

# Legitimacy beyond Consent: State Justification in Context\*

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Abstract: While the idea of public justification is frequently conceived, by proponents and detractors alike, as a practice of philosophical reasoning about the abstract and hypothetical *justifiability* of state coercion, in which the beliefs and practices of those subject to coercion play a limited and secondary role, I attempt in this paper to free the idea of justification from the grip of ideal theory, and to reconceive of justification as a public, political practice that must engage with the distinctive normative commitments of the agents subject to coercion by the state. Toward this end, I expand upon the “realist” account of political legitimacy put forth by Bernard Williams, whose “Basic Legitimation Demand” seeks to provide a critical perspective on the exercise of political power while rejecting what he calls the “priority of the moral over the political.” I argue that this demand, as Williams presents it, make sense only on the basis of an implicit normative commitment to respecting the agential capacities of individual persons, and that this commitment provides the most plausible basis for Williams’s further requirement – evident in his moral and political writings alike – that the basic institutions of the social world ought to be broadly transparent to all who live under them. Drawing on a number of his own examples, I suggest that the ideal of transparency includes two conditions, which I call sincerity and (following Williams) intelligibility. In particular, justifications must be sincere, in that states not knowingly invoke legitimation stories to deceive their subjects or appeal to beliefs that are themselves the product of the coercion supposedly being justified; and they must be intelligible, in the sense that they must draw on their subjects’ existing normative commitments, and not rely on evaluative considerations that are “external” to their existing structures of belief. By requiring states to engage in good faith with the existing commitments and morally salient capacities of individual agents, this approach provides a distinctive perspective from which to evaluate the legitimacy of a range of existing regimes, while remaining responsive to individual agents’ own particular values and judgments about political authority.

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In thinking about the normative legitimacy of political institutions – that is, their moral right to issue commands backed by force – how should we take into account the particular traditions, practices, and attitudes of those subject to the institutions’ coercive directives? At one extreme, we could imagine making political legitimacy a strict function of individuals’ evaluative beliefs or existing social practices, such that a state, for example, would count as legitimate just to the extent that its members take it to be morally entitled to rule,<sup>1</sup> or insofar as the state “fits” the historical and cultural community of which it is “merely an expression.”<sup>2</sup> While these accounts of legitimacy may prove useful in the domains for which they were first employed – namely, in studying the propensity of subjects to obey the laws of their state, or in grounding an international presumption against foreign intervention in international affairs – few would endorse such minimal criteria as standards for adducing the moral standing of political institutions with respect to their own members, at least not without a much fuller account of the conditions under which the relevant beliefs were formed and expressed, the direction of influence between states and their underlying cultural practices, and more generally whether the attitudes of members toward their institutions might themselves be coerced or “ideological.”<sup>3</sup>

At the opposite pole, we might think that state legitimacy has nothing whatsoever to do with individuals’ beliefs or practices, but is instead earned by a state’s according with some antecedent account of justice, or at least by instantiating the core commitments of such an account. On this model – employed by the dominant rationalist tradition in political thought, spanning from Plato to Kant, arguably through to the early John Rawls – political principles are worked out philosophically for idealized individuals largely in abstraction from their historical and cultural contingencies, which are to be considered only at a secondary stage of “implementation,” where the ideal account may have to be adapted to local circumstances. So while the traditions and attitudes of particular communities might in practice set limits on the feasibility of a just or near-just state, such a state’s legitimacy would be assessed with respect to its satisfaction of various abstract moral principles, rather than to its responsiveness to local practices or beliefs about value. If the first approach, which held legitimacy to consist in the state’s converging with or “mirroring” the existing views or practices of its subjects, appeared to be normatively weak, lacking the critical resources to reject the legitimacy of states that elicit assent through force or manipulation, the ideal-theoretic approach seems if anything normatively over-burdened, treating political theory as “something like applied morality”<sup>4</sup> or “applied ethics,”<sup>5</sup> without specifying the conditions under which such philosophical ideals could become binding on, or authoritative for, the particular individuals subject to state coercion. It offers, to borrow a distinction from A. John Simmons, merely “impersonal justifications” of state power, with reference to moral principles that may well be seen as foreign or hostile by the subjects of the state, rather than “personal legitimations,” which would ground particular states’ claims to

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<sup>1</sup> See Max Weber, “Politics as a Vocation,” in *From Max Weber: Essays in Sociology*, H. H. Gerth and C. Wright Mills, eds. (New York: Oxford University Press, 1946), p. 78, and discussion in §1 below.

<sup>2</sup> Michael Walzer, “The Moral Standing of States,” *Philosophy and Public Affairs* 9, no. 3 (1980): 209-229, at p. 212 and *Just and Unjust Wars* (New York: Basic Books, 1977), p. 108.

<sup>3</sup> A. John Simmons attributes the Weberian (or what he calls the “attitudinal”) account of legitimacy to Charles Taylor in *Justification and Legitimacy* (New York: Cambridge University Press, 2001), pp. 131-134; while I think this imputation is mistaken, I cannot discuss the reasons here. I explore Walzer’s ideas of fit and presumptive legitimacy in a separate paper on legitimacy and collective self-direction.

<sup>4</sup> Bernard Williams, “Realism and Moralism in Political Theory,” in *In the Beginning Was the Deed* [hereafter *IB*], Geoffrey Hawthorn, ed. (Princeton: Princeton University Press, 2005), p. 2.

<sup>5</sup> Raymond Geuss, *Philosophy and Real Politics* (Princeton: Princeton University Press, 2008), p. 6.

coerce their members “in morally significant features of the specific histories of interaction between individual persons and their polities.”<sup>6</sup>

Political theorists have traditionally emphasized either of two historical or “transactional” mechanisms by which individuals can authorize or legitimate their states, both of which go beyond abstract hypothetical justification to require the subjective engagement of those subject to state power. First, and perhaps most prevalent historically, is the kind of consent-based account of legitimacy put forth by Simmons himself, which holds that states enjoy a general to coerce their subjects “only where the subjects have freely consented to the exercise of such power and only where that power continues to be exercised within the terms of the consent given.”<sup>7</sup> To impose political power on individuals without their express authorization would be to deny their status as, in Locke’s words, “by nature, all free, equal and independent,” capable of choosing for themselves whether to entrust the enforcement of their natural rights to a coercive government.<sup>8</sup> No doubt in part as a result of various influential early critiques of the social contract approach to state legitimacy,<sup>9</sup> and in light of its peculiar implication that “no existing states are legitimate,”<sup>10</sup> a wide range of contemporary political theorists have reinterpreted the contractualist demand for personal legitimation through the lens of democratic theory. Rather than seeking a chimerical moment of original consent, these thinkers – including a number of multiculturalist critics of liberalism, so-called “agonistic” democrats, and an expanding cast of non-foundationalist defenders of liberal democracy – have suggested that political legitimacy requires, as Arash Abizadeh has recently put it, “*actual participation* in institutionalized practices of discursive justification” among the very people, considered as free and equal, over

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<sup>6</sup> Simmons, *Justification and Legitimacy*, pp. 148, 149. I speak here and throughout of legitimacy as the moral right of political institutions to issue directives backed by the threat of force, while remaining agnostic as to whether this right entails any “correlative” duties or obligations on the part of individuals. Simmons, following Locke, takes legitimacy to entail a strict obligation on the part of members to obey the law, whereas most contemporary writers on the subject conceive of legitimacy as the mere “permission-right” of the state to coerce its subjects (reserving the term “authority” for the moral power to create obligations of obedience). While I believe legitimacy even in the permission-right sense employed here entails certain duties or obligations on the part of members – even if duties that fall short of a general obligation to obey the law – I will not argue for this further claim here. For representative discussions of the distinction between legitimacy and authority, see, e.g., Allen Buchanan, *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press, 2003), pp. 234-247 and David Estlund, *Democratic Authority* (Princeton: Princeton University Press, 2008), pp. 2, 30-31, 118-119.

