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Public Reason. The Consensus and the Convergence View

Abstract Jonathan Quong proposes and defends the consensus, shared reasons, view of public reason. The proposal is opposed to the convergence view, defended, among others, by Gerald Gaus. The strong argument that Quong puts forward in opposition to the convergence view is represented by the sincerity argument. The present paper offers an argument that embraces a form of convergence and, at the same time, is engaged in respecting the requirement of sincerity.

Keywords: Consensus, convergence, Gaus, public reason, Quong.

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1. Jonathan Quong's *Liberalism without Perfection* is an impressive book which will strongly influence debates in political philosophy, and especially in Rawlsian political philosophy, in the future. Together with Gerald Gaus's *The Order of Public Reason*, this is, in my opinion, the most stimulating book in political philosophy written in recent years, and the two books, as, in many senses, two poles in the debate on public reason, will persistently be strongly influential in the future. It is a great occasion to discuss *Liberalism without Perfection* with the author.

The fundamental distinctive aspect of Quong's proposal in the context of Rawlsian philosophy is that it defends the internal conception of political liberalism. According to such view, the main feature of public justification is that it is oriented to people who already endorse a liberal point of view. It is not required to offer justification to people who do not endorse the basic commitments of liberalism. Justification is meant as justification based on such fundamental commitments. The issue of pluralism does not regard pluralism external to liberalism, but pluralism that appears in a liberal society as a consequence of the free exercise of human reason. As Quong says, "I do not believe liberal rights and principles can be consistently justified to persons who do not already embrace certain liberal values (e.g. the moral ideal of persons as free and equal, and of society as a fair system of cooperation). The internal conception's more modest ambition – to work out a model of political justification for *liberals* – is not an attempt to do the impossible, and thus it avoids the difficulties that beset the external model" (Quong 2011: 140). *Liberalism without Perfection* "represents the answer

to a question that is internal to liberal theory, namely, what should the structure and content of political justification be in a well-ordered society, given the fact of reasonable pluralism? Given that we are committed to certain liberal values, what does that imply about the nature of a just and stable liberal regime?" (Quong 2011: 137-160).

This fundamental aspect of Quong's conception of political liberalism has several consequences, and one of them regards his approach to public reason, i.e. the justification of specific policies and political and public decisions in the context of a political society based on basic liberal commitments.¹ As regards the structure of public reason, Quong's proposal is mainly loyal to Rawls's concept that relies on consensus and shared reasons. On the opposed side there is the convergence interpretation of the structure of public reason championed by Gerald Gaus. Not only shared reasons, but all evaluative standards embraced by the members of society are relevant for public justification.

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In the following part of the paper, I discuss Quong's criticism and refusal of the converge view of public reason and I try to offer an employment of justification from convergence that is different from Gaus's. In my view, the basic public justification relies on consensual shared reasons, but convergence has a justificatory role, as well. In some sense my claim is that both Quong and Gaus are right. But, on the other hand, I try to show that both are wrong (not an easy task, they are the two leading public reason philosophers in actual debates!). Gaus, in my opinion, is wrong because he refuses the shared reasons model and defends the convergence view as basic. Quong, as I see it, is wrong in thinking that justification by convergence must be totally dismissed.

The consensus view puts comparatively strong limits to the reasons that may be employed in public reasoning: "First, there are the substantive principles provided by the political conception of justice, or the family of liberal conceptions, all of which agree on the three general principles" (Quong 2011: 259) that (a) contains certain basic liberal rights and freedoms, (b) assigns special priority to those rights, and (c) ensures that all citizens have the resources to make use of those freedoms" (Quong 2011: 198). To this, Quong adds "that the content of public reason must also include the more foundational idea of society as a fair system of social cooperation between free and equal citizens, since this

¹ Quong endorses the broad view of the scope of public reason, as opposed to Rawls's narrow view, focused on the constitutional essentials (Quong, 2011, 273-289).

foundational idea will be necessary in order for citizens to publicly reason about the interpretation, weight, and ranking of the general liberal principles” (Quong 2011: 159 n. 10). We may not appeal to comprehensive religious and philosophical doctrines. The reason is that they are perennially controversial. A second important aspect of the content of public reason is represented by the guidelines of inquiry that specify ways of reasoning and the criteria for the rules of evidence in the public political debate from the general political content represented by a political conception of justice to more specific conclusions.

For the converge view (championed by Gerald Gaus) a broader variety of reasons can be employed in public reasoning. In such a view, it is required that all persons have a reason to accept a rule, but different agents can base the justification on different reasons. A rule can be justified even if the reasons for acceptance of the rule for some persons are derived only from their comprehensive doctrines. In brief, a rule must be justified to all people on whom it is applied, but it is not required that the justification is based on a common set of reasons represented by consensual political reasons; different persons can have different reasons and the appeal to comprehensive doctrines is legitimate. The only limit to the use of reasons is that they must be intelligible as moral reasons (Gaus 2011: 279-283).

