

# Moral Uncertainty and Public Justification

**Abstract:** Moral uncertainty and disagreement pervade our lives. Yet we still need to make decisions and act, both individually and politically. So, what should we do? Moral uncertainty theorists provide a theory of what individuals should do when they are uncertain about morality. Public reason liberals provide a theory of how societies should deal with reasonable disagreements about morality. They defend the public justification principle: state action is permissible only if it can be justified to all reasonable people. In this article, we bring these two approaches together. Specifically, we investigate whether considerations of moral uncertainty support public reason liberalism: given moral uncertainty, should we favor public justification? We argue that while moral uncertainty theory cannot vindicate an exceptionless public justification principle, it supports adopting public justification as a *pro tanto* principle – albeit one that can be overridden when the moral stakes are high. It also provides new answers to some intramural debates among public reason liberals and new responses to some common objections.

**Key words:** public justification; moral uncertainty; public reason liberalism; moral disagreement

# 1 Introduction

Moral disagreement pervades our lives. We disagree about the rightness or wrongness of actions, the goodness or badness of outcomes, and the justice or injustice of institutions. These disagreements often seem quite reasonable – and equally intractable. Moral reasoning is hard, requiring us to navigate complex concepts and their intricate and often surprising implications. We come to this task with different life experiences, educations, and social networks, and so with different biases, priors, and evidence bases. And even when we agree about which moral considerations matter, we often disagree about their weights. Moral thinking, in other words, is subject to the “burdens of judgment” (Rawls, 2005, pp. 55–57; compare MacAskill et al., 2020, pp. 11–14). And it is a predictable consequence of these burdens that intelligent people reasoning in good faith will come to different conclusions about morality.

Given the many plausible moral views available to us, and their many capable and eager champions, it is difficult to know how to proceed. We must reckon both with the fact of our own uncertainty about morality, and with the fact that others inevitably reach different conclusions than we do. These two facts, though related, have spawned two different research programs in contemporary philosophy: *public reason liberalism* in political philosophy and *moral uncertainty theory* in ethics. Public reason liberals ask what laws governments should enforce given individuals’ reasonable disagreements about morality. They argue that governments must take all reasonable positions into account: it is permissible to enforce a law only when it can be justified to all reasonable people. Moral uncertainty theorists are concerned with what individuals should do when they are uncertain about morality. Most argue that we should take all plausible moral positions into account: what you should do depends not only on the moral theory you find most plausible, but also on the verdicts of all other moral theories in which you place some positive credence.

Our goal in this article is to bring these research programs into contact. To frame our discussion, we investigate the hypothesis that moral uncertainty theory lends support to public reason liberalism. Our tentative conclusion is that while moral uncertainty theory cannot vindicate

the stringent requirement that all laws must be publicly justified, it nevertheless provides several reasons to take public justification seriously. Specifically, it supports governments adopting public justification as a weighty *pro tanto* principle – albeit one that can be overridden when the moral stakes are high.

Along the way, we also highlight some attractive features of our novel defense of public justification. For example, critics argue that existing defenses of the public justification principle fail to cohere with the principle itself, because they assume controversial first-order views about morality or justice, either explicitly or in how they delineate the class of “reasonable” people. Moral uncertainty theory sidesteps this issue, because it permits uncertainty about all first-order views of morality and justice and relies on a thin and independently motivated notion of reasonableness. It also offers a fresh perspective on some intramural debates among public reason liberals, for example on who counts as reasonable, what it takes to justify a law to a reasonable person, and what role “shared reasons” should play in public justification.

We proceed as follows. In section 2, we outline public reason liberalism and moral uncertainty theory and introduce our hypothesis. In sections 3, 4 and 5, we discuss arguments in support of this hypothesis. We comment on intramural debates on public justification in section 6 and conclude in section 7.

## **2 Two Second-Order Approaches to Justification**

### **2.1 Public Reason Liberalism**

How should we justify institutions and state action? In this article, we focus on coercive *laws*. But much of what we say applies, *mutatis mutandis*, to other institutions and forms of state action –

and perhaps even to informal institutions or social norms.<sup>1</sup>

On what we call the *first-order moral approach*, political philosophy is about finding the correct moral theory and applying it in the political domain. To determine which laws are justified, we must figure out, first, if communitarianism, libertarianism, utilitarianism, or some other theory is the correct view and, second, what laws this view supports. This does not mean that utilitarians, for example, must ignore moral disagreement. Instead, disagreement is factored in as an empirical regularity: what laws do the most good when not everyone is a utilitarian?

Given moral disagreement and the pluralism characteristic of modern societies, many political philosophers find the first-order moral approach unsuitable and prefer a mode of political justification that takes disagreement seriously. The most common proposal is the *public justification principle*: governments should only exercise their power in a way that can be justified to every reasonable person.<sup>2</sup> Call a law “publicly justified” when it can be justified to all reasonable people, and a law “publicly unjustified” when it cannot. The public justification principle imposes a prohibition against enforcing publicly unjustified laws, not a requirement to enforce publicly justified laws.<sup>3</sup> It says that governments are prohibited from enforcing laws that some reasonable people reject.

Theorists who accept the public justification principle are called “public reason liberals,” but the label is confusing since not all public reason liberals think that justification must proceed via “public reasons.” We can distinguish *consensus* from *convergence* liberals (D’Agostino, 1996; Vallier,

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<sup>1</sup> Public reason liberals disagree about the object of public justification. For example, (Rawls, 2005, p. 215) holds that only issues of basic justice and constitutional essentials must be publicly justified, but that “it is usually highly desirable to settle political questions by invoking the value of public reason.” (Quong, 2011, Chapter 9) extends the requirement of public justification to all laws; (Gaus, 2011, pp. 490–497) extends it to social norms; (Waldron, 1993, pp. 36–37) applies it to “all aspects of the social world.”

<sup>2</sup> See, for example, (D’Agostino, 1996; Gaus, 2011, 2011; Larmore, 1990; Lister, 2013; Nagel, 1987; Rawls, 2005; Vallier, 2019; Waldron, 1993). (Vallier, 2018) provides additional citations.

<sup>3</sup> The public justification principle is often seen as a requirement on *legitimate* state action, which some, but not all, see as equivalent to permissible state action. We avoid that contested concept here and speak directly about what governments are permitted to do.

2011). Consensus liberals argue that we must bracket people's private or non-shared reasons and ask whether laws can be justified to all reasonable people factoring in only the reasons they "share" or see as carrying some justificatory weight (even if they disagree about this weight). Convergence liberals, in contrast, hold that whether a law is justified to a reasonable person depends on all their reasons (or at least those meeting a minimal standard of "intelligibility"). Accordingly, on the convergence approach, laws might be publicly justified (or unjustified) because all accept them (or some reject them) for non-shared reasons.

