

# PRÉCIS – THE ORDER OF PUBLIC REASON: A THEORY OF FREEDOM AND MORALITY IN A DIVERSE AND BOUNDED WORLD

GERALD GAUS  
University of Arizona

This work advances a theory that forms a unified picture of what I call “social morality,” and the ways that it relates to the political order. It draws on a wide variety of tools and methods: game theory, experimental psychology, economics, sociological theories of cultural evolution, theories of emotion and reasoning, axiomatic social choice theory, constitutional political economy, Kantian moral philosophy, prescriptivism, and analyzes reasoning, and how it relates to freedom in human affairs. The book is motivated by one central concern: can the authority of social morality be reconciled with our status as free and equal moral persons in a world characterized by deep and pervasive yet reasonable disagreements about the standards by which to evaluate the justifiability of claims to moral authority? If it cannot — if the authority of social morality requires that some simply obey others — then our morality is *authoritarian*. In contrast, a social order that is structured by a nonauthoritarian social morality is a free moral order: a moral order that is endorsed by the reasons of all, in which all have reasons of their own, based on their own ideas of what is important and valuable, to endorse the authority of social morality. Such a social and moral order is “an order of public reason” — it is endorsed by the reasons of all the public. Only if we achieve an order of public reason can we share a cooperative social order on terms of moral freedom and equality. Only in an order of public reason is our morality truly a joint product of the reasons of all rather than a mode of oppression by which some invoke the idea of morality to rule the lives of others.

The idea that morality can itself be authoritarian strikes many as odd. We all know the first line of section 1 of *A Theory of Justice* — “Justice is the first virtue of social institutions, as truth is of systems of thought.” Isn’t morality a wonderful thing? And can we have too much of it? Kurt Baier was less enamored of moral discourse. Consider how he began his great work, *The Moral Point of View*: “Moral talk is often rather repugnant. Leveling moral accusations, expressing moral indignation, passing moral judgment, allotting the blame, administering moral reproof, justifying oneself, and, above all, moralizing — who can enjoy such talk? And who can like or trust those addicted to it?” Morality does not directly speak to us; it is other people who speak to us, asserting their views of morality as demands that we act as they see fit. Baier’s

morality is not an “ideal morality” shorn of all blame, reproof, and guilt. It is our real practice, which makes your activities your neighbor’s business; he calls on morality to tell you what to do, and he will not simply shrug his shoulders and walk away if you ignore his demands. Confronting this actual practice — in which “imperfect compliance” is a central feature — we have to ask “why do we need it?” and “when can its claims to authority be freely recognized by all?” These are the questions this work seeks to answer.

Chapter I provides an overview of the main ideas and problems and sketches some approaches to their solutions. This chapter explains the idea of a “social morality.” Social morality constitutes the basic framework for a cooperative and mutually beneficial social life. Social morality provides rules that we are required to act upon and that provide the basis for authoritative demands of one person addressed to another. The chapter goes to analyze this authority relation, and its apparent tension with understanding others as free and equal moral persons. How can free and equal moral persons claim authority to prescribe to other free and equal moral persons? A general solution to this problem, advanced by Rousseau and Kant, is that authority and freedom can be reconciled if each freely endorses the authority of morality. A publicly justified morality — one that the reason of each endorses — allows each to remain free while subject to moral authority. Although Rousseau and Kant, and later Rawls, point the way to a solution to the fundamental problem of a free social order, their solutions flounder on the core idea of reasonable pluralism. Individuals with very different values, conceptions of the good life, and other normative commitments are unlikely to have good reasons to endorse the same moral rules; the application of the ideal of public justification under these conditions is indeterminate.

To understand social morality, we must see why it is necessary: why human social life confronts us with situations in which each individual relying on her own reasoning about her ends can lead to results that are bad for all. Chapter II considers instrumental reasoning in “mixed motive games” in which although all benefit from cooperation, all are tempted to cheat, but if they do so, all will be worse off. In the history of social and moral philosophy, those who have taken this problem most seriously, and from whom we have the most to learn, are Hobbes and his contemporary followers such as David Gauthier. Rational individuals, they argue with great sophistication, can reason themselves out of such situations by agreeing to social morality; social morality is a tool of rational individuals who are seeking to promote their values and ends. Chapter II shows that instrumental reasoning is unable to provide the basis of social morality; morality is not, and cannot be, the construction of human reason as a way to solve the basic problems of social life. The instrumentalist analysis of the problems of social cooperation is correct: its solution fails.