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I defend the employment of convergence in the process of justification of laws, but I take it as an additional resource and not as an alternative to the consensus model. The latter is basic. Because of the fact that Quong fully embraces the consensus / shared reasons view, I avoid here to show possible reasons to take it as basic. For Quong it is not only basic, but the only legitimate model of public reason. In virtue of this, in this discussion I indicate why it is appropriate to employ the convergence model as an additional resource.

2. The first reason for employing the convergence view is that the content of the consensual base may be too general to lead to precise results – understanding and judgment may be required. Rawlsians are aware of the problem of generality of principles (Quong 2011: 148) and Quong tries to resolve it and the possibility of differences in their interpretation by relying on the understanding of the reasons behind them. This is why Quong introduces the more foundational ideas of society as a fair system of cooperation between free and equal citizens in the content of public reason (Quong 2011: 161-191). But the problem is that these foundational ideas are very general, as well, and there is a problem for their

understanding. In cases of such disagreements, and the resulting difficulties for justification from consensus, justification from convergence can represent an additional resource. To be sure, Quong is confident about the possibility of consensual resources to not be indeterminate (not disposing of answers to relevant questions) in public justification (Quong 2011: 281-289). In any case, even if public reason with the resources conceded to it by Quong is not indeterminate, it is difficult to think that it will not be rather frequently inconclusive (will not have conclusive answers to many relevant questions). In order to resolve such issues, voting is the only alternative to try to find solutions with justification from consensus. It is not immediately clear that in such cases voting is a better resource than trying to make use of the resources of convergence, as well. Moreover, I think that convergence, at least in some cases, can be a preferable resource, because it indicates to all citizens a more direct reason to fully embrace a decision.

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Second, there is the question of unreasonable people, i.e. people who do not endorse the ideas of reasonable pluralism and the related idea of burdens of judgment, of society as a fair system of social cooperation among free and equals, as well as one of the conceptions of justice that (a) contains certain basic liberal rights and freedoms, (b) assigns special priority to those rights, and (c) ensures that all citizens have the resources to make use of those freedoms. There are at least four attitudes that we can take toward them. The first is simply to enforce on them a reasonable order. The second is to enlarge the constituency, i.e. the set of people and views that can represent the content of public reason, for example by changing the consensual ground, like Rawls does in the *Law of Peoples* (Rawls 1999a). The third is to merely establish with them a *modus vivendi*. My proposal is represented by the fourth attitude: to not renounce to the consensual ground represented by the basic content of reasonableness as the basis of a just order, but not to simply enforce this order and the consensual ground on unreasonable people, but to try to develop arguments for unreasonable persons and justification to them, whenever possible. In some cases, maybe, this will be possible, but only through convergence with their comprehensive views.

I find the issue of unreasonable people as particularly important for the question of stability. I agree with the Rawlsian project, and with Quong specifically, that gaining stability for the right reasons corresponds to acquiring “the reasoned allegiance of citizens. It is crucial for a just constitutional regime to generate its own support in order to avoid decay

and decline” (Quong 2011: 300). I agree, as well, that “normative stability requires an overlapping consensus to exist on the core political values of freedom, equality and fairness. If enough people reject these political values, then a normative stable democratic regime becomes impossible. It is therefore essential that doctrines which deny the freedom and equality of persons, or the idea of society as a fair system of cooperation, not become so prevalent that they threaten to undermine the fundamental ideals of a well-ordered liberal regime” (Quong 2011: 300).

However, unreasonable people will always exist, and even a proper idealization must take this in consideration. An important part of the strategy toward unreasonable people is to try to convert part of them to the core liberal commitments, or, at least, to avoid, or reduce, the presence of unreasonable people who are strongly inimical to the liberal order. Reasoning with them on basis of reasons that may be specifically acceptable to them, that are not strategic, but that look for convergence of various moral reasons, may be a good attempt to try to develop a level of civic friendship, or at least to reduce civic animosity with unreasonable people. Justification from convergence may possibly help to convert some of them gradually, by showing, case by case, in as much occasions as possible, that the liberal order is not inimical to their comprehensive views (because there is a relevant field of convergence), or, at least, it may be possible to show them that the liberal order is not inimical to them because it can converge on relevant parts of their comprehensive views (although there are differences that impede unreasonable people to convert to liberalism) and that, therefore, there is no reason for them to be strongly inimical to the liberal order. At least, it might be possible to show that adherents to the liberal conception of justice are not disrespectful toward their fellow citizens who do not adhere to the liberal conception. Here I borrow the words of Christopher Eberle, although his general intention is opposed to mine (i.e. he defends an overall legitimacy to pass laws even if based on non public reasons only): “There is, of course, no alternative to the frustration engendered by losing out in a fair and free political contest. But there is an alternative to losing out to those who exhibit a callous indifference to one’s well-being and thereby to the impact of their winning policies on one’s life prospects” (Eberle 2009: 169). Obviously, there may be some comprehensive views, or unreasonable people, so strongly inimical to the core liberal commitments that attempts to find convergence with them does not make any sense.²

² The last sentence similar to what Schwartzman says in relation to reasoning from conjecture Schwartzman 2012: 521-544.