<sup>7</sup> Simmons, *Justification and Legitimacy*, p. 129. See also Simmons’s extended discussion in *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979), chapters 3-4.

<sup>8</sup> John Locke, *The Second Treatise on Government* in *Two Treatises on Government*, Peter Laslett, ed. (Cambridge, UK: Cambridge University Press, 1967), p. 330 (chapter 8, §95). Cf. Simmons’s formulation in *On the Edge of Anarchy* (Princeton: Princeton University Press, 1993), p. 74: “Because many of us agree with Locke about the importance of the individual’s right of self-government or autonomy, we are with Locke drawn to the conclusion that consent is the only ground of political obligation and authority that is consistent with the natural moral freedom to which we are committed.”

<sup>9</sup> For Hume’s oft-quoted illustration of the absurdity of consent in the absence of viable exit options, see “Of the Original Contract,” in *Political Writings*, Knud Haakonssen, ed. (Cambridge, UK: Cambridge University Press, 1994), p. 193. Hegel, by contrast, targeted the contractarian account for falsely assuming that the relevant capacities for freedom and reasoned choice (upon which consent theory relies) would be present in the state of nature or otherwise independent of relatively complex social institutions; see *Elements of the Philosophy of Right*, Allen W. Wood, trans. (Cambridge, UK: Cambridge University Press, 1991), §§ 75, 258 and throughout his transcribed lectures. For helpful discussion, see Alan Patten, *Hegel’s Idea of Freedom* (Oxford: Oxford University Press, 1999), chapter 4.

<sup>10</sup> Simmons, *Justification and Legitimacy*, p. 156.

whom political power is exercised.<sup>11</sup> Whereas certain liberal accounts of legitimacy “engage[] in a strategy of hypothetical justification,” according to which coercion “be in principle *justifiable* to everyone,”<sup>12</sup> the democratic approach requires those subject to power to personally take part in a process of determining how that power is put to use. Much like the consent-based account, the democratic theory of legitimacy conceives of abstract justification as too remote, too impersonal, too far removed from the concrete circumstances and judgments of the people, to provide a moral grounding for the exercise of political power.

While I largely embrace these critiques of the “justification” model of political legitimacy, and reject that model’s conception of political theory as a kind of applied moral philosophy, I will argue here that the contrast suggested between justification and legitimacy is overdrawn. In particular, both sets of critics falsely assume that justification must take the form of abstract, hypothetical, impersonal, and universal explanations of moral rightness – indeed, that justification is practice that is undertaken chiefly, or at least *initially*, by philosophers, at some remove from political context, and with little if any regard for the subjective reception of the justification, should it at some point be issued publicly. By contrast, I elaborate a contextualized conception of justification that views justification as an essentially public and political activity that ought to engage with the specific beliefs and practices of its recipients, in terms that are intelligible to them in light of their historical and cultural circumstances. In doing so, I expand on the “realist” account of legitimacy set forth by Bernard Williams, whose project seeks to provide a critical perspective on the exercise of political power while rejecting what he calls “the priority of the moral over the political.”<sup>13</sup> The paper proceeds in three main sections: first, I describe Williams’s political realism and the “Basic Legitimation Demand” that forms its centerpiece; second, I highlight a key shortcoming in Williams’s argument as it stands, and seek to salvage the Basic Legitimation Demand by drawing out what I take to be the implicit moral basis of his realist approach; and, third, I develop this revised account by articulating two substantive conditions – what I call *sincerity* and *intelligibility* – that any successful justification of political power will have to satisfy. My hope is to present a novel account of state justification that both consolidates and enriches many of Williams’s distinctive contributions to political philosophy, and can stand on its own as a necessary component of any robust theory of political legitimacy.

### §1. The ‘Basic Legitimation Demand’

The realist approach to legitimacy begins with the Hobbesian demand that the state

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<sup>11</sup> Arash Abizadeh, “Democratic Theory and Border Coercion,” *Political Theory* 36, no. 1 (2008): 37-65, at p. 41, emphasis in original. Abizadeh leaves open the question of whether “democratic legitimacy requires participation in the literal sense advocated by participatory democrats, or is compatible with representation or other means of institutional articulation” (ibid.).

<sup>12</sup> Ibid., emphasis in original. While Abizadeh does not cite particular advocates of this approach, its historical exemplar would have to be Kant, who famously held that his “original contract” need not “be presupposed as a *fact* (as a fact it is indeed not possible),” but is “instead *only an idea* of reason, which, however, has its undoubted practical reality, namely to bind every legislator to give his laws in such a way that they *could* have arisen from the united will of a whole people” (“On the Common Saying: That May Be Correct in Theory, but It Is of No Use in Practice,” in *Practical Philosophy*, Mary J. Gregor, ed. [Cambridge, UK: Cambridge University Press, 1996], p. 296 [Ak 8:297], emphasis in original).

<sup>13</sup> Williams, “Realism and Moralism,” in *IB*, p. 2.

secure order in social life, thereby protecting its subjects from those basic violations – “coercion, pain, torture, humiliation, suffering, death,” and the like – that all have reason to fear, whether at the hands of other individuals or of the state itself.<sup>14</sup> Williams describes the creation of order and the conditions of mutual safety as the “first political question,” in the sense that “solving it is the condition of solving, indeed posing, any others”: it is a practical prerequisite for achieving any collective aims, including the more ambitious goals that would comprise any idealized account of a just society.<sup>15</sup> While the Weberian state – a territorially-bound network of institutions that is seen to hold a legitimate monopoly on the use of violence – has appeared historically as the most plausible candidate for resolving the problem of insecurity, states are also notorious for their capacity to terrorize their own populations and thus fail in their charge to rescue their subjects from the fear, and reality, of cruelty. It is therefore implicit in any resolution to the first political question, on Williams’s view, “that the state ... not become part of the problem,” in terms of its subjects’ security.<sup>16</sup> Of course, no state can be expected to eliminate disorder and fear (including of the state itself) altogether, and so we should not interpret this requirement as insisting that states approximate an idealized condition of perfect stability; at the same time, this demand should not be construed so weakly as to require merely that states not exacerbate insecurity relative to some pre-social baseline of utter chaos.<sup>17</sup> Rather, according to this account, it is incumbent upon the state to “offer a justification of its power *to each subject*” capable of explaining to those under the state’s jurisdiction “what the difference is between the solution and the problem,” and why the state is an example of the former rather than the latter.<sup>18</sup> Only in this way – by providing an explanation of why its coercive power is warranted, despite existing chiefly for the sake of curbing coercion and the fear thereof overall – can the state show itself to be deserving of its power, and thus fulfill its promise (by inducing general compliance) to resolve the problem of insecurity.

