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POLITICAL LIBERALISM VS. LIBERAL PERFECTIONISM



POLITICAL AUTHORITY AND
PERFECTIONISM: A RESPONSE TO QUONG

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Jonathan Quong's *Liberalism Without Perfection*¹ is a powerful restatement and defense of Rawlsian political liberalism. The book develops its case by arguing against its chief intellectual opponents in recent years, namely, liberal perfectionists. The book has many virtues—it is clearly and rigorously argued; it gives a fair hearing to the recent arguments of liberal perfectionists; and it presents new challenges to them. The book makes an important contribution to the debate between political liberalism and liberal perfectionism.

In this commentary I will focus on what Quong regards as the most decisive challenge to liberal perfectionism in the book, which concerns the legitimacy of the perfectionist state.² Perfectionists argue that it is wrong for liberals to categorically exclude the promotion of the good life from the state's legitimate tasks. On the contrary, under certain conditions, it is legitimate for the state to promote conditions that help people pursue valuable conceptions of the good life. In the literature on perfectionism, there are at least two ways of justifying the authority of the perfectionist state. One way is what I would call independent justification. An independent justification gives a direct, independent reason for the authority of the perfectionist state. An example is Joseph Raz's service conception of authority and its normal justification thesis, which argue that the very rationale of authority is to help people act in accordance with practical reasons that apply to them, and the pursuit of what is objectively valuable and good for their lives is one such reason. The other way is what I would

¹ Jonathan Quong, *Liberalism Without Perfection* (New York: Oxford University Press, 2011).

² The challenge is presented in Ch.4

call conditional justification, which takes up whatever justifications of state authority *liberals* regard as sound and uses them for the authority of the perfectionist state. For instance, I have argued that the higher-order unanimity argument that liberal philosophers use to justify the state's pursuit of controversial goals in matters of justice or education can also be used to justify state pursuit of controversial perfectionist goals.³

In this commentary I shall focus on Quong's challenge to Raz's normal justification. My main interest lies not in Raz's justification itself, still less in defending it here. Rather, I am interested in the more general philosophical point Quong raises in his critique of Raz. For Raz, a person has authority over another person if the alleged subject would better conform to reasons for action that apply to her by following the alleged authority's commands, than by following those reasons directly. Quong calls this the "practical reason model" of authority, because authority is established by its alleged ability to help the subject conform to practical reason. Quong believes that liberal perfectionism precisely subscribes to this model in justifying the authority of the perfectionist state, for perfectionism claims that to lead as valuable a life as we can is indeed a practical reason to which we should conform; and if state action "enables citizens to lead more flourishing or valuable lives than they would in the absence of the state's rules and institutions," (120) then, according to this practical reason model, the state would have authority in undertaking perfectionist state action.

Quong rejects the practical reason model of authority. He argues that better conformity with practical reason does not provide any reason for authority, for it fails to explain "why the brute fact that I have reason to do something should affect what rights you have with regard to me." (115) The mere fact that I have a good reason to go on a trip to Peru does not imply that any experienced, trustworthy travel agent can claim authority over me as to what I should do about the trip.⁴ Quong argues that you have authority to

³ See Joseph Chan, "Legitimacy, Unanimity, and Perfectionism," *Philosophy & Public Affairs*, 29 (2000): 5-43.

⁴ There is, however, some problem with this example, as noticed by Quong. He is aware that Raz does not take conformity with practical reason as a sufficient condition for authority. For Raz, such conformity only grounds a legitimate claim of authority provided that the alleged subject cares more about acting rightly than acting autonomously. Quong does not think that Raz's autonomy constraint can answer his challenge. Since I do not

issue and enforce command over me with regard to a certain domain of issues only if I am, in the first place, under a duty of justice to others regarding that domain. His example is the duty to aid the victims of an accident—if the best way I can fulfill this duty is to obey the medical commands of a surgeon who happens to be on the scene, then the surgeon has authority over me, i.e. he has the right to issue and enforce medical commands over me. Quong writes:

Your authority over me in the example derives not from the fact that what I have most reason to do is rescue the victims, but rather from the fact that I have a duty of justice to help the victims which means, by definition, that I lack the right to refuse to help them. All the normative work is thus done by our views regarding who holds which rights and who is under which duties: the allocation of legitimate authority is simply parasitic on our beliefs about the distribution of rights and duties. Call this the duties-not-reasons objection to all practical reason views of legitimate authority. The objection declares that the focus on what we have most reason to do is misleading. Legitimate authority does not track what we have reason to do, it tracks what rights we have, and what duties we may be under. (116)

I doubt if the surgeon example can show that the surgeon has authority. It may be right to think that the surgeon is morally justified to coerce me to do things she sees as necessary to help victims. It may even be possible to think that I am morally obligated to comply with the surgeon's medical instructions. But does it show that the surgeon has authority over me, in the sense that she has the status or standing to command my obedience? I do not think it does. If a person has authority over me, then presumably within certain limits, he has the right to command me and I am obligated to obey him, even if the content of his command is highly controversial or mistaken.⁵ No authority in this sense exists in the surgeon case. My obligation to comply with the surgeon's instruction is confined to a narrowly defined *ad hoc* task, namely to save the victims; my compliance is conditional upon the successful execution of the task. If I reasonably disagree with the instruction or seriously doubt whether my compliance would lead to the successful execution of the task, the force of my obligation will quickly weaken; and if the surgeon's instruction is in fact mistaken, then certainly I have no obligation to comply. An authoritative relationship may be partially

want to dispute with Quong on this point here, I will not discuss the autonomy condition in Raz's defense of his service conception of authority.

⁵ For this point see Andrei Marmor, "The Dilemma of Authority," *Jurisprudence* 2 (2011): 128.

justified by the authority's expertise or ability to coordinate collective action to ensure justice, but this cannot be the whole story—the ability of the alleged authority does not, by itself, show that she has, as Thomas Christiano puts it, “a valid claim on us to respect the status of the decision maker even when we disagree with the substance of the decision.”⁶

I suspect what is missing in both the travel agent case and the surgeon case is that the persons who claim to have authority are private individuals who, despite their expertise and ability, have no valid claim or normative power over others to regard them as authoritative decision makers. In a more recent article, Raz recognizes that the alleged authority's ability to help the subject better conform to reason (whether practical or obligatory) seems not sufficient to explain what it means to have practical authority. Practical authorities have normative powers over people. They impose duties on the subjects and grant rights to them. The mere fact that they can perform their tasks well *if given* the authority to perform those tasks does not show that they in fact possess the authority to impose duties and grant rights. “[N]o one is a prime minister or a teacher just in virtue of the fact that they can perform the task well. Something else has to happen to give them the task, to make it their task.”⁷ Raz argues that his service conception of authority can go some way to fill the gap between ability and authority—one way to show that a putative authority has the ability to do the tasks well is that she in fact possesses *de facto* authority, that her *de facto* authority is recognized and followed by the subjects. Raz illustrates this with the case of political authorities. We know, he says, that a major part of their role is to improve public services, protect personal security, enforce contracts, facilitate collective action, and so forth. Now, the fact that a group of individuals has the ability to perform these functions well is necessary, but not sufficient, to establish authority. “Only bodies that enjoy *de facto* authority (i.e., that are in fact followed or at least conformed with by considerable segments of the

⁶ Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (New York: Oxford University Press, 2008), 241-242.

⁷ Joseph Raz, “The Problem of Authority: Revisiting the Service Conception,” *Minnesota Law Review* 90 (2006): 1032. In *The Morality of Freedom*, Raz gives a similar view: “[I]n most cases the normal justification cannot be established unless the putative authority enjoys some measure of recognition, and exercises power over its subjects. There is a strong case for holding that no political authority can be legitimate unless it is also a *de facto* authority.” (Oxford: Clarendon Press, 1986), 56.

population) can have legitimate authority over all these matters. Hence there cannot be an unknown political authority.”⁸

