oxford University Press, 2010), p. 118.

⁵⁰Specifically, Rawls decided that the argument of Sec. 86 of *A Theory of Justice* failed. For extensive discussion, see Weithman, *Why Political Liberalism?* pp. 234-69.

⁵¹Rawls, *Political Liberalism*, p. 169.

the good. Thus, Rawls thought that public reason liberalism must grapple with a conflict between two types of reasons, since we may have reasons of personal good to reject or override our sense of justice.⁵²

One difficulty with Rawls's account of congruence is that it is unclear which elements are supposed to congrue. On the one hand, Rawls wants our conceptions of right and good to match in some way, which suggests that he wants our *reasons* of right and good to fit together or at least not conflict. On the other hand, a political conception of justice is meant to be institutionalized, which suggests that real-world norms, laws, and institutions play a role in realizing congruence. It appears, then, that our conception of the good should also congrue with the *institutions* that manifest the conception of justice that matches our good. So congruence should obtain between conceptions and between conceptions and institutions. The second difficulty for Rawls is that it is not enough for us to simply comply with just institutions. The reason that we must integrate our conception of justice into our conception of the good is that Rawls wants our allegiance to institutions to be rooted in our deepest values. So it seems that Rawls also needs a conception of internalization to realize his ideal of congruence. Our conception of congruent justifications as resting on both first-personal and second-personal reasons to internalize a law, then, gives political liberals what Rawls's account of congruence was supposed to provide.

9. Conclusion

A congruent justification for a law is an ideal public justification, one where harmonized first-personal and second-personal reasons favor the internalization of a law. Public justifications that lack any one of these three components are thus defective. Without these three components, justifications for laws can be based solely on fear of reprisal, threat of punishment, and the like, reasons characteristic of a *modus vivendi* regime. In this way, the congruence ideal furnishes the basis for distinguishing between the reasons that require complying with *modus vivendi* regimes and those that require complying with the dictates of a publicly justified polity. Because a publicly justified polity is rooted in congruent justifications, it uniquely rests on reason rather than force.

While having a method of distinguishing *modus vivendi* regimes from publicly justified polities is attractive, I should end by noting an additional advance in the account of congruence presented here. Recently,

⁵²Congruence can be understood in Strawsonian terms as well, as a unity of reasons of social morality and individual ideal.

public reason liberals have starting searching for a basis for public justification requirements other than the mainstream “respect for persons” defense.⁵³ Gaus has attempted to base public reason on the value of a kind of nonauthoritarian moral relationship.⁵⁴ Andrew Lister has tried to ground public reason in a form of civic friendship and community.⁵⁵ Standard accounts of public justification seem to better explain the sorts of laws that citizens can merely *respectfully* impose on one another. But the account of congruent justifications developed here lays the foundation for realizing other, richer forms of moral relationship.⁵⁶

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⁵³Charles Larmore, *The Autonomy of Morality* (New York: Cambridge University Press, 2008), pp. 139-67, provides a classic account of the respect-based view.

⁵⁴Gaus, *The Order of Public Reason*, pp. 33-35.

⁵⁵Andrew Lister, *Public Reason and Political Community* (New York: Bloomsbury Academic, 2013.) pp. 105-34.

⁵⁶This paper has gone through many drafts, and has been aided by a great many individuals, including Chad Van Schoelandt, Jerry Gaus, John Tomasi, David Estlund, Charles Larmore, Corey Brettschneider, Sharon Krause, Alex Gourevitch, Jeppe Von Platz, Javier Hildalgo, Jessica Flanigan, Kate Manne, and several anonymous referees. All errors that remain are ~~of course~~ my responsibility.