While this requirement – what Williams terms the “Basic Legitimation Demand” – is undoubtedly a moral requirement, Williams insists it does not “represent a morality which is prior to politics,” for the demand for justification is itself “inherent in their being such a thing as politics,” properly understood as distinct from a kind of open warfare among enemies.<sup>19</sup> To be sure, some of the more frightful, genocidal states of the twentieth century, along with a number of settler-regimes in the age of European colonization, have regarded at least some of their subjects as alien peoples, who – like the helots of ancient Sparta – “are nakedly the objects of coercion and for whom there is no ... legitimation story” proffered, even if only in order to explain why the subjected class should not revolt.<sup>20</sup> Yet, in the general case, states do not

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<sup>14</sup> Ibid., p. 4. Williams’s approach thus develops what Judith Shklar has called the “liberalism of fear,” which begins not with a “*summum bonum* toward which all political agents should strive,” but “with a *summum malum*, which all of us know and would avoid if only we could. That evil is cruelty and the fear it inspires, and the very fear of fear itself.” “The Liberalism of Fear,” in *Political Thought and Political Thinkers*, Stanley Hoffmann, ed. (Chicago: University of Chicago Press, 1998), pp. 10, 11.

<sup>15</sup> Williams, “Realism and Moralism,” in *IB*, p. 3.

<sup>16</sup> Ibid., p. 4.

<sup>17</sup> Williams explicitly disavows this latter, “state of nature” line of reasoning at *ibid.*, p. 3. My thinking about the relevance of various “baselines” has been influenced by G. A. Cohen’s discussion in *Self-Ownership, Freedom, and Equality* (Cambridge, UK: Cambridge, University Press, 1995), p. 78ff.

<sup>18</sup> Williams, “Realism and Moralism,” in *IB*, pp. 4, 5, emphasis in original.

<sup>19</sup> Ibid., p. 5.

<sup>20</sup> Williams, “From Freedom to Liberty: The Construction of a Political Value,” in *IB*, p. 95; for further analysis of the case of the Spartan helots, cf. *ibid.*, p. 95 n. 21, “Realism and Moralism,” p. 5, and *Shame and Necessity* (Berkeley: University of California Press, 1993), pp. 106, 201 n. 7.

present themselves as engaged in “internalized warfare” against various domestic enemies, but rather *claim authority* over their subjects, asserting the rightfulness of their coercive monopoly and maintaining, at the very least, that their subjects “would be wrong to fight back.”<sup>21</sup> In order to substantiate this claim to authority, and to avoid costly reliance on the “external means” of physical force, states must foster what Weber called “inner justifications” or “legitimations” of state power on the part of those bound by it.<sup>22</sup> And no single legitimation, as Weber saw vividly, can play this role across all social and historical contexts; while some states have been able to achieve widespread compliance on the basis of shared religious commitments or a general convergence on traditional “mores,” others – especially those in the increasingly “disenchanted” societies of the modern West – must seek legitimation with reference to the charismatic qualities of its most prominent officials or to the formal procedures by which rules acquire legal force.<sup>23</sup> In Williams’s terms, official justifications of authority must be “intelligible,” or “make sense,” *as authoritative* to those subjected to its power.<sup>24</sup>

The presumed practical need for states to tailor their claims of authority to the particular subjective beliefs or local understandings of their members – to provide intelligible legitimations to their subjects – is central to distinguishing the “realist” account of political legitimacy from that of what Williams dubs “political moralism,” or the view that the legitimacy of political institutions hinges on their faithfully implementing a moral theory worked out antecedently, in abstraction from political contingencies as we encounter them in the world. According to the realist approach, while individuals everywhere look to political institutions to protect themselves against violence and the fear it conjures, and although states everywhere must buttress their power with a locally intelligible account of their legitimacy in order to root out insecurity and fear, what counts as locally intelligible will inevitably vary by context, and so the content of these justifications will be inaccessible through *a priori* analysis alone, and largely ungeneralizable across a range of societies. In the absence of salient transhistorical social regularities or fixed human dispositions that would allow a generic form of legitimation to be ascertained through relatively abstract or philosophical reflection, a successful answer to the first political question will be unavoidably “affected by historical circumstances,”<sup>25</sup> or, as Raymond Geuss has put it, “a social achievement” that must be negotiated in “historically instantiated forms of collective human action,” whose legitimations “do not have a coherence and independence of the wider political and social world that would allow one to treat them

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<sup>21</sup> Williams, “Realism and Moralism,” in *IB*, pp. 5, 6. Thomas Nagel has argued in a similar vein that in “mak[ing] us responsible for its acts, which are taken in our name,” and by eliciting our “active cooperation” in “obeying its laws and conforming to its norms” – including coercive taxation and perhaps military conscription – the state not only coerces its subjects but “makes unique demands on the will of its members” that uniquely give rise to “the positive obligations of justice.” “The Problem of Global Justice,” *Philosophy and Public Affairs* 33, no. 2 (2005): 113-147, at pp. 129, 130. Williams’s Basic Legitimation Demand is more minimal, requiring merely that such assertions of authority be accompanied by a certain kind of justification to each member.

<sup>22</sup> Weber, “Politics as a Vocation,” in *From Max Weber*, p. 78. Cf. *Economy and Society: An Outline of Interpretive Sociology*, Vol. 1, Guenther Roth and Claus Wittich, trans. (Berkeley: University of California Press, 1978), pp. 31-38, 213, for some refinements in the view.

<sup>23</sup> See Weber, “Science as a Vocation,” in *From Max Weber*, p. 155 and “Politics as a Vocation,” p. 79.

<sup>24</sup> Williams, “Realism and Moralism,” in *IB*, p. 10. The italicized phrase serves to underscore that, while “[s]ituations of terror and tyranny” surely “make sense” to their victims in the trivial sense of being “humanly entirely familiar,” these scenarios would not be intelligible as examples of legitimate power: the power would be as yet “unmediated” by an account of its normative bindingness (see *ibid.*, pp. 10-11). I return to the idea of intelligibility in §3.B below.