The third reason to complement justification from consensus with justification from convergence is the broadening of the scope of public reason. I agree with Quong that public reason must regard not only constitutional essentials and basic justice, but wider laws and public policies, as well. It is correct to try to justify such laws and public policies through consensus on reasonable political terms whenever possible, and sometimes we will find such public reasons during the process of justification (Quong 2011: 281-289). But it is still to be shown that this will always be the case. If the response will be negative, justification by convergence can be an appropriate additional resource. We had a relevant example of the helpfulness of employment of convergence in Croatia when we had the referendum for joining EU, when the parallel appeal, for example, to catholic arguments, to the historical tradition of Croatia, and to the internalization of the solidarity of working class was important.

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3. I go now to Quong's criticism of justification from convergence. He mainly relies on the principle of sincerity. "Sincerity requires that we not support or advocate laws when we do not sincerely believe they can be justified to others, regardless of what those others may themselves believe" (Quong, 2011a).³ One of the reasons for supporting the sincerity requirement, according to Quong, is that it distinguishes public justification from rhetoric or manipulation. In the specification of the sincerity argument, Quong says that there is nothing uncontroversial in saying "I don't adhere to your doctrine myself, but I believe that your doctrine clearly supports a commitment to rule X", but the controversial point is the claim "I believe your doctrine clearly supports a commitment to rule X, and I believe you are justified in believing the relevant part of your doctrine" (Quong, 2012a). If A is not able to endorse this claim, A cannot sincerely believe that B's endorsement of X satisfies the principle of justificatory sincerity, i.e. A cannot sincerely believe that X is justified to B. Here Quong is opposed to what Gaus says about justification, i.e. that it is path-dependent and what is a defeater in A's system of beliefs is not a defeater in B's system of beliefs. As a consequence of this conception of justification, Gaus's view is moderately relativistic. What can be justified to one person, can be not justified to another person. Moreover, a crucial aspect of Gaus's view on justification is that a standard of justification can be a source of justification, without being justified

3 Among authors that basically endorse a consensus view of justification, Nebojša Zelić appeals to the importance of sincerity and the duty of civility. Zelić 2012, Zelić forthcoming.

itself (Gaus 1996; Gaus 2011). This is refused by Quong in his opposition to the convergence view. Only justified standards of justification can be sources of justification.

Schematically, this is Quong's basic argument:

- 1) Convergent justifications amongst people adhering to different comprehensive doctrines can only be made consistent with PJS [principle of justificatory sincerity] provided each person involved sincerely believes that the other people involved are justified in adhering to their different comprehensive doctrines.
- 2) The belief required in (1) is generally not possible unless citizens accept certain epistemological or axiological doctrines (e.g. Gaus's).
- 3) The fact of reasonable pluralism means we cannot and should not expect citizens in a liberal society to adhere to any particular epistemological or axiological theory.
- 4) Therefore, as a general rule, we cannot expect convergent forms of justification to be consistent with PJS in a liberal society" (Quong 2011: 272).

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Quong thinks that Gaus avoids the conclusion of this argument by renouncing to the condition in (1), i.e. to the justification requirement, and by substituting it with the intelligibility requirement. In my opinion, Gaus has always followed the same concept of justification, as, for example, in his book *Justificatory Liberalism* (Gaus 1996). In his epistemological view, some reasons may be not justified, but be justificatory reasons at the same time. In order to serve as justificatory reasons, it is sufficient that such basic standards of justification are intelligible as justificatory reasons. But, says Quong, the appeal to such an epistemology in public justification is not permitted in virtue of reasonable pluralism: there are reasonable people who do not endorse this concept of justification, like, for example, externalists. Insisting on justification by convergence, as a consequence, has a high price. Either it is required to renounce to PJS and be engaged in public justification with insincerity, or it is needed to renounce to public justification and say that all views are legitimate simply because they are intelligible, even when they are not justified. In the latter case, as Quong says, Gaus renounces to his commitment for an order of public reason and opts for an order of public intelligibility (Quong forthcoming).

I think that it is possible to reformulate the use of justification from converge in order to avoid Quong's objection. In my answer, however, I depart from Gaus's formulation.