Public reason liberalism, then, is really a family of theories. We will comment on some intramural disputes later, but for now merely note that to remain a viable and distinctive position, public reason liberalism must navigate between two poles. First, since public reason liberals are not anarchists, they must show that at least some laws can be justified to all reasonable people: publicly justified laws should not form an "empty set." There are two basic strategies to respond to this worry: one can restrict the class of people who count as "reasonable," say, to those who embrace core liberal commitments (Quong, 2011, Chapter 5); or one can lower the standard of justification so that a law is justified to a reasonable person, say, when they merely see it as "better than nothing" (Gaus, 2011, pp. 321–325). Second, to avoid "collapsing" into a first-order moral approach, public reason liberals must avoid implying that laws are only publicly justified when the correct first-order moral theory says so (Raz, 1990, p. 46). For example, they should not restrict who counts as "reasonable" to those who accept the correct first-order moral theory, nor should they count a law as justified to someone only if it is justified by the correct first-order moral theory.

In this sense, public reason liberalism is a "second-order" theory of justification: a theory of how to justify laws given disagreements about first-order morality. And it claims that governments are prohibited from enforcing publicly unjustified laws.

## **2.2 Moral Uncertainty Theory**

Whereas public reason liberals ask how to proceed given disagreement about morality, moral

uncertainty theory asks how individuals should proceed in light of their own uncertainty about morality: what ought someone to do when they don't know what they morally ought to do (Sepielli, 2009)? It therefore investigates the moral analogue to decision-making under empirical risk and uncertainty. Suppose you are sympathetic to utilitarianism but not fully certain. You also have some credence in other moral views, such as Kantianism and virtue ethics. You have three options to choose from – *A*, *B*, and *C* – and different moral views give you different prescriptions about what to do. Moral uncertainty theory aims to tell you what to do given your uncertainty about the correct moral view.

Consider different versions of moral uncertainty theory. *My Favorite Theory* (MFT) says you should choose the option favored by the moral view in which you have the highest credence (Gracely, 1996; Gustafsson & Torpman, 2014). So, if you think utilitarianism is most likely to be right, you ought to follow utilitarianism. Although many seem implicitly to adopt this approach, most moral uncertainty theorists reject it. One reason is the problem of theory individuation (MacAskill et al., 2020, pp. 41–44). Imagine you have 60% credence in consequentialism, 30% credence in Kantianism, and 10% credence in virtue ethics. But there are many forms of consequentialism: for example, you could be a hedonic utilitarian or a prioritarian or a consequentialist with a richer theory of the good. Say you have equal credence in three different types of consequentialism such that your credence in each of them is 20%. Instead of consequentialism, your favorite theory now turns out to be Kantianism!

An alternative that avoids this problem is *My Favorite Option* (MFO) (Lockhart, 2000, p. 26). MFO says that under moral uncertainty you ought to choose the option most likely to be right. So, to continue the above example, imagine all three versions of consequentialism say you ought to do *A*, Kantianism picks *B*, and virtue ethics picks *C*. MFO tells you to choose *A*, as *A* has a 60% probability of being the right option and is thus the option most likely to be right.

While MFO avoids the problem of theory individuation, most moral uncertainty theorists still reject both MFO and MFT for being *stakes-insensitive*. Because the stakes implied by different

moral theories can vary greatly, the intuitively correct response is sometimes to hedge against moral risk by not choosing the option most likely to be right (MacAskill et al., 2020, pp. 44–47). For example, imagine you have 60% credence in consequentialism but 40% credence in a deontological theory on which killing – even to promote moderately good consequences – is very wrong. Then, you should refrain from killing when killing has only marginally better consequences than not killing, since a small probability of doing something very wrong (violating a serious deontic constraint) can outweigh a large probability of doing something slightly wrong (producing marginally suboptimal consequences). Both MFT and MFO consider only the probability of different theories or options being correct but ignore the stakes between different theories, so they fail to accommodate such “moral hedging.”

In this article, we thus assume that adequate theories of decision-making under moral uncertainty are stakes-sensitive. Specifically, where greater precision is needed, we assume:

“*Maximize Expected Choiceworthiness (MEC)*: ... A is an appropriate option iff A has the maximal expected choiceworthiness” (MacAskill et al., 2020, p. 48; see also Lockhart, 2000; Ross, 2006; Sepielli, 2009).

MEC is the moral uncertainty equivalent to expected value theory: it sees moral theories as assigning choiceworthiness scores to options, multiplies the choiceworthiness score each theory assigns to an option by your credence in that theory, sums together the ensuing products to determine an option’s *expected* choiceworthiness, and instructs you to choose the option with the greatest expected choiceworthiness. Much like expected value theory, MEC can be adjusted in various ways to account for issues such as risk-aversion (MacAskill et al., 2020, p. 48). Importantly, it is stakes-sensitive and so allows for moral hedging, like in our example above where MEC would likely recommend not killing because of your credence in deontology.

Although MEC is the most popular approach to moral uncertainty, some object to its strong assumptions about intertheoretic comparability. It presupposes that we can make

intertheoretic “unit” comparisons of the form: the difference in choiceworthiness between  $A$  and  $B$  according to deontology is  $n$  times the difference in choiceworthiness between  $A$  and  $B$  according to consequentialism (Gracely, 1996; Gustafsson & Torpman, 2014).<sup>4</sup> We see the force of this objection but believe it can be overcome, as proponents of MEC have provided several compelling responses which it would take us too far afield to discuss here (MacAskill et al., 2020, Chapter 5, is a helpful survey). Regardless, there are other approaches to moral uncertainty that capture intuitions about stakes and moral hedging without relying on intertheoretic comparisons. These include bargaining approaches which treat moral theories as if they bargain over what action to perform (Cotton-Barratt & Greaves, 2019) and social choice approaches that treat moral theories as if they vote on which action to perform (MacAskill, 2016; Tarsney, 2019).

In further work, it would be interesting to consider whether the case for public justification is stronger or weaker given different approaches to moral uncertainty or assumptions about intertheoretic comparability. Indeed, bargaining approaches to moral uncertainty may be especially fruitful to investigate, given the central role bargaining plays for some public reason liberals (Muldoon, 2016, Chapter 4). But to keep things manageable and to discuss public reason liberalism generally, we stick with MEC here.

### **2.3 From Moral Uncertainty to Public Justification?**

Moral uncertainty theory has so far been primarily employed in applied ethics. Recently, however, there have been a few attempts to apply it in political philosophy (e.g., Bukoski 2021; C. Barry and Tomlin 2019). We welcome this development and believe there is room for much work at the intersection of moral uncertainty and political philosophy. Here, we focus on public reason

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<sup>4</sup> In the only other discussion (we know of) connecting moral uncertainty to public reason liberalism, Valentini and List raise this worry without developing it, writing only: “We suspect that, contrary to what some recent literature on moral uncertainty suggests, [intertheoretic comparisons] pose insurmountable challenges” (Valentini & List, 2020, pp. 203–204).



liberalism. Public reason liberals have good reason to take interest in, and draw on, moral uncertainty theory.