<sup>25</sup> *Ibid.*, p. 3.

completely in abstraction.”<sup>26</sup> In this sense, the realists’ Basic Legitimation Demand is a case of what Michael Walzer has called “reiterative universalism”: universal in that the demand for legitimation applies to all states, but reiterative insofar as the universal demand can only be satisfied by drawing upon the values and practices found in particular human societies, which will of course vary across time and place.<sup>27</sup> Thus, indispensable as legitimation stories are to political life everywhere, any given philosophical justification of state power will prove ineffectual, and thus idly “moralistic,” unless “it accepts that like any other outlook it cannot escape starting from what is at hand, from the kinds of life among which it finds itself” – unless, that is to say, it appreciates the truth in Faust’s remark that “in the beginning was the deed.”<sup>28</sup>

## §2. *The Moral Basis of Williams’s ‘Realism’*

While there is much to be said for Williams’s conception of political legitimacy as a demand that is universal in scope but which requires political institutions (somehow) to engage with their members’ existing structures of belief, the realist account as it stands suffers from a key ambiguity regarding the relation between realism and moral theory, which has the effect of obscuring the theoretical basis of the Basic Legitimation Demand as well as its connection with Williams’s further insistence that only justifications that are fully transparent (as described in §3 below) can succeed in satisfying this demand. The fundamental ambiguity in Williams’s formulation of realism revolves around its claim that, in order for states to succeed in establishing the conditions of basic security, they must explain the grounds for their coercive power to every last person subjected to that power. The demand for such justification is “realist” in that it is said to follow only from the practical necessity of securing order and thus providing the preconditions for political life, and not from some independent moral theory; to whatever extent this demand is a moral one, its morality encompasses nothing more than the commitment that there be a stable political order at all – it is, as Williams says, a morality “inherent” or “implicit” in politics. Yet there is an obvious sense in which this cannot be right. Countless states throughout human history have failed to issue (and seem not even hypothetically capable of having issued) a justification to each of their subjects, even while asserting that all subjects would be wrong to resist the state’s exercise of coercive power – which Williams declares to be, on its own, a “sufficient condition of there being a (genuine) demand for justification.”<sup>29</sup> These regimes include various tyrannies that claim authority over all residents in the absence of any justification whatsoever, as well as apartheid and caste states that offer legitimations to some favored subset of their subjects while using violence and intimidation to keep the rest at bay. While states may well find it less costly to instill a widespread belief in their legitimacy than to rule solely at the point of a bayonet,<sup>30</sup> realism cannot plausibly maintain that *universal*

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<sup>26</sup> Geuss, *Philosophy and Real Politics*, pp. 22, 36.

<sup>27</sup> See Michael Walzer, “Nation and Universe,” in *Thinking Politically*, David Miller, ed. (New Haven: Yale University Press, 2007), pp. 186-189.

<sup>28</sup> Williams, “In the Beginning Was the Deed,” in *IB*, p. 24.

<sup>29</sup> Williams, “Realism and Moralism,” in *IB*, p. 6.

<sup>30</sup> Alan Ryan, for instance, has argued that even a Hobbesian sovereign “has excellent prudential reasons for listening to advisers, allowing much discussion, regulating the affairs by general rules rather than particular decrees, and so on.” In these respects, “as long as nobody talked about their ‘rights,’ a Hobbesian state would be indistinguishable from a liberal constitutional regime.” See “Hobbes’s Political Philosophy” in Tom Sorell, ed., *The Cambridge Companion to Hobbes* (Cambridge, UK: Cambridge University Press, 1996), p. 237.

justification is required for states to solve the problem of security – unless, of course, “solving the problem of security” simply builds in the requirement that the state justify itself to each subject. If realism is committed to this last strategy, however, then the demand for universal justification is only “inherent” or “implicit” in there being *a political order justifiable to everyone*, rather than in there being politics *simpliciter*. And the former demand, unlike the latter, appears to smuggle a moral requirement into the very definition of “politics,” and thus to undercut the “realist” pretensions of the Basic Legitimation Demand.

While this interpretation of Williams’s argument – in identifying a moral commitment implicit in the demand for universal justification – may have the effect of imperiling his distinction between realist and moralist approaches to political legitimacy, it also has the virtue of unifying several key elements of his political thought, and accounting for his further specifications of the Basic Legitimation Demand. Before filling out the rest of the view, however, it will be important to say something more about what I take to be the moral commitment that is presupposed by Williams’s account of legitimacy. Most basically, the idea that individuals should be secure from violence and fear, and the requirement that, insofar as some institutional monopoly on violence is necessary to provide this security, individuals are owed a justification from those institutions, both appeal to the importance of certain features of human personhood or agency that all individuals possess equally, and which political institutions can neglect or violate only at the cost of undermining their moral entitlement to rule. We can think of each of these requirements of legitimacy – the demands for security and for the justification of public power – as corresponding to a different set of qualities that characterize all persons; following Williams’s 1962 essay “The Idea of Equality,” I will refer to these as the “negative” and “positive” respects in which “people can be counted as all alike.”<sup>31</sup>

All persons, on Williams’s account, share a capacity to feel pain, “both from immediate physical causes and from various situations represented in perception and in thought,” and to feel affection, both for other persons and objects and for ourselves as individuals who identify with projects and commitments of our own (what Williams calls “self-respect”); these capacities underlie the “negative” aspect of human equality, in that they involve individuals “in moral relations as the recipients of certain kinds of treatment.”<sup>32</sup> In the language of realism, it is this common vulnerability to pain, and to the frustration of the diverse aims with which we identify, that initially motivates the “first political question” and grounds Williams’s demand that political institutions make available the conditions of security to all persons. Yet there is further, “positive” respect in which persons are thought to be equal, not only “in things that they needed and could suffer,” but also as “conscious beings who necessarily have intentions and purposes and see what they are doing in a certain light,” and who are, most crucially, “capable of reflectively standing back from the roles and positions in which they are cast” in social life. In addition to sharing a desire for safety and affection, which generated the demand for the material conditions of security, we also share an ability to conceive of ourselves as having a certain “character” or self-understanding that transcends the social roles or titles that have been ascribed to us. This common capacity for reflective self-understanding allows us to regard individuals as moral agents of a sort, and in Williams’s view grounds “the precept that one should respect and try to understand other people’s consciousness of their own activities” and “not suppress or

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<sup>31</sup> Williams, “The Idea of Equality,” in *IB*, pp. 101, 97-114 passim.

<sup>32</sup> *Ibid.*, pp. 99-100, 101. On the importance of projects and commitments to what Williams calls personal “integrity,” see his “A Critique of Utilitarianism,” in J.C.C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge, UK: Cambridge University Press, 1973), pp. 108-118.

destroy that consciousness.”<sup>33</sup> Just as the demand for universal security reflected a tacit commitment to protecting certain physical and affective capacities common to all persons, the demand for universal justification embodies a principle of respect for the capacities for reflection and agency that all persons share.

While this idea of equal respect for persons has found its fullest expression in the liberal tradition, and is rightly seen as grounding a number of distinctively liberal moral and political positions,<sup>34</sup> it should not be confused with an ethical ideal of moral autonomy or what Williams calls a “liberal conception of the person,” which might be taken to require individuals to subject their deepest ends to critical scrutiny and view them as susceptible to rational revision.<sup>35</sup> Rather, the notion of agency at play here involves the more minimal idea that individuals are capable of stepping back from their social roles and rationally evaluating those roles (and the justifications that underlie them) in terms of their existing beliefs about value – not that those beliefs must themselves be seen as rationally grounded. It is, if you like, a “political” conception of agency.<sup>36</sup> However, agents even in this narrower sense – while perhaps not wholly self-scrutinizing – are nevertheless able, as Jeremy Waldron has put it, “to make sense of the world” and “to grasp its regularities and fundamental principles.”<sup>37</sup> More than merely responding by rote or reflex to the stimuli of the social world, agents have individuated perspectives on that world and, further, perspectives that are not merely predictive – with beliefs about what they or others might do – but also evaluative, capable of criticism and self-criticism, of not only descriptive but normative understanding. When states coerce beings with these capacities, compelling them to act (or refrain from acting) in certain ways, or forcing upon them some public status or position not of their choosing, agents are entitled to an explanation of this power – of how it operates and on what basis – that engages the very agential capacities it constrains. At a minimum, these features of agency give rise to a requirement that social and political institutions form “a *transparent* order, in the sense that [their] workings and principles should be well-known and available for public apprehension and scrutiny.”<sup>38</sup> While the demand that, in Williams’s words, “the workings of [society’s] ethical institutions should not depend on members of the community misunderstanding how they work . . . fits naturally with liberal contractualism,” this aspiration, like the conception of agency on which it relies, “marks the distinction not so much between liberals and nonliberals as between any who retain more radical hopes born of the Enlightenment

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<sup>33</sup> Williams, “The Idea of Equality,” in *IB*, p. 103.