The important premise of my argument is that the context of the present discussion is determined by the endorsement of the ideas of agents as free and equal, of burdens of judgment and of reasonable pluralism. In virtue of the burdens of judgment and of reasonable pluralism, it is not to be expected that agents will have equal standards of justification. Moreover, it is to be expected that they will be distinguished by plural evaluative standards. But every person is entitled to follow her standards of justification, in so far (like I endorse from the consensus view) as they do not conflict with what is justified by shared reasons related to the foundational commitments of liberalism, i.e. to the common standards of justification of reasonable citizens (the idea of society as a fair system of cooperation among equals and reasonable pluralism, as well as the three main principles of liberalism). As Samuel Freeman remarks, it would be unreasonable to "not normally accept or tolerate people's affirming and acting on the particular beliefs that provide them with reasons. Persons and principles of justice are unreasonable in so far as they do not tolerate or accept that false beliefs can provide others with good reasons for acting. [...] To insist that others cooperate with you only on grounds and for reasons which you believe are true is the paradigmatic case of an unreasonable person. [...] Respecting others as persons and as citizens involves allowing them to non-coercively decide their values and (within limits of justice) act on their chosen ways of life. This moral requirement implies a duty to allow others to make their own mistakes of judgment and action, and, within limits of justice, act on their false beliefs as well" (Freeman 2004: 2037, 2042).⁴

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So, it is possible for reasonable Betty to offer to unreasonable Alf this justification:

(i) You are entitled to follow your standard of justification Σ in every case when there is not a successful defeater for the reasons that it justifies.

This may be a common premise for Betty and Alf. Betty accepts such entitlement in virtue of her adherence to the fundamental liberal commitments. Alf thinks that he is entitled to follow his standard of justification Σ , otherwise it would not be possible to explain why he endorses Σ .

⁴ To be sure, Freeman's quotation, in his paper, is not intended as part of a support of any kind of justification from convergence.

There are differences in the reasons why Alf and Betty endorse Σ , but I think that this does not represent a problem. If the justificatory consensus on premises would have to be so deep, there would be problems with the justification of shared reasons among reasonable people, as well. Even in their case, it is left to each individual to look by himself/herself for his/her justification of the shared reasons. In fact, below, in the discussion of the endorsement of the shared reasons, I try to show that a weaker conception of justification than Quong's is needed, but I skip on the details here.

For the sake of sincerity, Betty must explicitly declare to Alf the qualification that she thinks that he is entitled to follow his standard of justification Σ in every case when there is not a successful defeater for the reasons that it justifies. Alf may think that there are no such defeaters if he thinks that Σ provides indefeasible justification, but I do not see why this is a reason for him to stop Betty's argument at this point, and to not let Betty to develop her argument and, if she wants so, to try to find a defeater for some of the reasons sustained by Σ later. In the hypothetical case that I describe, Alf expects that all such possible challenges will be unsuccessful, but there are no reasons to debate about this at this point of the argument.

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(2) The standard of justification Σ sustains rule R.

As a hypothesis, in order to exemplify the argument from convergence.

(3) R is justified to you if there is not a successful defeater for it.

Premise (3) follows from (1) and (2).

(4) There are no defeaters of R.

As a hypothesis, in order to exemplify the argument from convergence. Alf can endorse (4) in the hypothetical case if he thinks that R is a pro tanto rule and there are no available defeaters in his standards of justification, but in the case that he takes R as an absolute rule, as well, because in such a case for him the possible defeaters of R are an empty set. Betty can endorse (4) because, in the hypothetical case, R converges with the liberal standards of justification.

(5) R is overall justified to you.

This seems to me as a case of sincere justification, where no controversial epistemology is implied.

One may say that in my defense of justification from convergence as an addition to justification from consensus I have simply reformulated Rawls's justification from conjecture (Rawls, 1999b: 155-156). Let it be. The basic thing in my discussion is to show why a citizen, Betty, who reasons with an unreasonable citizen, Alf, on the base of his evaluative standard could be sincere. It appears to me that my explanation is sensibly more concessive than what Quong admits in his position toward reasoning from conjecture.

As he says, "reasoning from conjecture can be consistent with the PJS [only] if Betty believes there are sufficient shared reasons for rule X, but she also believes Alf's unjustifiable comprehensive doctrine supports X, then I think she can engage in sincere reasoning from conjecture with Alf where she tries to show him his own doctrine commits him to X (but she probably ought to publicly articulate the shared reasons too if we believe in a strong publicity condition)." (Quong 2012a)

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If I understand correctly him, Quong refers to cases like in his (Quong 2012) and Gaus's (Gaus, 2012) dispute of cases where citizens endorse shared reasons that support a rule R, but some of them (championed by, let's say, Alf) endorse additional reasons that speak against R. In such a case, the reasonable citizen Betty, who endorses R on the base of shared reasons, may engage in reasoning from conjecture with Alf, in the attempt to show him that his basic evaluative standard commits him to endorse R, exactly the rule that is sustained by shared reasons.