For a person to have authority, then, she has to be widely recognized as having *de facto* authority to command others.⁹ This line of thought, I believe, points to the right direction in understanding authority. One could go farther than Raz’s point about *de facto* authority by viewing practical authority as primarily an institutional or practice-based phenomenon. To be a *de facto* authority is to be known, recognized, and complied with by its subjects. Such recognition is often based on the fact that the *de facto* authority takes up certain roles or positions in an institution or social practice that grant her a standing to impose duties on people who participate in that institution and share its rules or norms. Recently, some legal theorists have advocated this understanding of authority. Scott Hershovitz holds that “[a]uthority is a feature of roles embedded in practices.”¹⁰ “To say that one person has *de facto* authority over another is to say that both participate in a practice whose roles are such that the first person has a right to rule and the second an obligation to obey.”¹¹ Similarly, Andrei Marmor writes, “what it takes to have practical authority is determined by some social or institutional practice.”¹² He argues that A has authority over B if and only if A has the normative power to unilaterally change the normative situation of B (by imposing duties or granting or withholding rights) within a certain defined range of options. Such normative powers, if they are relatively stable and complex, can only be granted by “power-conferring norms” that are “practice-based or institutional in nature.”¹³

I find this institutional or practice-based perspective on authority attractive. But given the limited space of this commentary, I cannot go into the details of such a perspective, let alone defend it. Instead, I will use this

⁸ Joseph Raz, “The Problem of Authority: Revisiting the Service Conception,” *Minnesota Law Review*, 90 (2006): 1036.

⁹ John Finnis holds a similar view too. See his *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980), 245-252.

¹⁰ Scott Hershovitz, “The Role of Authority,” *Philosopher’s Imprint* 11, 7 (March 2011): 11.

¹¹ *Ibid.*, 12

¹² Andrei Marmor, “An Institutional Conception of Authority,” *Philosophy & Public Affairs* 39 (2011): 238.

¹³ *Ibid.*, 241.

perspective to formulate an initial response to Quong's challenge to the authority of the perfectionist state. Quong uses the travel agent example to show that a person's mere ability to help people better conform to reason does not grant that person any authority. This is true, but I don't think it is necessary to appeal to Quong's duty-based conception of authority to understand why this is so. An alternative explanation is that the travel agent is a stand-alone individual who does not operate with any power-conferring institutional norms or rules of practice. There are no shared rules or norms that can enable the travel agent to make a valid claim to certain authoritative standing vis-à-vis her potential customers. In other words, the travel agent is simply not a recognized *de facto* authority that can impose duties on others in the domain of travelling and tourism. For the same reason, the surgeon is not a *de facto* authority (although he may possess theoretical authority). So the travel agent and the surgeon do not have *legitimate* authority because they do not possess *de facto* authority. Practical authority operates against the background of a common life governed by institutional norms or rules of practice. Quong's examples simply lack this critical background.

This is not to say that the travel agent would have legitimate authority over her customers if she did operate with power-conferring norms that grant her *de facto* authority. This is because those norms can be morally problematic or unjustifiable, and if that is the case her *de facto* authority would lack legitimacy. As Hershovitz and Marmor separately suggest, the institutional or practice-based perspective on authority takes a two-step approach to the question of legitimate authority. First, we have to determine whether a putative authority does possess *de facto* authority conferred by some institutional norms or rules of practice. Second, we ask whether these norms or rules can be justified to the participants in those institutions or practices.¹⁴ The travel agent example may simply not be able to pass the second step. Generally speaking, participants may simply not see any good reason for participating in power-conferring norms that impose duties on them regarding their travel decisions.

¹⁴ Hershovitz, "A person with *de facto* authority also has legitimate authority if the practice and their participation in it is, in some sense, justified." "The Role of Authority," p.12; Marmor, "[W]hat it takes to have practical authority is determined by some social or institutional practice. And then the legitimacy of the relevant authority is bound to depend on the kind of practice it is and the terms of participation in it." "An Institutional Conception of Authority," 238-239.