<sup>34</sup> Cp., Jeremy Waldron, “Theoretical Foundations of Liberalism,” in *Liberal Rights: Collected Papers, 1981-1991* (Cambridge, UK: Cambridge University Press, 1993), pp. 36-37, where he argues that “liberals are committed to a conception of freedom and of respect for the capacities and the agency of individual men and women. . . [T]hese commitments generate a requirement that all aspects of the social world should either be made acceptable or be capable of being made acceptable to every last individual”; and Charles Larmore, “The Moral Basis of Political Liberalism,” in *The Autonomy of Morality* (Cambridge, UK: Cambridge University Press, 2008), pp 148-149: “an essential feature of persons is that they are beings capable of thinking and acting on the basis of reasons. If we try to bring about conformity to a rule of conduct solely by the threat of force, we will be treating persons merely as means, as objects of coercion, and not also as ends, engaging directly their distinctive capacity as persons.”

<sup>35</sup> Williams, “Realism and Moralism,” in *IB*, p. 9. Indeed, Williams maintains that the liberal conception of the person is merely the historical *product* of this thin idea of human agency combining with the conditions of modernity – which together gave rise to liberal politics – and is not itself “the foundation of the liberal state” (p. 8).

<sup>36</sup> See, e.g., the distinction between moral and political autonomy in John Rawls, *Political Liberalism*, paperback ed. (New York: Columbia University Press, 1996), pp. xlv-xlv and lectures II-III *passim*.

<sup>37</sup> Waldron, “Theoretical Foundations of Liberalism,” in *Liberal Rights*, p. 43.

<sup>38</sup> *Ibid.*, p. 58, emphasis in original.

and those who do not.”<sup>39</sup> Tyrannical or highly secretive regimes, which coerce their citizens without making known the principles and procedures under which they operate, or which fail to provide any explanation of their authority to their subjects, cannot be understood as regarding their subjects as reflective agents – as beings capable not only of following orders but of understanding and evaluating the basic operation and normative grounding of their social world.<sup>40</sup>

### §3. *Two Conditions of Transparency*

It is easy to see how various political practices of public justification can be essential to providing transparency in this basic sense. A wide range of constraints associated with the rule of law, including the promulgation of legislative statutes and the written defense of judicial rulings, as well as more informal instances of public debate and discussion, which presuppose mutual knowledge of various shared “terms of association” that structure controversy in the community (whether stated in a set of constitutional documents or merely implicit in the prevailing political culture), serve to ensure that individuals have access to information about the workings of their government and at least an official explanation of their state’s entitlement to rule. Yet the ideal of transparency, as Williams develops it, goes well beyond this. Not only must states put forth *some* justification of their power (and retain a sufficient level of openness for concrete justifications to come into view<sup>41</sup>), but the content of these justifications must meet two additional conditions: what I will call *sincerity* and, following Williams, *intelligibility*.

#### A. *Sincerity*

In addition to being publicly available, state justifications must be offered sincerely, in that they must be believed by those who issue them. As with sincere reports of belief in everyday conversation, the justifications need not be true – drawing on accurate background beliefs, corresponding with the correct or appropriate values, and so on – in order to count as sincere. Yet sincere justifications cannot put forth an explanation of the state’s entitlement to rule that those in power themselves take to be false, and indeed offer simply with the intention of eliciting compliance; doing so, like failing to offer a justification at all, would fail to respect the distinctive agential capacities of those subject to political power. While Williams does not use the language of sincerity in the context of political legitimacy,<sup>42</sup> he describes two kinds of inadmissible justification that run afoul of the sincerity condition as I have described it. First, a

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<sup>39</sup> Williams, *Ethics and the Limits of Philosophy* (Cambridge, Mass.: Harvard University Press, 1985), p. 101.

<sup>40</sup> Williams engages with questions of state secrecy, and of the importance of truthfulness in politics more generally, in *Truth and Truthfulness: An Essay in Genealogy* (Princeton: Princeton University Press, 2002), pp. 206-219. Similar questions are treated under the heading of “publicity” in Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* (Cambridge, Mass.: The Belknap Press of Harvard University, 1996), chapter 3. For a fuller idea of publicity, which incorporates the two conditions of transparency as I describe them below, see John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass.: The Belknap Press of Harvard University, 1999), pp. 4-5, 397-399, as well as *Justice as Fairness: A Restatement*, Erin Kelly, ed. (Cambridge, Mass.: The Belknap Press of Harvard University, 2001), p. 121 and accompanying n. 43.

<sup>41</sup> In what follows, I will refer to justification in a more abstract sense, making the simplifying assumption that various *ad hoc* “micro-justifications” of political power (e.g., those cited in specific judicial rulings) will draw on certain elements of a broader “legitimation story” that purports to explain the justifiability of the regime as a whole.

<sup>42</sup> He does, however, offer an extended exploration of sincerity as an ethical ideal in *Truth and Truthfulness*, chapters 5 and 8, which I cannot discuss here.

justification might make an appeal to its addressees' actual interests and values but do so falsely, with the knowledge that the political power being justified will not in fact advance the interests and values appealed to in the justification. In classical Marxism, for example, property-owners and other members of the ruling class present their particular class interests (in profit-maximization, say, and in the social conditions conducive thereto) as universal interests (for instance, by peddling various "bourgeois rights" as "rights of man") without believing that those universal interests will be served by the power being justified.<sup>43</sup> Yet insincere justifications of this first kind need not be self-serving, and indeed may be deployed for the sake of those to whom the insincere justification is addressed. In a number of works, Williams has argued that utilitarianism, particularly as developed by Sidgwick, has a tendency to become what Derek Parfit later called "esoteric": that, in order to maximize utility overall, the theory will recommend a system in which ordinary individuals believe some other moral theory, but where a cadre of elites are privy to the truth of utilitarianism and engineer the social order according to its dictates.<sup>44</sup> While such a system is thought by its administrators to be in the best interest of all members, the rulers will have to offer an insincere rationale for their power, since widespread knowledge that utilitarianism is the correct moral theory would prove to be self-defeating on the theory's own terms. Such "Government House" justifications, whether or not (as Williams believed) they ultimately "demand institutions of coercion or severe political restriction to sustain [themselves]," would in any event circumvent the reflective capacities of individuals agents, and thus fail to establish the legitimacy of the political power in question.<sup>45</sup>

Whereas the foregoing justifications misleadingly appealed to subjects' existing values or interests in order to elicit compliance with the regime, a justification might be deemed "insincere" in a second sense if the state used the very political power it seeks to justify to shape its subjects values and interest directly, so that individuals come (as a result of the state's exercise of power) to hold beliefs that in fact support the justification put forward. In the first case, the justification is insincere because the actual exercise of power would *fail to serve* the interests or values of those subject to it; in the second case, the justification is insincere *in spite of serving* the interests or values of the population, but rather because those interests or values themselves were the product of state coercion. To guard against this second kind of insincerity, Williams invokes what he calls the "critical theory test" (or "critical theory principle"), which holds that "the acceptance of a justification does not count if the acceptance itself is produced by the coercive power which is supposedly being justified."<sup>46</sup> While, paradigmatically, a regime will fail the critical theory test when its "rulers intentionally manage their subjects' beliefs by

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<sup>43</sup> See Marx, "On the Jewish Question" and *The German Ideology*, reproduced in *The Marx-Engels Reader*, Robert C. Tucker, ed. (New York: W.W. Norton & Co., 1978). A more difficult case, to which Marx was certainly alive, is one in which the ruling elites themselves come over time to believe the justifications initially put forth insincerely.