The condition of shared reasons put forward by Quong for the legitimacy of reasoning from conjecture is clearly exclusive in several cases of reasoning from conjecture with unreasonable people. Only reasoning from conjecture with, let's say, semi-unreasonable citizens (those that share reasons with the reasonable, but don't think that they are always overriding) is saved. For the reasons indicated above, I think that such exclusion is not supportive of the requirements of stability and I hope that I have shown that there are no reasons based on PJS to endorse such a restriction.

Maybe it is worth deserving to question whether Quong's limited acceptance of reasoning from conjecture is exclusive in another case, i.e. in the case of disagreements in the understanding of the content of public reason (for example, in the understanding of the foundational ideas of society as a fair system of cooperation between free and equal citizens), or principles that protect some freedoms, which interpretation is

inconclusive in virtue of their generality. I am not able to say whether, for Quong, in the case of agreement on the general formulations about freedom, equality and fair society, but disagreement on their understanding, there are sufficiently shared ideas in order for reasoning from conjecture to be legitimate, or this condition is not present.

To be sure, the problem of limiting the resources of reasoning from conjecture that I am pressing here, in particular with unreasonable people, is not immediately an issue for Quong, in virtue of his internal conception. But, as I have tried to show in virtue of the requirement of stability, unreasonable people deserve specific care even in an idealized liberal society, as that pictured by Quong.

4. I indicate now two concerns related to Quong's four steps argument that appeals to the strong concept of justification and the PJS. The two issues that I indicate are meant to question whether Quong's strong concept of justification is appropriate for political liberalism, or it must be replaced by a more permissive concept of justification. First, it appears to me that Quong's sincerity argument could be a threat to the proposals of several Rawlsians that endorse the shared reasons / consensus view of public reason,⁵ as well as to Rawls's himself.⁶ As Rawls says, the freestanding argument for principles of justice (the argument related only to premises characteristic of public political culture of democratic societies and free from controversial premises of comprehensive doctrines) is only pro tanto justified. In order to obtain full justification, each qualified person must put in coherence her view with her comprehensive doctrines. Public justification is obtained when this is done by all qualified persons (Rawls 1996: 386-388). This is, in fact, a form of convergent justification and it is liable to the same objection raised by Quong to Gaussian convergence view.

I skip on the issue of how Rawls and various Rawlsians can deal with this proposal and I will focus on Quong's reply. In Quong's view, no role is played in public justification by comprehensive views.

But there is a problem, nonetheless. Quong says: "The alternative view that I have offered [the internal conception] does not present the freestanding argument – the move from the fundamental ideas to the general

5 For example, Stephen Macedo says that reasonable citizens will be ready to adjust the freestanding justified conception of justice in order to render it acceptable to reasonable fellow citizens who endorse various comprehensive doctrines Macedo, 2012.

6 One of the problems is raised by Micah Schartzman Schwartzman, 2012.

liberal principles – as a *pro tanto* justification which then depends on an overlapping consensus in order to achieve a full or public justification. Because the freestanding argument builds on certain fundamental ideas that are already assumed to be the subject of an overlapping consensus amongst reasonable people, the conclusions of the freestanding argument should be taken as fully justified to all reasonable persons. Reasonable persons are already assumed to have their own comprehensive or otherwise non-public reasons for endorsing the fundamental ideas, and thus the free standing argument requires no further justificatory support” (Quong 2011: 186). The possible problem is that even if all citizens rely in public reasoning on ideas and principles assumed to be the subject of an overlapping consensus amongst reasonable people, some of them endorse these ideas and principles by relying on what others take as unsound justificatory reasons. As Quong accepts similarly to Rawls, the comprehensive or otherwise non-public reasons, endorsed by citizens, can be in an epistemological bad shape. This seems to me as a possible problem, in accordance with the strong conception of justification that Quong endorses in his use of the PJS in opposition to the convergence view. If we accept the strong view of justification, it appears the same dilemma that Quong puts forward to Gaus’s convergence view: either some qualified members of the constituency are not sincere toward other members of the constituency (and think that others are not justified in endorsing the fundamental liberal commitments), or they endorse a controversial epistemology or theory of reasons. Everybody participates in the project of building or sustaining a liberal society with others in virtue of their common shared commitments, but here it appears to be an issue of sincerity, because some citizens do not see some other citizens as justified in accepting such commitments.