We are now in a position to respond to a question Quong raises with certain force. Legitimate authorities impose duties on their subjects, but, Quong asks, “if, prior to the authority’s demands, I owed no one any duties, to whom do I own the duties that the authority imposes on me?” (116) Quong’s question, in short, is: What could possibly justify my duties to obey if I owe no one any duties in the first place? An answer could be given from the two-step approach. In the first step, arguments will have to be provided to justify the duty to obey as an *institutional* duty. Just as the authority’s power to impose duties on its subjects are conferred by certain institutional or practice-based norms, the subjects’ duty to obey also arises from the same norms. These norms specify at once the power to command and the duty to obey. In the second step, arguments will have to be provided to *morally* justify the subjects’ institutional duty to obey, by giving a moral justification of the norms of the institution in which the authority and subjects participate. If these norms can in fact be morally justified, then the subject’s duty to obey is a *moral* duty as well as an institutional one. This duty to obey is owed not so much to the person in authority but to all the people who participate in the institution and its norms.

Quong continues to argue that “[a]ll the normative work is... done by our views regarding who holds which rights and who is under which duties: the allocation of legitimate authority is simply parasitic on our beliefs about the distribution of rights and duties...” (116) I am not sure this is right. A possible reply from the two-step approach would be this: Institutional norms allocate or confer people the powers to command and duties to obey, and these norms could be justified by many reasons. Although the subjects’ duty of justice is an important reason, it may just be one of them. The modern state is a complex institution performing many different functions. It is very plausible that there are different reasons at work in shaping and justifying the various functions and rules of this kind of institution. Later I shall say more on this reply. For now, to see why the duty of justice does not exhaust the normative work in justifying political authority, I shall comment on Quong’s duty-based conception of authority.

First, it is not clear whether the duties in his conception of authority refer only to duties of justice or to some other kinds of duties as well. In a few

places, Quong appears to be saying that the duty of justice is the only possible source of political authority. For example, he says that the answer to “Who has the legitimate authority to decide what I must do?” depends on our answer to “What does justice require me to do.” But elsewhere, in talking about the duties that generate authority, Quong says he focuses “only on duties of justice and not other kinds of duties,”¹⁵ which seems to imply that he allows other kinds of duties to be playing some role in justifying authority and its various functions. What other duties would that be? This is an important issue, since it is an open question whether perfectionist state action could be justified by these other duties. It might be the case that other duties can be used to support a perfectionist state. This brings me to my second point.

In another place, Quong does explicitly say that his duty-based conception of authority “does not claim the appeal to duty is the *only* way to establish that one person has legitimate authority over another.” “I do not here deny,” Quong continues, “that consent, fair-play, associative duties, or other arguments might under certain conditions ground claims of legitimate authority.” (128) By “appeal to duty” I think Quong must refer to the narrow duty *of justice* rather than to a broad notion of duties, since fair-play and associative duties clearly are some kinds of duties, though they are not ones of justice. Now, since Quong allows that fair-play and associative duties could justify legitimate authority, it opens the possibility of justifying the perfectionist state on these grounds.

My strategy to open up space for the authority of the perfectionist state would be two-fold: (1) to argue that the duty of justice, as Quong understands it, is not sufficient to explain and justify the many functions of the state and citizens’ duties that many people accept today, and (2) to show that other normative resources needed for justifying the state’s legitimate functions do not necessarily exclude perfectionist goals. Again, space does not allow me to develop these two points in any length or consider possible objections. My purpose is here is just to outline a possible argument.

¹⁵ Footnote 21 on page 116.

Quong draws on Rawls in elaborating on the duty of justice as the ground of political authority. Quong writes, “I assume, following Rawls, that each person is under a natural duty of justice which ‘requires us to support and comply with just institutions that exist and apply to us. It also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves.’” (128) It should be noted that, for Rawls, natural duties, including the duty of justice, are those that have “no necessary connection with institutions or social practices,” and which “hold between persons irrespective of their institutional relationships.”¹⁶ Understood this way, it is not clear if natural duties can impose significant costs on people. In fact, Rawls makes it clear that the natural duty of mutual aid, which is similar to Quong’s notion of the duty of justice to aid victims of an accident, is a relatively weak one, accompanied with a proviso of not “imposing excessive risk or loss to oneself.”¹⁷ Understood as a weak duty, the natural duty of justice may not be robust enough to ground the state’s authority to impose heavy taxes, conscription on its citizens, or other significant duties that involve substantial costs to citizens.¹⁸