<sup>44</sup> See Williams, "A Critique of Utilitarianism," in *Utilitarianism: For and Against*, pp. 138-140, as well as *Morality: An Introduction to Ethics* (Cambridge, UK: Cambridge University Press, 1972), pp. 97-98. For Parfit's discussion, in which he argues that consequentialist theories are not likely to be "esoteric" or otherwise "self-effacing" in practice, see his *Reasons and Persons*, corrected ed. (Oxford: Oxford University Press, 1984), pp. 24, 41-42.

<sup>45</sup> Williams, "A Critique of Utilitarianism," in *Utilitarianism: For and Against*, p. 139. For the idea of "Government House utilitarianism," see Williams and Amartya Sen, "Introduction" to Sen and Williams, eds., *Utilitarianism and Beyond* (Cambridge, UK: Cambridge University Press, 1982), p. 16.

<sup>46</sup> Williams, "Realism and Moralism," in *IB*, p. 6. Williams here and elsewhere employs the critical theory test to evaluate instances of subjects "accepting" justifications, but the test seems to apply *a fortiori* to cases in which a regime exerts coercive power against subjects' background beliefs without successfully eliciting their acceptance; perhaps Williams simply assumes that belief-manipulation by the state is typically effective at securing acceptance.

means that conspicuously do not preserve truth or rationality, such as conditioning, gross propaganda, and drugs,” Williams wants to rule out in addition “cases in which the manipulation is not intentional and the methods are not so gross.”<sup>47</sup> The purpose of such a criterion is not to say that no state may permissibly influence the beliefs of its subjects – such methods of influence are unavoidable and frequently benign in a public system of education, for example, which often compels attendance for pupils in their most formative years<sup>48</sup> – but rather to reject practices of coercive belief-formation in which the presence of coercion provides the “sole reason” for the subject’s acceptance of a belief, and which subjects could come to reject as manipulative in this way through a process of reflective criticism in which their other beliefs are held constant.<sup>49</sup>

Although it will undoubtedly prove difficult to apply such a test to any but the most egregious cases of coercive belief-formation without significant, case-by-case empirical investigation<sup>50</sup> – indeed, Williams appears to have abandoned an early attempt to assess non-democratic or “hierarchical” regimes generally in terms of this principle<sup>51</sup> – the more serious challenge to this approach denies the possibility of *any* modern state, however open or liberal, satisfying this standard. In a recent, largely sympathetic interpretation of Nietzsche’s political thought, Tamsin Shaw has expressed a deep skepticism about the possibility of uncoerced legitimation in our post-traditional world, where myth and religion can no longer be relied on to secure normative convergence on the justifiability of political authority. To the extent that most individuals simply lack the intellectual capacity to discover the normative truths relevant to questions of political authority, and have no reason to defer on such matters to particular epistemic authorities, should they exist, widespread agreement on the legitimacy of modern, secular states will be heavily reliant on those very states’ ability – via official mechanisms of cultural and educational instruction – to “manufactur[e] a misguided moral commitment to the obligations they impose on us,” and thereby achieve normative support through a coercive and thus “circular” processes of “self-legitimation.”<sup>52</sup> While Williams acknowledges the plausibility of much of this skepticism, leaving open the possibility that “human beings cannot live together,

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<sup>47</sup> Williams, *Truth and Truthfulness*, p. 222.

<sup>48</sup> For discussion of state education in this context, see *ibid.*, pp. 226-227 and “From Freedom to Liberty,” in *IB*, p. 89 n. 19, where Williams considers “educational regimes” as a case in which “beliefs and states of desire can be quite properly the causal product of regimes to which people have been exposed or even subjected.”

<sup>49</sup> Williams offers a detailed schema of such a process of criticism in *Truth and Truthfulness*, pp. 227-231.

<sup>50</sup> See Williams’s reservations in “Realism and Moralism,” in *IB*, p. 6; cp. Geuss, *Philosophy and Real Politics*, pp. 51-52: “How exactly power relations operate to generate or influence the formation of beliefs, desires, and attitudes is a complex question, and there will probably be little of much significance one will be able to say in general about the mechanisms by which this influence is exercised. Only a historical account of the particular details of the case will be at all enlightening.”

<sup>51</sup> See Williams, “The Idea of Equality,” in *IB*, p. 105, where he argues that “[w]hat keeps stable hierarchies together is the idea of necessity, that it is somehow foreordained or inevitable that there should be these orders, and this idea of necessity *must be eventually undermined* by the growth of people’s reflective consciousness about their roles, still more when this is combined with the thought that what they and the others have always thought about their roles in the social system was the product of the social system itself” (emphasis added). In “Human Rights and Relativism,” in *IB*, p. 71, he is less categorical: “How far [a theocratic regime] will have come to be like [the paradigm of unjust coercion] is in good part a matter of fact and understanding. Up to a certain point, it may be possible for supporters of the system to make a decent case (in both senses of that helpful expression) that the coercion is legitimate.”

<sup>52</sup> Tamsin Shaw, *Nietzsche’s Political Skepticism* (Princeton: Princeton University Press, 2007), pp. 5, 148. William Connolly similarly invokes Nietzsche in suggesting that, in light of the consolidation of modern bureaucratic states, “today a broad range of private activities must be co-ordinated by conscious means, and this extends indefinitely the range of practices and standards in need of legitimation.” See his “Introduction: Legitimacy and Modernity,” in Connolly, ed., *Legitimacy and the State* (New York: New York University Press, 1984), p. 6.

at least on any culturally ambitious scale, if they understand fully what they are doing,” he nevertheless holds out the Enlightenment’s hope that increased openness and free discussion can expose the workings of power even on coercively inculcated and seemingly basic beliefs.<sup>53</sup> Perhaps like the skeptics themselves, Williams conceives of the critical theory test as specifying a regulative ideal with regard to which states can do better or worse, rather than suggesting a binary condition of a state’s political legitimacy.<sup>54</sup>