A possible explanation that says that the fundamentals of liberalism are self-justifying, will not work, because the foundationalist concept of self-justifying beliefs or reasons represents a controversial epistemological view, something that is defined as a problem by Quong. In another reply, the fundamentals of liberalism may be taken as strong enough to survive in a process of reflective equilibrium (Quong 2011: 155-156). Their justification is obtained in reflective equilibrium. But, this, again, would not do the work, because reflective equilibrium is itself a controversial epistemological concept.

Quong’s reply is that “I think an essential part of PL’s strategy of epistemic abstinence involves taking it as given that all reasonable persons

are justified in endorsing the fundamental political values, and accepting the burdens of judgement. PL does not directly enquire into the question of whether individuals are justified in accepting those values in order to abstain from controversial epistemological theories over which we assume reasonable people disagree. We just take the fundamental political values as given, and then can appeal to those shared values in any instance of public justification and stipulate that in doing so, we can assume our starting premises are justified to reasonable persons. Making good on that assumption is something political liberalism as a theory remains silent about: we leave that up to individual citizens as part of the background culture or comprehensive philosophy” (Quong, 2012a).

I have still worries in relation to how it is possible to say this, in coherence with the criticism of Gaus’s convergence view, based on the sincerity argument. Quong requires to Betty to refrain from justification from convergence of rule R to Alf because she does not believe that Alf is justified in endorsing his evaluative standard Σ . How is this different from Betty, who is allowed to reason with Alf on the base of shared public reasons SRs, although she does not believe that Alf is justified in endorsing them? One answer is that in the former case Betty needs to investigate about Alf’s justification of R, while in the latter case she avoids to investigate about the justification of SRs, because she does not need to do so. But is this really so? Betty may have a strong rationale to investigate about why Alf endorses SRs. For example, she may want to know how stable Alf’s endorsement of them is. If Alf’s endorsement is based, for example, on a doctrine with contradictions, or too ambiguous formulations, she may be wary of the stability of Alf’s endorsement.

In any case, an attitude of attribution of merits to a person related to avoiding information about her merits appears as shallow. I suppose that every reasonable person would judge as regrettably shallow the sincerity of a person in a relation with a spouse, or friends, if, for example, she admires them, but she deliberately avoids knowing facts about them. Isn’t it a regrettable shallow attitude to admire a husband for how successfully he financially cares about the family, and neglect to get information about how he does so (perhaps he is a gangster). In a similar way, it appears to me that it is a regrettable shallow attitude to sincerely engage in justification of public rules with my fellow citizens on the base of some sustaining reasons, if I admit that justification may be so defined that it is obtained only if one is justified in endorsing the

sustaining reasons (which is exactly what Quong establishes about justification in his criticism of Gaus's convergent justification), and I neglect to know about my fellow citizens' justification of the sustaining reasons on which ground we are engaged in justification of public rules.

A further problem is that in order to obtain justification in a strong sense, basing it on sound justificatory reasons is not sufficient. A person must relate the justificatory reason *R* to the conclusion *C* with a sound inference. As Quong says, "in order for decisions to be justified, they must be grounded in sound reasons or arguments" (Quong, 2012a). But, as it is well known, ordinary people are not very good in developing good arguments. They are subject to logical mistakes and rely on heuristics (see, for example: Gaus 1996: 130-136). As a consequence, either we must think that only epistemological elites can include qualified members of the constituency, or we must renounce to the strong idea of justification put forward by Quong in his criticism of Gaus. It seems to me that the latter option is more congruent with the intentions of public reason, i.e. not to exclude people as qualified members of the constituency because of not being more than ordinarily rational from the epistemological and logical point of view. It is true, as Quong says, that "public justification does not aim at mere agreement or consent – the aim is for political decisions to be *justified* to each person who is bound by them" (Quong, 2011a).

The problem, in my view, is that the conception of justification that Quong associates with PJS is too strong. I just indicate the issue, here, and leave a discussion of possible alternative conceptions of justification for another occasion.

6. At the end of the paper I raise some doubts about the relevance of the religious issues among supporters of the consensus and supporters of the convergence view. Contenders on both sides show the divergences on this question that derive from the employment of the justificatory structure, but I think that the topic is worth-deserving of further analysis, in particular more focused on specific issues, before reaching this conclusion.⁷ The initial ground for such a thought is that in virtue of the presumption of freedom, religious reasons can be efficaciously employed, for Gaus, only in the defense from coercion, not in support of

⁷ It may be important, as well, to direct the discussion among consensus and convergence view to debate which of them is more able to oppose those views that admit the legitimacy of coercive laws based on religious reasons only.

requirements of coercion, while, on the other hand, the defense of religious rights is relevant for Rawlsians, as well. As Samuel Freeman says, “Only the most compelling reasons of justice, those regarding the protection of others’ fundamental rights, should be allowed to outweigh the freedom of religious doctrine, sacraments and liturgical practices” (Freeman 2002: 24).⁸

However, the opponents in the debate do not share my intuition. Kevin Vallier, for example, takes as one of the advantages of the convergence view the possibility to offer a stronger support to religious freedoms (Vallier 2011: 261-279). The main reason to which he appeals is that the consensus view restricts the kind of reasons that citizens may use in order to stop coercive laws. In order to support his thesis, he indicates an education example, and he says that the convergence view, but not the consensus view, allows parents to object on religious grounds to a policy that organizes school curricula so that, in public schools, children are thought only shared and accessible reasons.