Chapter III argues that social life requires social rules of a certain sort — moral social rules. The aim of this chapter is primarily to dispel what many have seen as the mystery about rule following, especially a case for rule following that seeks to show that it is necessary for a social life that benefits all. Some think it is mysterious how those who are devoted to their own ends could come to be devoted to rules that can thwart their ends. This chapter seeks to dispel this mystery by showing how a society of rule followers

may arise out of a group of individuals who are concerned only with promoting their own goals, without anyone trying to reason herself into being a rule follower. Others think it is mystery how we could actually reason deontically, and how this way of thinking could pass muster as rational; this chapter also seeks to dispel these mysteries. The chapter closes by discussing the relation of moral rules to social rules and the intimate relation between what Baier called “positive morality” and “true morality.”

If we are going to understand what an adequate normatively justified social morality would be, we need to understand our current moral practices and the core claims implicit in them. Once moral theory abandons the aspiration to construct social morality from the ground up (or, as it were, to discover it for the first time), we must understand the fundamental features of our moral practices, and then we can seek to evaluate them from an impartial view — a moral point of view of free and equal persons. Chapter IV focuses on a fundamental feature of our social morality: the way it integrates the emotions and reason in our moral relations with others. The sentimentalists stress that morality is about emotional reactions; the rationalists stress that it is about giving others reasons. Both are correct, and any adequate understanding of our social morality must see how this is so.

Although it is certainly crucial to understand that social morality fulfills certain necessary functions in all human societies, and if it did not serve these functions we would have reason to alter it, we should not suppose that it is simply an instrument to achieve certain social ends. Rather, it is essentially a type of interpersonal relation. Chapter IV also examines the interpersonal nature of social morality, drawing on Strawson’s important essay on “Freedom and Resentment.” At the heart of social morality is an authority relation: others hold themselves to have standing to make my action their business, to demand compliance with social morality, and I acknowledge both their standing and the authority of the moral demands to require that I set aside my goals and abide by their prescriptions. The chapter then considers the conditions under which this authority relation, and the moral emotions that accompany it, can be maintained. It argues that for our normal moral relations to be maintained, we must hold that others can reason themselves into endorsing moral prescriptions. The upshot of a version of Strawson’s analysis is that our apparently controversial starting point — that we are to understand ourselves and others as free and equal moral persons, and this in turn commits us to conceiving of a justified social morality as one which secures positive freedom for all — is implicit in our everyday moral practices. Because social morality is a form of interpersonal reason giving, we cannot grasp it without grasping what is involved in giving another the right sort of reason, and so we must understand what is involved in claiming that another has a reason. The chapter closes discussing this thesis, arguing that the reasons we attribute to others in a practice presupposes an adequate standard of deliberation for participants, such that if the agent engaged in rational deliberation to that standard, she would affirm this to be her reason.

Chapter V begins Part Two of the book. Part One analyzed social morality as a system of social rules, Part Two examines the nature of a publicly justified social morality. Chapter V presents the Deliberative Model of public justification. The aim of the Deliberative Model is to translate a difficult justificatory problem into a more tractable

deliberative one, in which we can identify the core features of the justificatory problem and provide a more disciplined framework for thinking about public justification. The Deliberative Model is constituted by “Members of the Public,” moderately idealized versions of actual participants in social morality, who appreciate the reasons their actual counterparts possess. In thinking about the Deliberative Model, two sets of contrasts must be kept clearly in mind. First, we must always take care to locate the philosophical perspective of “you and me.” We are engaging in a highly reflective endeavor: we wish to know what would be required for a moral rule to be justified, and in particular, whether the moral rules of our society are justified. In thinking this through we may appeal to specialized ideas such as theories of rationality and social choice theory. Our aim is to model the second perspective — normal and (more sophisticated) moral agents — to see what reasons they can be said to have, and how, given the reasons they have, a moral rule may be publicly justified. Members of the Public all occupy the role of evaluators of proposed moral rules insofar as each has reasons to endorse or reject them. The model makes this idea of endorsability more tractable by reducing it to pairwise comparisons: “is rule  $x$  to be endorsed or rejected in favor of rule  $y$ ?” Each also must at some point make the judgment that she does not have sufficient reason to accord some proposed rule  $z$ , moral authority over her. This is not an especially refined capacity restricted to philosophical reflection: when normal agents reject existing rules as mere taboos, superstitions, or the results of oppressive tradition they are, in effect, doing this. If our concern is to justify moral authority, we must suppose at some point that there is insufficient reason for according some rule (and demands based on it) authority. Such a rule manifestly fails the test of public justification. The set of rules that all Members of the Public have some reason to accept as authoritative yields a *socially eligible set*. The Deliberative Model then employs a type of Pareto rule to identify a socially optimal eligible set: the set of proposed moral rules that every Member of Public prefers to no rule at all about some matter.