First, moral uncertainty theorists and public reason liberals share various concerns and motivations: in moral matters, it is hard to know – and so we disagree about – which theory is correct, but we must at the end of the day still act. Public reason liberalism says that simply appealing to our favorite first-order moral or political theory won't do. Similarly, stake-sensitive approaches to moral uncertainty, such as MEC, say that appealing to one's Favorite Theory (or Option) in ethics won't do. Moreover, both approaches suggest we should take other reasonable people's moral views seriously: public reason liberals explicitly focus on accommodating moral disagreement, and moral uncertainty theorists identify widespread disagreement as a key reason to be morally uncertain (MacAskill et al., 2020, pp. 12–13). Likewise, as we will see, some public reason liberals already make inchoate appeals to moral uncertainty, or to concepts in its vicinity, when justifying their approach.

Second, public reason liberals are often faced with the challenge of justifying the public justification principle itself. Various answers are on offer. However, critics sometimes argue that such answers smuggle in controversial first-order moral theories (Enoch, 2013; Wall, 2002). For example, some argue that respect or political community can ground the public justification principle. But is there not reasonable disagreement about these values too? And, if so, why isn't public reason liberalism “but another sectarian doctrine” (Rawls, 1985, p. 246): a first-order theory competing with other first-order theories rather than a second-order theory that stands above the fray? Others draw a stark epistemological distinction between conceptions of the good and morality on the one hand, and principles of justice and institutional justification on the other, arguing that only the latter have sufficient epistemic status to justify state coercion (B. Barry, 1996, pp. 169–171; Nagel, 1987). However, it is far from obvious that theories of justice or institutional justification are epistemically stronger or more robust than views on morality and the good life (Clarke, 1999; Enoch, 2017). They, too, are subject to widespread disagreement and uncertainty.

Here, moral uncertainty theory may offer public reason liberals an underexplored route to avoid these problems.<sup>5</sup> Specifically, it does not require a firm commitment to any first-order theory of morality or justice nor does it claim that political principles have a stronger epistemic status than ethical views and conceptions of the good. Instead, it permits uncertainty about first-order theories in political philosophy, including about the public justification principle itself.<sup>6</sup>

Finally, we will see that moral uncertainty theory provides interesting, external, and distinctive answers to some intramural debates among public reason liberals.

It is therefore worth investigating whether moral uncertainty offers support for public reason liberalism. To this end, we consider:

*Hypothesis:* governments MU-ought to adhere to a rule of only enforcing publicly justified laws.

Note two features of this hypothesis.

First, we use “MU-ought” to refer to the “ought of moral uncertainty” or “what we ought to do according to moral uncertainty theory,” as opposed to what we ought to do according to the correct first-order moral theory. So, in our earlier example, stakes-sensitive approaches to moral uncertainty imply that a person sometimes MU-ought to choose a different option from what they ought to choose on the correct first-order moral theory (when they engage in moral hedging, for example).<sup>7</sup>

Second, our hypothesis concerns a rule that governments MU-ought to adhere to. This is subtly different from a hypothesis about what governments MU-ought to do in every token

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<sup>5</sup> Of course, public reason liberals attempt other responses to these worries (Bajaj, 2017; Bespalov, 2021).

<sup>6</sup> Admittedly, moral uncertainty theorists face an analogous challenge of how to deal with uncertainty about which approach to moral uncertainty to use (Weatherson, 2014). But, again, moral uncertainty theorists provide several plausible responses to this “regress” problem. For discussion, see (MacAskill et al., 2020, p. 33; Trammell, 2019).

<sup>7</sup> Moral uncertainty theorists disagree about how best to understand the “MU-ought.” For example, is it a rational or a moral ought? We remain neutral here. For discussion, see (MacAskill et al., 2020, pp. 18–21; Sepielli, 2013).

instance, such as:

*Hypothesis\**: governments MU-ought only to enforce publicly justified laws.

An analogy might help. Suppose you are a utilitarian and think that under specific and unlikely circumstances it can be morally right for the government to torture someone (say, to save lots of lives). Still, you might think that governments should adhere to a *rule* of never torturing, because you think the risk of justified torture so minute, and the risk of unjustified torture so high, that adhering to a strict prohibition on torture outweighs its downsides. Imagine now that instead of a committed utilitarian, you are morally uncertain about the correct first-order theory. Even if many theories say that torture is always wrong, if you put some credence in utilitarianism, you might hold that in rare circumstances, governments MU-ought to torture someone (say, to save an enormous number of lives). However, these circumstances might be so rare and the moral risk of unjustified torture so high that, on balance, moral uncertainty theory favors governments adhering to a strict prohibition on torture. So, governments MU-ought to adhere to rule of never torturing, even though there may be some cases where governments MU-ought to torture.

Now, similarly, moral uncertainty theory might support governments adhering to public justification *as a rule* even if, in some instances, governments MU-ought to depart from public justification. Put in terms of MEC: even if adhering to public justification sometimes leads to decisions that do not maximize expected choiceworthiness, adhering to public justification as a rule (instead of deciding whether to do so on a case-by-case basis) might still maximize expected choiceworthiness overall. So Hypothesis might be true even if Hypothesis\* is not.

Before moving on, we must dispense with one more ambiguity. Public justification concerns state action. Moral uncertainty theory, in contrast, is about what an individual ought to do given their credences in different moral positions. But it is unclear which credences to appeal to when thinking about what governments MU-ought to do. So, moral uncertainty theory might not be a natural framework in this context.

We see, broadly, three ways of using moral uncertainty here, and in political philosophy more generally.

First, claims about what governments MU-ought to do could be addressed to a particular person who is morally uncertain. So, imagine you are somewhat uncertain about morality. We could then use moral uncertainty theory to convince you that, given your own credences in what the government ought to do, you should accept that it MU-ought to adhere to the public justification principle. We might then repeat this process and seek to justify public justification to others who are morally uncertain with different credences.

Second, instead of addressing individuals' actual credences, we might claim that only some credences over moral views are rational. We need not assume that there is one rational probability distribution over moral views, but could assume a range: for example, it may be irrational to have a high credence in a deeply racist view but rational to have a wide range of non-negligible credences in deontology, libertarianism, or consequentialism. It is then based on these rational probability distributions that we construct arguments about what governments MU-ought to do.

Third, we might address collective agents. So, when a government or society needs to decide on a law, we treat the relevant collective as having credences in different moral views. Here we could treat people's beliefs as represented in a population as analogous to an individuals' subjective probabilities. However, such a view encounters a challenge: how should we aggregate individuals' beliefs into collective credences? And whose beliefs should we aggregate: all people in society, all reasonable people (or those with rational credences), or only parties to the decision? For reasons of scope, we pass over such questions here.