### *B. Intelligibility*

Up to this point, we have seen that, on Williams’s account, a range of states – those that fail to offer any public justification of their power; those that knowingly offer deceptive justifications; and those that offer justifications that appeal to beliefs which are themselves the product of the coercion supposedly being justified – cannot be seen as having a moral entitlement to exercise political power against their subjects. Such regimes are examples of “the human tendency to unmediated coercion,” rather than “the human capacity for intelligible order,” and must be considered to be illegitimate, even if we can envision a hypothetical or philosophical justification for their wielding political power.<sup>55</sup> While the two conditions of sincerity, as I have described them, place limits on what can count as a legitimating “mediation” of coercion, it remains to be seen what states must do to satisfy the positive demand that their mediating justifications be “intelligible,” or that they “make sense,” to their subjects. Although it is clear (on pain of redundancy) that Williams means to create space for there to be fully sincere justifications that nevertheless fail to satisfy the Basic Legitimation Demand, he says little about this further requirement of intelligibility, beyond noting that justifications can only be rendered intelligible “in light of the historical and cultural circumstances.”<sup>56</sup> Williams’s reticence is compounded by the fact that – much as he claimed that universal justification is inherent in or implicitly required by any resolution to the problem of insecurity – he first presents the standard of intelligibility as a practical or functional requirement of establishing the basic conditions of order and social stability, rather than as a normative or moral requirement facing states in virtue of the value of individual agency. Yet if, as I argued in §2 above, the demand for universal justification cannot be seen as a purely pragmatic precondition of political stability, then surely we cannot view a requirement for universal *intelligible* justification as implicit any answer to the “first political question”; the demand must be understood as a normative injunction rather than a merely prudential necessity facing states.<sup>57</sup>

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<sup>53</sup> Williams, *Truth and Truthfulness*, p. 232.

<sup>54</sup> See Williams, “Realism and Moralism,” in *IB*, p. 10. Cp. Shaw, *Nietzsche’s Political Skepticism*, p. 152: “So long as there is still a gap between the demands of normative authority and the demands of political authority, legitimacy remains a mere aspiration. Nietzsche’s insights do not entail the view that we should give up on this aspiration, rather that we should preserve the conditions of its possibility, without ever assuming that it has been fulfilled.” Geuss suggests along similar lines that “[a]lthough we can be in a position fully to recognize our ‘real interests’ only if our society satisfies the utopian condition of perfect freedom, still, although we do not live in that utopia, we may be free enough to recognize how we might act to abolish some of the coercion from which we suffer and move closer to the ‘optimal conditions’ of freedom and knowledge. The task of a critical theory is to show us which way to move.” See *The Idea of a Critical Theory* (Cambridge, UK: Cambridge University Press, 1981), p. 54.

<sup>55</sup> Williams, “Realism and Moralism,” in *IB*, p. 10; cf. *Truth and Truthfulness*, p. 221 for a similar formulation.

<sup>56</sup> Williams, “Realism and Moralism,” in *IB*, p. 11.

<sup>57</sup> Although Williams says that intelligibility is a “normative” or behavior-guiding concept only when applied to “our own practices,” yet “non-normative” when “we apply [it] to others,” he later acknowledges that the idea “is also normative in relation to other societies which co-exist with ours and with which we can have or refuse to have various kinds of relations” (“Realism and Moralism,” in *IB*, pp. 11, 14). That a regime’s issuing intelligible

With this in mind, I believe we can narrow our interpretation of the intelligibility requirement by rejecting both a weak and a strong construal of the demand. On a weak interpretation of the requirement, the demand that justifications be “intelligible” to individuals in light of their existing beliefs could mean that individuals ought to be able simply to *comprehend* the legitimation stories set forth by their states, leaving open the possibility that a given justification could be “intelligible” while being rejected, perhaps vehemently, by as many as all of its addressees. But this reading renders the Basic Legitimation Demand either normatively inert or trivial. If the requirement of comprehensibility means that it must be possible, in principle, for the utterances comprising the state’s justification to be meaningful or coherent to its addressees, it is not clear that the demand places any limitation on the scope of legitimating justifications, in light of the familiar difficulties in making sense of the idea of an untranslatable language; as Donald Davidson famously argued, the inability to assign meaning to such utterances is best taken as evidence of the absence of language-use, not of language-use that is merely unamenable to translation and thus comprehension.<sup>58</sup> There would be nothing to distinguish the issuance of an unintelligible justification in this sense from the failure to issue a justification at all. If, alternatively, the requirement of comprehensibility is taken to require not that justifications be, in principle, translatable, but that states justify their power in the language(s) actually spoken and understood by the local population, it would trivially weed out only those justifications issued – willfully, one might expect, and with the intention of being incomprehensible – in a foreign parlance, with the legitimation demand requiring no more than that the rulers find themselves a translator. Needless to say, neither version of the weak, “comprehensibility” interpretation leaves us with a morally attractive understanding of the Basic Legitimation Demand, nor one capable of doing the work Williams intends for it to do.<sup>59</sup> At the same time, however, a strong interpretation of “intelligibility” that would construe the demand as requiring that individuals in fact *accept* the justifications proffered by their states renders the Basic Legitimation Demand an “insatiable ideal,” not unlike the classical consent theory described at the outset.<sup>60</sup> If the requirement of merely comprehensible justifications left the legitimation demand with little if any critical force, the requirement that justifications actually be accepted effectively makes legitimate state power a practical impossibility, and – quite apart from the normative appeal of philosophical anarchism – Williams clearly thinks his standard of legitimacy ought to rule some states “in” and others “out”: that there should be “practical consequences of applying or withholding [legitimacy] in the contemporary world.”<sup>61</sup>

Is there an intermediate interpretation of the intelligibility requirement capable of lending the Basic Legitimation Demand both coherence and practical force? In an earlier and more

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justifications should guide the behavior of those subject to the regime, and of those societies with which the regime interacts internationally, is sufficient to account for the normativity of the requirement in the sense indicated above.

<sup>58</sup> See Donald Davidson, “On the Very Idea of a Conceptual Scheme,” in *Inquiries into Truth and Interpretation* (Oxford: Oxford University Press, 1984), pp. 183-198.

<sup>59</sup> Williams’s remark that the justification must be intelligible “as a legitimation” (see note 24 above) does nothing to rescue the “comprehensibility” interpretation, for presumably even legitimation stories that draw upon beliefs that we regard as entirely alien – as, for example, “Zeus commands it” relies on a belief in the divinity of the pagan gods – are comprehensible to us as claims purporting to justify political power, even if we do not hold the beliefs in question and thus reject the legitimacy of a state justified in that manner.

<sup>60</sup> Williams, “Toleration, a Political or Moral Question?” in *IB*, p. 136 n. 8. Cf. *ibid.*, pp. 135-136: “when it is said that government must have ‘something to say’ to each person or group over whom it claims authority ... it cannot be implied that this is something that this person or group will necessarily accept. This cannot be so: they may be anarchists, or utterly unreasonable, or bandits, or merely enemies.”