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The question is complicated. On one hand, as we see, for example, from Freeman in the quotation above, the consensus view allows strong protection of religious rights. On the other hand, it is not so clear how extended protection of parents’ rights in the education of children the convergence view offers. Let’s remember the teaching of J.S. Mill, who distinguishes among the freedom of parents in relation to choices in their life and choice in the lives of their children. The two questions are frequently conflated. But this is wrong. Children are not the property of their parents (Mill 1859/1977: 301-304). For this reason, there is a question about, as Gaus would say, the jurisdictional rights in the education of children. As Brian Barry wrote, there are good reasons for the legitimacy of the state to interfere in the education of children, specifically in the context of school curricula, in order to protect their legitimate interests. Barry certainly opposes the presumption of the right of parents to block a school curriculum that teaches evolution, or the bases of civic freedom (Barry 2001: 194-249). It seems to me that Vallier would be ready to accept such entitlement for the parents by the same token by which he defends the right of parents to block a school curriculum that teaches only shared and accessible reason. If he is not ready to do so, then he admits that parents do not have absolute jurisdictional rights in the education of children. But, then, the issue about the entitlement

⁸ See also Freeman 2004: 2036-2037, 2042.

to veto school curricula that teaches only shared and accessible reason becomes an open question, even in the context of the convergence view. In my opinion, there is a strong rationale for this, precisely the one addressed by Mill: children are not parents' property.

Quong may complain on his side to the, let's say, ecumenical view that I show by expressing worries related to the clarity of the concept of coercion. In his *Three Disputes about Public Justification*, he indicates difficulties by using an example that shows that the basic issue is not that of an independent definition of coercion, but of what is just and what is unjust. So, a possible problem might be that religious people can define what is just in accordance to their view and, consequently, define the legitimacy of a law in accordance to their view, and, consequently, again, enforce laws that override others' evaluative standards in matters of personal life.

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But let's remember that, for Gaus, it is possible to pass a law only if, for each and every person, no regulation of the field is better than the law regulation of this field by this law. This is a powerful tool to stop religious regulations of the lives of non religious people. Think about the (in many countries, like Croatia) controversial case of regulation of marriage. Religious people frequently require a regulation that forbids marriage among homosexuals. Gaus's test is to see whether such a regulation is better for all, than no regulation of this field. But for some homosexuals no regulation of marriage at all may be better than discriminative regulation. Such a regulation is, therefore, defeated. On the other hand, probably, even for religious people it is better to have a liberal regulation of marriage than no regulation at all. As a consequence, the liberal regulation of marriage is the appropriate space of convergence.

Quong, however, can still raise challenges to the legitimacy of employing religious reasons in justifying public decisions, by appealing to the problem that this will cause hard divergences with the liberal concept of justice. So, similarly to Vallier, Quong shows that the justificatory structure that he endorses is more suitable for protecting the fundamental ideas of liberalism. Think about Quong's example of Anna, a rather reasonable citizen (Quong 2012a: 55). Anna accepts the core liberal commitments, but she thinks that they have not absolute priority over the commitments of her comprehensive view. In the balance of her political liberal and of her comprehensive commitments, among else, she generally accepts anti-discriminative rules, with only one exception. Her religion requires

that only members of this religion (or, of any religion, which excludes atheists and agnostics) can be hired in religious associations, and this is the rule that she accepts as the best balance among all of her commitments. Quong's conclusion is that "if Anna is included in the constituency of public reason, then our theory will no longer be able to deliver what I take is uncontroversially accepted as a liberal right" (Quong 2012a: 55).

The right to not be discriminated in employment policy is certainly a very high ranked liberal right. But, perhaps, the employment policy endorsed by Anna is not so clearly illiberal, at least in some of its interpretations, and after having considered overall liberal values and principles. First of all, there may be some kinds of occupations in religious associations where the religious belonging of the employee is functional to the religion. For example, there are good egalitarian liberal arguments to permit to catholic associations not to hire priests or nuns who are not Catholics. Among others, a strongly committed egalitarian liberal like Brian Barry offers even a reasonable argumentation for the right of catholic institutions to limit the access of women to the role of priest, or, more precisely, denies to the state the right of being the umpire in such an issue. As he says, by quoting one US court: "who will preach from the pulpit of a church and who will occupy the parsonage" is a purely ecclesiastical question" (Barry 2001: 175). Admitting here the role of umpire to the state would simply mean to deny the autonomy of catholic religion as such. Those unsatisfied with this rule can try to change it from inside, or try to found a new religion that fits better with their worldview (Barry, 2001: 176).