The distinction between the first two approaches tracks a disagreement among moral uncertainty theorists about whether what agents MU-ought to do depends on their actual credences or their "rational" credences, which we cannot hope to resolve here (MacAskill et al., 2020, p. 4). Nor can we resolve the question of whether to opt for the individual or the collective approach. Instead, we remain agnostic. If one prefers the "actual credence" view, then our ensuing arguments

can be interpreted as addressing agents who are in fact substantially uncertain about morality, at least if they allot their credences among the sort of views generally seen as contenders in moral and political philosophy. If one prefers the “collective credence” view, then our arguments can be interpreted as addressing collectives, at least if such collectives allot their credences among the same sort of views. Alternatively, if one prefers the “rational credence” view, then our arguments can be interpreted as suggesting that given a range of rational credence distributions over moral views, governments (rationally) MU-ought to adhere to the public justification principle. The rational credence view arguably provides the most “philosophical” grounding: it does not justify public justification *to* anyone in particular but instead grounds it in a range of credence distributions it is rational to have.

Let us now explore arguments for our hypothesis.

### **3 The Proto-Moral Uncertainty Argument**

We begin with what we call the “proto-moral uncertainty argument” – an argument suggested, in incipient form, by two of public reason liberalism’s best-known proponents: Rawls and Gaus (Gaus, 2015, p. 1085; Rawls, 2005, p. 125). This argument is that, in general, even when our favored moral view suggests we ought to enforce a law, there is a considerable probability that this is wrong. Governments that enforce laws according to our (or their) favored moral theory thus run a serious moral risk. Adhering to the public justification principle reduces this risk. Specifically, assume that for any potential law, at least one reasonable person gets the correct answer about whether this law is “objectively justified”, that is, justified according to the correct moral theory. Then, if a government never enforces laws that some reasonable person rejects, it will only enforce laws that are objectively justified. Publicly justified laws are therefore “safe” options, while publicly unjustified laws are not. To the extent that this assumption holds, requiring public justification will ensure we never enforce laws that are “objectively unjustified.”

So, adopting the public justification principle reduces the probability of enforcing laws that are unjustified according to whatever moral theory turns out to be correct. Objectively unjustified laws may still slip through the cracks of the public justification test if no reasonable person has the correct view on some issue. But at least we know that, barring a blanket prohibition on enforcing any laws, we cannot reduce this risk any further.

However, this argument has two problems.

First, it assumes a strong asymmetry between wrongly enforcing laws and wrongly failing to enforce them. Let's say that when a government enforces a law that is objectively unjustified, this is a "moral false positive." When a government fails to enforce a law that is objectively justified, call this a "moral false negative." Adhering to the public justification principle reduces the risk of moral false positives. However, it also increases the risk of moral false negatives: laws that fail a public justification test will be objectively justified whenever the side believing we ought to enforce the law is correct. So, the argument gives far greater weight to avoiding false positives than false negatives, and we need a justification for this asymmetry.

Second, the proto-moral uncertainty argument fails to be stake-sensitive. Bent on preventing moral false positives, it resembles My Favorite Option, which minimizes the probability that we choose an option that is objectively wrong. However, recall that plausible approaches to moral uncertainty focus not only on probabilities but also on stakes. As our example of killing to promote better consequences suggested, we sometimes MU-ought to hedge and prefer an option likely to be slightly wrong over an option with a lesser probability of being very wrong. So, arguments for our hypothesis need to go beyond the probability of moral false positives or negatives and consider the severity of such errors too.

The Proto-Moral Uncertainty Argument alone will not do. We require reasons to think that adhering to the public justification principle not merely reduces the risk of moral false positives but appropriately balances the risks of false positives against the risks of false negatives while also being sensitive to stakes. We now propose four such reasons.

## 4 Four Considerations Favoring Public Justification

As we have seen, when balancing the risks of moral false positives against the risk of moral false negatives, we must consider two factors. First, we must consider the *probability* of either risk materializing. As the probability that a law is objectively justified decreases, the risk of a moral false positive goes up and the risk of a moral false negative goes down. Second, we must consider the *severity* of moral errors. The morally worse it would be to enforce some law that is objectively unjustified, the more severe the risk of a false positive. The morally worse it would be not to enforce some law that is objectively justified, the more severe the risk of a false negative.

Let's now say that a "publicly unjustified false positive" occurs when a publicly unjustified law is enforced when it objectively should not be (it is a type of moral false positive). A "publicly unjustified false negative" occurs when a publicly unjustified law is not enforced but objectively should be (it is a type of moral false negative). To defend our hypothesis, we need some considerations that either drive up the *severity* of publicly unjustified false positives relative to the severity of publicly unjustified false negatives, or that increase the relative *probability* of publicly unjustified false positives. Specifically, these two types of considerations should show that not enforcing a publicly unjustified law typically has greater expected choiceworthiness than enforcing it. Now, some exceptions may occur, as we interpret public justification as a rule governments MU-ought to adhere to, rather than as a criterion of what governments MU-ought to do in all cases. Still, such exceptions should not be so frequent and severe that they undermine the expected choiceworthiness of governments adhering to public justification, nor should they arise so predictably that we could instead opt for an alternative rule with relevant exception clauses.

Here is a consideration of the second type:

*Public Justification Tracks Objective Justification.* When a law is publicly justified, it has a high probability of being objectively justified. When a law is publicly unjustified, there is at least a significant probability that it is not objectively justified.

The first half of this claim is from the proto-moral uncertainty argument above. The second half does not follow immediately from the first, but we think it plausible. If some reasonable people believe a law is unjustified, we should take seriously the possibility that it is unjustified. We could guarantee this result through a definition of “reasonable”: when a reasonable person believes a law is not justified, then there is a significant probability they are right. This will hold if we define a reasonable person with respect to some law as someone who either holds a credible view with respect to that law or whose testimony we should take seriously, such that if they deny that a law is justified, we should think there is a significant probability the law is objectively wrong. Alternatively, and perhaps more promisingly, rather than defining a reasonable person this way, we think our intuitive notion of a reasonable person at least overlaps considerably with these categories: when someone disagrees with us about something, and we think this disagreement is reasonable, we tend to believe there is some probability they are right. So *Public Justification Tracks Objective Justification* may hold either by definition or as a general tendency. Notably, and as we discuss more later, this consideration appears to mesh better with a “convergence” than a “consensus” approach to public justification (the latter of which, recall, only considers “shared” reasons). When a reasonable person regards a law as unjustified, there is a significant chance that they are right—and this holds regardless of whether they believe this for reasons that all reasonable people share.

By itself, *Public Justification Tracks Objective Justification* doesn’t get us far. It gets our foot in the door by suggesting that the probability of publicly unjustified false positives is worth taking seriously. But it implies nothing about either the severity of publicly unjustified false positives or about how probable they are relative to publicly unjustified false negatives. A second consideration further opens the door:

*Public Reason Liberals Might Be Right.* Public reason liberals offer several reasons why laws, in virtue of being publicly unjustified, are objectively unjustified. Under moral uncertainty, we should give some weight to these reasons.