There is, however, a more fundamental problem with Quong’s use of Rawls’s idea. There is an important difference in the ways Quong and Rawls make use of the idea of the natural duty of justice. Quong wants to use this idea to argue against the legitimacy of perfectionist state action. He takes the duty of justice to be the moral foundation of legitimate authority. He claims that authority is parasitic on people’s prior duties of justice, and so if people have no prior duties of justice to do X, it follows that the state does not have authority to decide on matters concerning X. What follows, Quong argues, is that perfectionist reasons, which are practical reasons rather than reasons of justice, do not fall within the scope of legitimate authority. However, Rawls’s idea of the natural duty of justice does not carry this negative implication on perfectionist state action. The natural duty of justice “requires us to support and to comply with just institutions that exist and apply to us.” So Rawls’s idea is about the duty to comply with institutions that are just and not about defining the conditions of legitimate authority.

¹⁶ John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 114-115.

¹⁷ *Ibid.*, p.114.

¹⁸ Here I draw on George Klosko’s critique of Rawls’s natural duty of justice in his “Multiple Principles of Political Obligation,” *Political Theory* 32 (2004): 801-824

The idea certainly does not say that institutions are just *only if* they help people fulfill their natural duties of justice. Other than the goal of achieving justice, institutions may advance the economy, provide education, secure national defense, protect the environment, or promote the good life. If institutions pursue these goals in a just way (i.e. without violating procedural or substantive principles of justice), then Rawls would tell us that people who live under these institutions have the natural duty to support and comply with them. Therefore, Rawls's idea of the natural duty of justice does not have any implication as to whether perfectionist state action is legitimate or not. Rawls may reject perfectionist state action on other grounds, but the natural duty of justice is not one of them.

If the above line of argument is correct, then the natural duty of justice is not a duty weighty enough to ground a wide range of substantial state functions. We need other reasons or duties (such as fair-play and associative duties) to justify state authority and functions. Moreover, neither the duty of justice nor the other duties necessarily exclude the possibility of perfectionist state action. Fair-play and associative duties could ground citizens' duty to support perfectionist state action, if such action is judged to be justifiable to members of a political community. How, then, could perfectionist state action be justified? In light of the two-step approach, the question amounts to: What are the reasons that could justify power-conferring institutional norms in the domain of the good life? The answer, very briefly put, is that people care about living lives that are valuable or worthwhile, and the purpose of living together in a complex community is precisely to enable people to pursue a better life in material, social, and cultural terms. In the course of pursuing better lives, no doubt justice needs to be observed—physical security needs to be protected, opportunities distributed fairly, and rights respected—but we should not lose sight of the fundamental point that people live together not for justice but for pursuing better lives. If the state, as the agency of its citizens, is to help citizens pursue better lives, it seems natural that it should assist citizens by promoting valuable conceptions of the good life, just as it should assist the lives of citizens by promoting the economy, offering education and health services, and protecting their rights and justice.

No doubt there are arguments against power-conferring norms regarding the good life. Typical ones are that these norms undermine personal autonomy, that they show disrespect for people as equals, or that they create unfairness to those who disagree with perfectionist state decisions. Many liberal perfectionists have tried to rebut these arguments. I myself have developed a position of moderate perfectionism to deal with these challenges and advanced arguments to show why reasonable disagreements on conceptions of the good life need not make perfectionist state action illegitimate.¹⁹ The debate can continue. Whatever is the final verdict, however, the case for or against state perfectionism will be won or lost in the pros and cons—or the overall justifiability—of power-conferring norms on the good life, not in the duty-based conception of authority that Quong tries to use in rejecting perfectionism.

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¹⁹ Chan, “Legitimacy, Unanimity, and Perfectionism.”