Chapter VI explores how a regime of rights can help us lessen the burdens of public justification in a society characterized by extensive reasonable pluralism. It examines two “devices of public reason” — approaches to public justification that help us cope with the diversity of evaluative standards, those individual bases for reasoning about the acceptability of moral rules. One device is to *abstract* away from our many disagreements to our fundamental common evaluative standards as self-directing agents. Arguments from abstraction allow us to identify those core demands of agency itself, rights to freedom and protection from harm, manipulation, and invasion. In a society in which all are deeply committed to understanding themselves as agents with aims and reasons to act, these are the fundamental rights in the order of justification. They must be assumed as given when we grapple with further justificatory problems. The other device of public reason is the idea of *jurisdictional rights*, which is one of the most important modern innovations in moral life. Rather than insisting that the question “what is the right thing to do?” must be answered by a common judgment about the correct evaluative standards to apply in specific situations, in a culture of tolerance we often devolve moral authority, providing to each a sphere in which her evaluative standards have public standing. What Benjamin Constant called the “liberties of the moderns” is one of the great modern moral discoveries. It provides a framework for a common

morality that reconciles deep differences in our evaluative standards by devolving moral authority to individuals, giving each a sphere in which her evaluative standards have authority. A regime of rights is the key to solving Rousseau's fundamental problem: reconciling freedom and social order.

The question for Chapter VII is: how can we move from abstract rights and principles to an actual ordered social life? The rights discussed in Chapter VI were vague and not well specified; we need to agree on a specification if the right is to order social life. Each right has a number of possible interpretations. We are again confronted with the idea of a socially eligible set, this time a socially eligible set of possible interpretations of rights. This chapter provides a basic game theoretic analysis, using an impure coordination game, to show how a group of free and equal individuals can converge on one member of the socially eligible set without justifying any selection procedure. And it follows from this analysis that we can achieve a common free moral order while disagreeing on the ideal moral order. When free and equal moral persons reach an equilibrium within the optimal eligible set, Rousseau's fundamental problem is solved; each can call on the rule as the source of an authoritative prescription while the other has reason to comply, consulting only her own evaluative standards. From the perspective of impartial reasoning — the moral point of view — no rule in the optimal eligible set is better than any other, yet social processes characterized by the increasing returns of a shared morality can lead us to converge on one rule, which then becomes the uniquely publicly justified rule. In some ways this leads to a social evolutionary account of moral justification, though it is only evolutionary in a weak sense.

An important claim of Chapter VII is that an actual moral equilibrium has moral properties that merely possible equilibria do not. It provides the basis for an actual authority based on an actual rule that provides the basis for actual expectations about the nature of our social interactions. In an account of real public reason, the aim of moral theory is not to paint pictures of an ideal world but to show how we can achieve a real social morality that meets the test of moral acceptability of the real reason of moral agents. The chapter also explores cases where there is urgent need for moral reform, and some of the barriers to achieving it.

Chapter VIII, the final chapter, examines the relation between the moral and the political orders. The political order is a powerful but dangerous tool; its ability to employ high levels of coercion means that it can quickly move us away from oppressive social conventions at which we have been stuck. For the same reason, it can move us to any convention, publicly justified or not. The difference between the classical liberal tradition and what is known as the “new” liberalism is not simply about the justification of property rights but the basic attitude toward state coercion. In his influential statement of the new liberalism, L. T. Hobhouse criticized the classical liberal's constant worry that the coercion of the state was a threat to liberty. Today too, many “new” or “egalitarian” liberals simply do not see the worry about using state-backed force; classical liberals understand both that the state's force is both a requirement of a free political order and a serious threat to it. This chapter argues that the costs of coercion require justification, and we can expect a political order of public reason to economize on the use of this dangerous but necessary tool.

Libertarians, on the other hand, err by leaping from a well-founded worry about state coercion to a rejection of almost all (or perhaps even all) state authority. Unless the laws have *de jure* authority they cannot form the ground of a political order among free and equal persons. Without authority, the laws of the state cannot perform their core function of articulating and protecting our fundamental moral rights. We can think of this critical function of the state as the continuation of moral justification by other means. And only some sort of democratic order can justifiably perform this task.

It is important to distinguish this core task from pure policy functions of the state, where the aim is simply to secure the satisfaction of our goals through collective state action. The chapter concludes with a brief discussion of public policy in an order of public reason. The justification of such pure policy is fundamentally different from the justification of the core tasks of liberal legislation. This chapter argues for a restricted sphere of policy, a sort of “practical Paretianism,” with a far more limited agenda than our current states. To some this must be an error; many presuppose that political philosophy must in the end justify the range of activities engaged in by our current liberal-like states. The task of political philosophy, however, is not to legitimate current regimes but to examine the conditions under which political coercion can be justified to all, and all can live in a free social and political order.

Received: October 3, 2013

Accepted: October 3, 2013

The Department of Philosophy  
College of Social & Behavioral Sciences  
The University of Arizona  
USA  
ggaus@email.arizona.edu