Public reason liberals defend the public justification principle in several ways. They propose various deontological reasons suggesting that publicly unjustified laws are wrong, for example, because they are disrespectful (Larmore, 1990) or authoritarian (Gaus, 2011). And they propose various axiological reasons, suggesting that publicly unjustified laws undermine social trust (Vallier, 2019), political community (Leland & Wietmarschen, 2017; Lister, 2013), or a morally attractive notion of stability (Rawls, 2005). Relatedly, they argue that publicly unjustified laws are less effective at securing whatever they aim to achieve, since, all else equal, they are less stable, more likely to generate resistance and backlash, and so less predictable (Barrett & Gaus, 2020). Under moral uncertainty, we presumably give some credence to these arguments and, accordingly, to the idea that a law is wrong in virtue of being publicly unjustified.

This consideration has two effects. First, much like the first consideration, it drives down the probability of publicly unjustified false positives. To the extent that we think public reason liberalism might give us the right first-order theory of when to implement laws, we should think it less likely that we objectively should enforce any given publicly unjustified law. Second, and more subtly, it drives down the severity of false negatives. To the extent that we put credence in the considerations public reason liberals marshal against publicly unjustified laws – for example, those concerning disrespect – even laws we all-things-considered objectively ought to enforce become somewhat less choiceworthy (in expectation) when they are publicly unjustified. This makes the risk of not enforcing publicly unjustified laws less severe.

*Public Reason Liberals Might Be Right* gets a grip because of the role asymmetries play under moral uncertainty (MacAskill et al. 2020, 183-187). Some theories claim that public justification is in itself valuable; others claim it doesn't matter. But no plausible theory judges public justification disvaluable in itself. So, under moral uncertainty, we should at least treat it as *somewhat* valuable. Our third consideration concerns a similar asymmetry:

*There May Be a Presumption Against Coercive Laws.* There are many plausible moral theories on which there is a strong presumption against coercive laws, and no plausible moral theory

on which there is the reverse presumption. So under moral uncertainty, there is at least a weak presumption against coercive laws.

This consideration picks up on a common refrain – that coercion requires justification in a way failures to coerce don't – often invoked as a premise in arguments for public justification (Feinberg, 1989, p. 9; Gaus, 2011, pp. 319–321; Rawls, 2001, p. 44). Its relevance here is the following. We are after reasons to believe that, when it comes to publicly unjustified laws, the risk of a moral false positive typically outweighs the risk of a moral false negative (where exceptions to this rule are relatively infrequent and insignificant). *There May Be a Presumption Against Coercive Laws* supports this claim: it drives up the severity of the risk of moral false positives relative to the risk of moral false negatives in general, and not just when it comes to publicly unjustified laws. Specifically, many moral theories claim that all coercion is in itself *pro tanto* wrong or that unjustified coercion is in itself very wrong. Some theories deny this (e.g. Wall, 2010). But no plausible moral theory claims that failures to coerce are wrong in virtue of being failures to coerce. Similarly, many moral theories claim that wrongful acts are, all else equal, worse than wrongful omissions. Some theories deny this. But no plausible moral theory claims that wrongful omissions are worse than wrongful acts. Under moral uncertainty, the above asymmetries drive up the severity of false positives but not of false negatives, since enforcing a law is a *coercive act*, whereas failing to enforce a law is a *non-coercive omission*. We thus have reasons to err on the side of not enforcing laws.

The above three considerations are of the types we were looking for: they increase the probability and severity of publicly unjustified false positives relative to the probability and severity of publicly unjustified false negatives. However, unless one assigns high credences to public reason liberalism (or the values it relies on), the presumption against coercion, or the act-omission distinction, we doubt they suffice to confirm our hypothesis. We therefore present a fourth consideration that applies to at least some conceptions of public justification and gives them a significant boost:

*Public Justification Is a Low Bar.* On many conceptions of public justification, a law is justified to a reasonable person even if they see it as highly suboptimal. It must only meet some low threshold of being “better than nothing” or “something they can live with.”

Public reason liberals typically view public justification as a standard short of optimality. A law is considered publicly justified if all see it as good enough, even if it is not everyone’s first choice (Gaus, 2011; Vallier, 2019).

Now, the lower the bar one sets here – is a law justified to a reasonable person when they see it as pretty good, better than nothing, or merely non-disastrous? – the more severe the risk of publicly unjustified false positives becomes. After all, if a law only fails to meet a high bar of public justification because some reasonable people see it as slightly wrong, there is a moral risk of enforcing a slightly wrong law; but if a law also fails a low bar of public justification because some reasonable people see it as extremely wrong, then there is a moral risk of enforcing an extremely wrong law.<sup>8</sup> Furthermore, the lower the bar, the fewer laws will fail the public justification test overall, meaning that publicly unjustified false negatives become less likely when governments adhere to public justification. If we set the bar quite low, many laws will be publicly justified, and those that aren’t will have a serious probability of being severely wrong (by *Public Justification Tracks Objective Justification*).

Lowering the bar also interacts with *Public Reason Liberals Might Be Right*, since most substantive considerations public reason liberals raise seem to scale with where we set the bar. For example, if enforcing a law is disrespectful or authoritarian when people object to it, it is

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<sup>8</sup> Sometimes a law might be wrong even if no reasonable people view it as such or extremely wrong even if reasonable people only view it as slightly wrong: not all moral risks are noticed by reasonable people. This possibility is consistent with our claim that laws that reasonable people view as severely wrong are riskier than laws they view as only slightly wrong, since “unnoticed” risks typically cancel out in expectation: they are no more likely to attach to laws that reasonable people view as slightly wrong than they are to attach to laws they view as extremely wrong.

presumably more disrespectful or authoritarian the stronger their objection. Similarly, if enforcing publicly unjustified laws undermines social trust or stability because individuals are less willing to comply with laws they object to, this effect presumably increases the stronger their objections. Lowering the bar thus amplifies the two effects mentioned in *Public Reason Liberals Might Be Right*, further increasing the probability and severity of publicly unjustified false positives relative to the probability and severity of publicly unjustified false negatives.

Lowering the bar similarly interacts with *There May Be a Presumption Against Coercive Laws*: laws that fail a lower bar tend to be more coercive, leading to a stronger presumption against enforcing them. There are two reasons for this. First, on some conceptions of coercion, enforcing laws against people who more stringently object to them is, in itself, more coercive.<sup>9</sup> Some conceptions of coercion may deny this, but none say the opposite; so we should give this consideration at least some weight under moral uncertainty. Second, there may be an empirical correlation between how coercive laws are and how strongly people object to them, both because people often object more strongly to more coercive laws and because it often requires more coercion to secure compliance with laws that are more strongly opposed. So, lowering the bar likely increases the presumption against coercive laws.