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A different issue is represented by jobs in religious associations that are not religious in their essence. Think about the case of a janitor in a religious school. Is the school allowed to differentiate here on religious grounds? In such a case, precisely the case of a janitor in a Mormon school, Brian Barry refuses the right to the differentiation, because it is not functional to the job. Being religious, or following religious rules, is not a distinctive feature for being a good janitor (Barry 2001: 166). Here Barry endorses a view similar to Quong's: discriminating in the employment policy on religious grounds is not acceptable.

However, things can be more complicated. As Gaus says, "Entrepreneurship is itself a form of human flourishing. [...] Start-ups, innovation, risk taking, organizing groups to resolve problems and implement new ideas – all these are not simply ways to produce the stuff to be

distributed according to ‘economic justice’: they are basic to evaluative standards of some Members of the Public” (Gaus 2011: 379). It seems to me a corollary of Gaus’s statement that entrepreneurship, and, in general, organizing associations can be more than a functional activity in the sense of leading financially successful systems, or providing good education, and that heading such activities can be related to a worldview, or a broader value life project of a person or members of a group.

I do not see as something that clearly must be outlawed leading an organization with, among else, an intention to show that “we Catholics,” or “we Protestants,” etc. are able to do this in a successful way, in particular if the intention is to show the possibility to do so in conformity with a strict conformity to the general system of values correlated to the groups. In general, I do not feel sympathy for such kind of initiatives, but I feel, at the same time, a duty to be cautious in thinking that egalitarian liberalism allows requiring that they be outlawed. In some cases, I can find such initiatives as repugnant and I would boycott them whenever this would be possible to me, like, for example, if they include only people that are traditionally privileged in a society, or if they are inspired by hate for other groups. But, again, I am cautious in thinking that egalitarian liberalism entitles to require that they be outlawed. After all, coming back to the case of the Mormon school mentioned above, the US Supreme court did not refused the decision of the school: “All the justices united behind the rationale that it would be an interference with the autonomy of religious organizations for the government to decide which non-profit activities are religious and which are not” (Rosenblum 2000: 90, quoted from Barry 2001: 167)

However, there might be a particularly strong reason to outlaw such firms, even in Gaus’s argumentative scheme. It is important to remark, as Barry does, “that the effect of the decision [of the US Supreme court in relation to the Mormon school case] was to give religious bodies extremely broad scope for exercising job discrimination – so broad that it might be thought to threaten religious liberty itself. For, as Rosenblum has said, “there is no sharper deviation from liberalism than coercing belief by conditioning vital secular benefits on declarations of faith” ” (Barry, 2001: 167).

In conclusion, several things may be said in reply to Quong’s examples. There may be good public reasons to support the decision of religious organizations to hire only religious people, in some contexts. There might be good resources, in other contexts, for the convergence view to

rebut the proposal of a law that permits religious organizations to hire only religious people, or only people who respect religious prescription, because it might be reasonable to say that such a law threatens religious liberty itself. Gaus says that justification of public rules must respect a structure of justification and that there are higher ranked issues that put constraints on the justification of other issues (Gaus 2011). Religious freedom is a high ranked issue in the structure of justification and, therefore, if it is threatened by a policy that admits employment of only religious people in religious organizations, then there is a strong case for rebutting such a policy.

The previous discussion was not intended to be a conclusive proof of the thesis that the use of religious reasons in public justification is not a divisive issue with practical implications between the consensus and the convergence view, but only an indication that it is not obvious that it is so. Both Vallier's, as well as Quong's examples, deserve further discussion in order to see what would be the outcomes of their discussion in the context of a consensus, as well as a convergence view of justification. Perhaps, it is not so clear that both examples represent clear counterexamples for a view of justification, instead of being disputable hard cases.⁹

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Javni um. Konsenzualno i konvergentno viđenje

Apstrakt

Džonatan Kving predlaže i brani konsenzualno viđenje javnoga uma ili viđenje zajedničkih razloga. Predlog je suprotstavljen konvergentnom viđenju, koga brani, između ostalih, Gerald Gaus. Snažan argument koji Kving suprotstavlja konvergentnom viđenju jeste argument iskrenosti. Ovaj tekst nudi argument koji prihvata oblik konvergencije, ali se istovremeno zalaže za prihvatanje zahteva iskrenosti.

Ključne reči: konsenzus, konvergencija, Gaus, javni um, Quong.