Once we lower the bar, however, we need to slightly reinterpret *Public Justification Tracks Objective Justification*. Laws that pass a low bar of public justification may often be “compromises” that are not regarded as severely wrong by anyone but are widely regarded as slightly wrong. To maintain that publicly justified laws have a high probability of being objectively justified, we therefore should understand “objectively justified” laws not as morally optimal but as meeting the relevant bar of justification (for example, being better than nothing). Yet this is all to the good (as

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<sup>9</sup> For example, all else equal, a law may be more coercive when, absent the coercion, people have weaker reasons to comply with it (Nozick, 1969, p. 464) or more strongly disprefer doing so (Feinberg, 1989, p. 204). And people typically have weaker reasons supporting, and more strongly disprefer, complying with laws they more stringently object to.

far as expected choiceworthiness is concerned), since it makes room for the sort of moral hedging that plausible versions of moral uncertainty theory recommend. To illustrate this, consider two reasonable people with a choice between different laws on a particular subject:

	Moral assessment of reasonable person 1	Moral assessment of reasonable person 2
No law	Disastrous	Disastrous
Law 1	OK	OK
Law 2	Great	Disastrous
Law 3	Disastrous	Great

If the public justification principle only allowed laws that are everyone’s first choice, it would generate a disastrous outcome: the government must select “no law.” However, with a lower bar, Law 1 would count as justified to both reasonable people, so the government would be permitted to enforce Law 1 (but not Laws 2 or 3). Now, assume – for simplicity – that both people’s moral views represent views in which we have (rational) credences of roughly 50%. MEC would likely tell us to hedge and choose Law 1, even though it is guaranteed to not be the morally best option. And, more generally, a lower bar permits governments to engage in moral hedging in a way that a higher bar does not. This is an interesting connection between moral hedging and public justification. Moreover, it helps to illuminate how *Public Justification Is a Low Bar* reduces the probability of publicly unjustified false negatives and increases the severity of publicly unjustified false positives: fewer laws are ruled out by a lower bar and those that are carry more severe risks.

Altogether, then, we are left with the following picture. Given *Public Justification Tracks Objective Justification*, there is a significant probability that enforcing a publicly unjustified law is a moral error: when reasonable people think a law is wrong, they might be right. *Public Reason Liberals Might Be Right* similarly drives up the probability of publicly unjustified false positives, but also decreases the severity of publicly unjustified false negatives: to the extent that we put credence in the considerations public reason liberals adduce, publicly unjustified laws become less likely to be

objectively justified or at least more likely to carry moral costs. *There May Be a Presumption Against Coercive Laws* provides a general presumption against enforcing laws, thereby increasing the severity of false positives without similarly raising the severity of false negatives: under moral uncertainty, there is an asymmetry between the (greater) risk of coercive actions and the (lesser) risk of non-coercive omissions. Finally, by *Public Justification Is a Low Bar*, the lower the bar we set for public justification, the more these other considerations are amplified: with a lower bar, the probability and severity of false positives goes up, and the probability and severity of false negatives goes down.

## 5 Are These Considerations Enough?

The above four considerations support our hypothesis. But are they enough to ground public justification as a rule governments MU-ought to adhere to? Do they suggest that not enforcing publicly unjustified laws generally has greater expected choiceworthiness than enforcing them, and that exceptions to this rule involve only mild losses of expected choiceworthiness?

At first glance, with a low enough bar, it seems plausible that governments will typically do what they MU-ought by not enforcing publicly unjustified laws. Under moral uncertainty, it is a good idea to avoid options with significant probabilities of very bad outcomes, which publicly unjustified laws carry (by *Public Justification Tracks Objective Justification*, *Public Reason Liberals Might Be Right*, and *Public Justification Is a Low Bar*), particularly when considering option-types with risk asymmetries – in this case, between coercive actions and non-coercive omissions (by *There May Be a Presumption Against Coercive Laws*). However, we here run into a problem: sometimes, *failing* to enforce a publicly unjustified law also carries a significant risk of producing a very bad outcome. For example, imagine some reasonable people believe a law unjustified, but others think its absence would be a moral disaster. In such cases, if we assign a high enough credence to the view that failing to enforce the law would be a grave enough disaster, enforcing the publicly unjustified law may maximize expected choiceworthiness.

But how often will such cases arise? Initially, they might seem rare. For consider:

*Laws that Prevent Moral Disasters Are Typically Publicly Justified.* Typically, if failing to enforce a law would be very morally bad, then reasonable people will recognize this, and agree that the law is justified (at least given a low bar of justification).

This consideration is intuitive. It follows from the idea that when failing to enforce a law would be very bad, reasonable people tend to converge on this perspective – or at least, tend not to think enforcing the law would be bad enough that it fails to meet a low bar. When something is very bad, it tends to be bad for many reasons, and so from any reasonable perspective. For example, no reasonable person rejects laws needed to maintain basic order in society and to avoid widespread carnage, death, and destruction. Thus, to the extent that this consideration holds, it drives down the probability of publicly unjustified false negatives that are severely bad. And this may be enough to save public justification as a rule, since it suggests that, even if it would sometimes maximize expected choiceworthiness to enforce a publicly unjustified law, failing to enforce such laws will not decrease expected choiceworthiness by a large margin.

However, this consideration does not hold with sufficient generality. There are obvious counterexamples where a law is publicly unjustified but failing to enforce it would have a serious probability of moral disaster. Suppose you are confident that animal suffering matters and that imposing a tax on meat consumption would reduce animal suffering by a huge amount, and that even if you are wrong about this there is relatively little moral cost to enforcing the tax. Yet some reasonable people reject the law because they believe that animals have no moral status and that imposing the tax involves unbearable moralizing. In this case, the risk of a publicly unjustified false negative may outweigh the risk of a publicly unjustified false positive. Adhering to the public justification principle, a government might err severely in not enforcing the law.

Can we avoid this result if we make justification a low enough bar that a tax on meat consumption will clear it even for those who deny animals have moral status? Perhaps – but this will not resolve the problem. Imagine a series of progressively more restrictive laws that each serve

to reduce animal suffering. At some point, the law will get restrictive enough that reasonable people who deny the moral importance of animal suffering will reject the law as passing even a minimal bar of justification. But if the law reduces animal suffering by a huge amount, and we have a high enough credence that animal suffering matters, we will still see the law as much more choiceworthy in expectation than its absence – the objections of some reasonable people notwithstanding.

In cases like this, we may have to take a stand and insist that governments MU-ought to enforce a law that is publicly unjustified: the moral stakes of not doing so are simply too high. Now, if such cases were few and far between, this might still leave intact the hypothesis that governments MU-ought to adhere to public justification *as a rule*. But we worry that such examples are not isolated but represent a systematic problem. Specifically, *Laws that Prevent Disasters Are Typically Publicly Justified* appears to fail in many cases of reasonable disagreement not over how to weigh conflicting considerations, but over whether some consideration matters at all.

For example, consider that there are also deep disagreements about whether laws should be justified by their effects on future generations, including those in the far future, or whether states have obligations towards faraway people in other countries. Such disagreements are particularly troubling for our hypothesis, because such problems are *high-stakes* problems: if non-human animals, humans in other countries, or far-future people matter, failing to take them into account creates a grave moral risk, given the gigantic number of them and given that many moral theories are scale-sensitive (or even hold that wrongness or badness scales linearly with the number of individuals affected). Accordingly, if we apportion significant credence to scale-sensitive theories that assign moral status to such beings, these theories will be very influential in moral uncertainty calculations. So, if some reasonable people deny that such considerations matter to the justification of laws, insisting on public justification can come with grave moral risks. This makes us skeptical: moral uncertainty might not support public justification even as a rule. There will systematically be cases where governments that adhere to public justification will act in ways that are very low in expected choiceworthiness.



Let us explore two responses.

## 5.1 Constraining Reasonableness

One response is to stipulate that someone who denies, say, that animals or far-future people have moral status is unreasonable. By considering such people unreasonable, we might eliminate high-stakes counterexamples to public justification.

However, we do not advocate this solution.

First, such an understanding would not chime with moral uncertainty theory, which, we have suggested, should interpret people as “reasonable” when there is a significant probability they are right. While we do not insist that reasonable people be defined this way, we do note that, if public reason liberals want to invoke moral uncertainty (and particularly *Public Justification Tracks Objective Justification*), there must be a large overlap between people considered reasonable and those with a significant probability of being right. This leaves the set of reasonable people quite wide. Importantly, it includes those who deny that animals have moral status or who believe versions of the person-affecting view on which we lack obligations towards far-future people. Indeed, such views are not only held by regular people but are serious positions in academic debates.

A potentially more promising response is that “reasonableness” can allow for people who believe animals do not have moral status, as long as they are uncertain about this: reasonable people must themselves be morally uncertain. Here, we might only require that reasonable people be “somewhat uncertain” and not necessarily that they fall within some range of rational credences over different moral views. This move could be used in defense of our hypothesis: any reasonable person will have some moral uncertainty over whether animals have moral standing. This implies they should largely support animal welfare reforms, as the vast scale of the problem drives up the moral risk of continuing the status quo. For example, imagine that you only have a 0.05 credence that it is bad or wrong to raise and kill non-human animals in factory farms. You should still find factory farming disastrous in expected moral choiceworthiness, as it kills more than 100 billion

animals a year.

That reasonable people should be somewhat morally uncertain is a controversial but perhaps plausible way to interpret the Rawlsian idea that “reasonable persons recognize and accept the consequences of the burdens of judgment” (Rawls, 2005, p. 488). But we doubt public reason liberals should make this move, because it presupposes a particular picture of moral uncertainty – namely, that reasonable people must employ MEC (or at least another stakes-sensitive approach). Imagine someone instead adopts MFT. They might maintain that we MU-ought not to take animals into account, since on the theory they believe most likely to be right animals don’t matter. Is such a person unreasonable? To us, it seems more plausible that they are reasonable if their moral judgement on a law has some significant probability of being correct. Of course, we could define reasonableness so that only people who endorse MEC are included, but this would exclude enough people to render the public justification principle toothless. Many people seem implicitly to employ something like MFT or MFO, and even moral philosophers have only recently begun to consider alternatives. We do not want the “public” in “public justification” to consist only of a small minority, primarily composed of academic philosophers (compare Valentini & List, 2020, p. 204).

These arguments are inconclusive, and perhaps others will support defining reasonableness to require some level of moral uncertainty and the endorsement of a stake-sensitive approach to moral uncertainty. This notion of reasonableness could then be used to avoid problematic cases. However, we find another route more promising.

## **5.2 Going Pro Tanto**

The above proposal sought to avoid problematic cases by narrowing the set of reasonable people. The alternative is to keep this set broad but weaken the public justification principle. When formulating our hypothesis, we left this somewhat open:

*Hypothesis:* governments MU-ought to adhere to a rule of only enforcing publicly justified laws.

So far, we have interpreted “adherence” as requiring governments to treat public justification as a strict prohibition. But perhaps we could rescue our hypothesis by interpreting this less stringently:

*The Pro Tanto Interpretation.* Governments adhere to a rule of only enforcing publicly justified laws when they treat this rule as a weighty *pro tanto* principle that can sometimes be overridden by other weighty concerns.<sup>10</sup>

We could then either view public justification as a binary criterion such that a law is either publicly justified or not, or as a scalar criterion such that laws can be publicly unjustified to different degrees where this can count more or less against enforcing laws.

While either approach likely avoids the problem we have raised, we believe that the scalar approach is especially plausible. On this view, the extent to which a law is publicly justified depends on several variables. Most obviously, it depends on what bar of public justification a law achieves. If a law fails a very low bar of public justification (say, because some reasonable people think it would be a disaster), there is a stronger reason not to enforce it than if it only fails to meet a high bar (say, because some reasonable people think it only slightly suboptimal). So, we may say that laws are publicly justified to a lesser degree if reasonable people have stronger objections to them and that governments’ *pro tanto* commitment to public justification should vary accordingly.

We might also distinguish between laws that are *fully* publicly justified, meaning they are justified to every reasonable person, and laws that *approximate* public justification since they are

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<sup>10</sup> Does the *Pro Tanto* Interpretation still qualify as public reason liberalism? After all, some avowed critics of public reason liberalism admit that public justification has *pro tanto* moral weight (e.g., Enoch, 2013; Wendt, 2019). We think it still does, since some public reason liberals themselves endorse a *pro tanto* version of public justification (e.g., Ebels-Duggan, 2010; Leland, 2019). MacMullen (2022) even argues that there is now a consensus among public reason liberals that, sometimes, public justification can be outweighed. However, we will not press this point, as we ultimately care more about our substantive conclusion about the relationship between moral uncertainty and public justification than about how it should be labeled.

justified, say, to an overwhelming majority (Barrett & Gaus, 2020, p. 224). We could then say that laws that are justified to fewer reasonable people are less publicly justified, and that this also modifies the strength of the *pro tanto* prohibition. This is for two reasons.

The first relates to *Public Justification Tracks Objective Justification*. Typically, when more reasonable people object to a law, the law is less likely to be objectively justified (especially when judgments are independent). If the majority think a law unjustified, this should decrease our confidence in the law's justification more than if a small minority objects, which in turn should have more impact than if a single person objects. So if a law fails to even approximate public justification – if it is not justified to a large majority – the risk of publicly unjustified false positives is higher than if it only fails to be fully justified.

Second, most substantive considerations that public reason liberals raise against public justification seem to scale not only with the severity by which a law fails the public justification test, but also with the number of people who object to it. For example, if it is disrespectful or authoritarian (or wrongfully coercive) to enforce laws against people who don't accept them, or if this undermines social trust or stability, then presumably it is a bigger problem if more people object to the law. The effects of *Public Reason Liberals Might Be Right* (and *There May Be a Presumption Against Coercion*) are therefore greater for laws that are not even approximately publicly justified.

Overall, then, we find that adhering to public justification is often an effective way for governments to appropriately balance moral risks. However, certain exceptions (such as those involving animal welfare or far-future people) will systematically arise when governments incur a grave moral risk by not enforcing a publicly unjustified law. This calls into question our hypothesis that governments MU-ought to adhere to public justification as a rule. To rescue it, we have suggested weakening the public justification principle: moral uncertainty seems to support governments treating public justification as a weighty *pro tanto* consideration that can be overridden in high-stakes cases. This *pro tanto* requirement can be given either a binary interpretation or – more interestingly – a scalar interpretation. On the latter, the *pro tanto* commitment to not enforcing

publicly unjustified laws should be stronger the more reasonable people object to it and the stronger their objections.

## 6 Intramural Debates

We have focused on whether moral uncertainty theory vindicates public reason liberalism. In this section, we briefly survey how our discussion sheds light on some intramural disputes among public reason liberals. One such dispute, already addressed at length, is who counts as “reasonable.” From the perspective of moral uncertainty, we have seen that the category of reasonable people must overlap with that of people who have a decent probability of being correct – either because we (rationally) assign significant credence to their moral view, or because we take them to be morally reliable and so take their testimony seriously. A central advantage of this notion of reasonableness is that it is independently motivated and avoids smuggling in so much specific normative content that it collapses public reason liberalism into a variant of the first-order moral approach.

A related debate concerns the constituency of public reason, or *which* reasonable people governments must justify themselves to. Public reason liberals typically assume that public justification is owed domestically, to all reasonable members of a society or nation-state. But some argue that public justification is owed *globally*—either to individuals living in other states, or to other societies or “peoples” themselves (Director, 2019 provides a helpful overview).

Moral uncertainty suggests that the objections of “outsiders” should carry some weight: following *Public Justification Tracks Objective Justification*, anyone who has some probability of being right is relevant. For several reasons, however, moral uncertainty suggests giving greater weight to the objections of “insiders” (as far as the *pro tanto* commitment to public justification is concerned). First, insiders might better track the wrongness of local laws, because of “local knowledge” and because their own interests are involved. Second, following *Public Reason Liberals Might Be Right*, arguments from moral community, stability, respect, and so on, plausibly apply more strongly within societies. Third, *There May Be a Presumption Against Coercive Laws* suggests that justification is

owed more strongly to those subject to coercion, particularly people bound by a shared coercive legal structure within jurisdictions. Finally, recall the familiar role of asymmetries under moral uncertainty: nearly all first-order reasons to value public justification suggest justifying ourselves to insiders; only some suggest justifying ourselves to others; so, given uncertainty among these theories, we should give greater weight to justifying ourselves to a member of our own society than to someone outside of it.

Moral uncertainty also has implications for two other intramural disputes. First, one dispute concerns when a law qualifies as justified to a reasonable person. Here, we have suggested that the importance of public justification is higher the lower we set the bar. If some person sees a law as somewhat suboptimal, the case for not enforcing it is weaker than if it is unjustified to them because they see it as morally terrible. Relatedly, although there is less discussion on this point, we have suggested that public justification might be weightier if we interpret the principle as less than perfectly stringent – as requiring a law to be justified not to each and every reasonable person, but approximately, say, to an overwhelming majority. When only one reasonable person objects to a law, the case against that law is weaker than when many reasonable people object.

Finally, recall the debate between “consensus” liberals who hold that public justification should only invoke reasons that all reasonable people share and “convergence” liberals who also include reasons that some reasonable people deny carry justificatory weight. Moral uncertainty theory provides no reason to endorse the shared reason requirement. To allow only shared moral considerations effectively treats non-shared considerations as if we have zero credence in them, which seems antithetical to moral uncertainty theory. Furthermore, appealing to non-shared reasons may sometimes bring additional epistemic benefits, since judgments reflecting non-shared reasons may be more independent.

In fact, our above discussion suggests that the public justification principle may be most likely to lead us astray when people don't share reasons. For example, not enforcing a law might severely harm a class of beings (animals, far-future people, and so on) that some reasonable people

see as lacking status, such that their harm does not create a shared or public reason. If so, consensus theorists do not locate the importance of the distinction between shared and non-shared reasons in the right place. From a moral uncertainty perspective, the distinction is significant not because we should only take shared reasons into account, but because cases where governments MU-ought to override the public justification principle tend to be those where there are strong non-shared reasons to enforce a law.

That said, public justification by shared reasons may still be somewhat desirable from the perspective of moral uncertainty. After all, consensus liberals argue that the values grounding public justification (grouped under *Public Reason Liberals Might Be Right*) become stronger under consensus: for example, laws that are justified by shared reasons may be more respectful or better promote political community (Leland & Wietmarschen, 2017; Lister, 2013). Convergence liberals deny this (Van Schoelandt, 2019), but we can ignore such niceties here. Our point is only that, while moral uncertainty theory does not imply a shared reason requirement, it can hold that shared reasons play a valuable role in public justification – at least insofar as one puts credence in consensus liberals’ first-order arguments to this effect.

## 7 Conclusion

We have argued that while moral uncertainty theory cannot vindicate an exceptionless public justification principle, it implies that we should take public justification seriously. Given uncertainty about what moral or normative political theory is correct, and thus uncertainty about which laws are justified, governments MU-ought to adhere to a *pro tanto* version of the public justification principle. However, this is only plausible given a non-demanding interpretation of public justification: public justification must be a low bar. Moreover, the prohibition against enforcing publicly unjustified laws may need to be overridden in high-stakes cases where there is significant risk that failing to enforce a law is very bad even though some reasonable people disagree – for example, because the law protects a class of beings that some reasonable people deny have status.

We therefore have provided a preliminary defense of public justification, not as an exceptionless principle, but as a *pro tanto* one.

However, our arguments are only first attempts at exploring the connection between public justification and moral uncertainty. We doubt this will be the last word on the matter. Moreover, our hypothesis could be changed in various ways and several robustness checks could be performed. For example, in future work, it would be interesting to consider what more can be said about the conditions under which an insistence on public justification is likely to lead us astray under moral uncertainty, as well as how our conclusions might change given other approaches to moral uncertainty (especially those rejecting intertheoretic comparability). It is also worth considering what might change if we shift from the public justification of laws to the public justification of other objects in the public reason liberalism literature (such as principles of justice, constitutional essentials, or social norms), or from how governments MU-ought to proceed to how other potential subjects of public justification MU-ought to behave (for example, individual politicians or voters). Or we might compare the public justification principle to other principles to see if we can find one that does even better from the perspective of moral uncertainty. Finally, we suggested that the *pro tanto* public justification principle generates stronger reasons the greater the number of reasonable people who reject a law and the stronger their objections. Future work could ask what political institutions would best fulfil such a principle, and how this relates to potential epistemic arguments for democracy under moral uncertainty. We think there is much fruitful work to be done in this area and, more generally, at the intersection of moral uncertainty and political philosophy.



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