<sup>61</sup> Williams, “Realism and Moralism,” in *IB*, p. 14.

general inquiry into the idea of intelligibility, Williams sometimes speaks of an explanation or narrative account of action as “making sense,” in that the hearers of the narrative can imaginatively reconstruct the sorts of subjective factors that motivated an agent in the narrative to act as he or she did. In this case, intelligibility requires simply that, “by thinking themselves into the position of the agent, . . . taking on for the purpose of the exercise, as far as they can, his outlook and preconceptions,” third parties be able to comprehend (in the sense discussed above) the beliefs and motives of the acting agent, and the connection between these beliefs and motives and his actions, *not* that they necessarily possess any of these subjective properties themselves or “would regard [the agent’s actions] as reasonable things for [them] to do” – admittedly, a rather low bar to clear.<sup>62</sup> Yet there is a separate sense in which the selfsame actions are intelligible from the agent’s own point of view, from which it “made sense” for the agent *to have performed* those actions, and not merely to have grasped their meaning.<sup>63</sup> In order for such actions to be intelligible to a particular agent in this practical or first-personal sense, the agent must actually possess the kinds of subjective beliefs and motivations that could lead someone to act in such a manner. The agent must, in Williams’s terminology, have at least a *pro tanto* “internal” reason – that is, a consideration internal to the agent’s “subjective motivational set”<sup>64</sup> – to have performed the action in order for it to “make sense” in this way, even if the particular agent did not in fact undertake the action (as when I say “it would have made sense for me to have done X,” even though I did Y, perhaps on the basis of stronger or overriding reasons).<sup>65</sup>

In the context of political justification, we are primarily concerned with this practical or first-personal idea of intelligibility, albeit with a restricted class of internal or intelligible reasons. When we ask whether a justification of political power is intelligible to its addressees, we are asking, on this reading, whether the justification appeals to its subjects’ existing structures of *normative* belief – not merely whether the justification draws on subjects’ existing factual beliefs about the world, or on normative views they could comprehend but do not actually have. Thus as Williams says in his political writings, many kinds of state action (including the very acts of unmediated coercion which the intelligibility requirement is invoked to condemn as illegitimate) will be intelligible in the sense of being “humanly entirely familiar,” perhaps in virtue of relying on subjects’ existing non-normative beliefs; but the requirement of intelligible justification demands that public accounts of political authority make sense *as* legitimations of that authority.<sup>66</sup> In this way, this requirement impels states to treat their subjects not simply “from the outside, like a physical system” to be managed and coordinated, but “rather from their [own], possibly improved, point of view” – to treat them, in a word, as agents.<sup>67</sup> Since individuals’

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<sup>62</sup> Williams, *Truth and Truthfulness*, pp. 237, 234.

<sup>63</sup> Indeed, the third-personal idea of intelligibility – the idea, as Williams says, “that it should make sense to us that such actions should make sense to people in those circumstances” – seems to presuppose this notion of *practical* or first-personal intelligibility. See *ibid.*, pp. 234-235, as well as “Realism and Moralism,” in *IB*, p. 11, where Williams discusses the “hermeneutic principle” – distinct from the idea of legitimation – that “what [others] do [makes sense] if it would [make sense] to us if we were them.”

<sup>64</sup> Or a reason that can be reached by a “sound deliberative route” from this motivational set. See “Internal and External Reasons,” in *Moral Luck: Philosophical Papers, 1973-1980* (Cambridge, UK: Cambridge University Press, 1981), pp. 101-113 and “Internal Reasons and the Obscurity of Blame,” in *Making Sense of Humanity and Other Philosophical Papers, 1982-1993* (Cambridge, UK: Cambridge University Press, 1995), p. 35.

<sup>65</sup> Note, however, that nothing about the formulation in the text – nor about the moral demand, developed below, that states justify their power in terms of normative beliefs internal to their subjects’ motivational sets – need imply that *all* reasons are internal and thus intelligible in this sense; I take no position on this latter thesis here.

<sup>66</sup> Williams, “Realism and Moralism,” in *IB*, p. 12.

<sup>67</sup> Williams, *Truth and Truthfulness*, p. 227.

normative perspectives are bound to diverge widely across differing historical and cultural circumstances, states will have to tailor their practices of intelligible justification to local conditions and traditions that agents view as being important sources of value for them. While some normative commitments may be constant across all individuals and societies, the persistence of deep moral pluralism in an increasingly interconnected and “modernizing” world seems to indicate the ongoing need for state justifications to be significantly responsive to local context and patterns of belief, ensuring that the demand for intelligible justification will continue to be a case of “reiterative universalism,” as described in §1, into the foreseeable future.

It is important to note that individuals in a given society need not have a set of core or fundamental beliefs in common in order for the state to justify itself to all subjects; agents might share a set of narrowly “political” values, concerning the basic terms of social cooperation, without agreeing on the moral basis of these terms, or they might in principle share no such common justificatory vocabulary at all, in which case the state might appeal to a variety of local values – none of them common across all existing structures of normative belief – in order to satisfy the demand for intelligible justification.<sup>68</sup> This idea of intelligibility, moreover, requires not that individuals actually accept that the state, on balance, enjoys a moral entitlement to rule, but simply that the state appeal in good faith to some of their subjects’ beliefs about value, even when the subjects themselves fail to view these beliefs as decisive reasons to confer legitimacy. By engaging with the distinctive normative commitments of their subjects as they are, states thus acknowledge and engage their capacities as agents with their own points of view, with existing beliefs about value that deserve to be addressed through persuasion and not merely subverted by deception or force – even when the attempt at persuasion is ultimately unsuccessful. It is a further, and inevitably complicated, question as to what states are required to do in order to count as making a “good faith” effort appeal to their subjects’ existing normative beliefs; simply assuming that a locally dominant religious or cultural tradition is universally shared, needless to say, should not be sufficient for the state to discharge its justificatory obligations. Presumably, in the absence of complete knowledge of their subjects’ normative views, states will have to engage in practices of what Rawls has called “conjecture” – in which they argue from what they “believe, or conjecture, are other people’s basic doctrines ... and try to show them that, despite what they might think, they can still endorse” the set of political principles in question<sup>69</sup> – and might, further, be required to incorporate various institutional channels for feedback – ranging from protected forums for open discussion to more robust mechanisms of political representation and contestation – so that members can publicly indicate the adequacy or inadequacy of particular justifications, and that states can refine and reshape their public legitimation stories over time.<sup>70</sup> Such matters are of sufficient complexity and importance to merit an additional

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<sup>68</sup> It may of course be more conducive to social stability for states to appeal to shared reasons (should they exist), or to promote certain public virtues that would lead members over time to endorse some common set of normative beliefs, such that individuals will develop what Rawls has called an “independent allegiance” to their public principles of justice; yet the Basic Legitimation Demand stops short of requiring an overlapping consensus in Rawls’s sense. See *Political Liberalism*, p. 168 and lecture IV passim.

<sup>69</sup> Rawls, “The Idea of Public Reason Revisited,” in *Collected Papers*, Samuel Freeman, ed. (Cambridge, Mass.: Harvard University Press, 1999), p. 594.

<sup>70</sup> Williams himself says that certain basic human rights – he mentions rights of political speech and basic religious expression, and freedom from torture and widespread surveillance – may be seen as conditions of legitimation: of “the supposed solution” not becoming “part of the problem” (“Human Rights and Relativism,” in *IB*, p. 63). While some minimal forms of representation might plausibly be seen as *prerequisites for ascertaining* the normative beliefs of the population, more robust mechanisms might be in turn *required by* those normative beliefs, once known; for example, Williams views some sort of “participatory democracy as an essential part of modern

paper, so I will only acknowledge their centrality here.

### *Conclusion*

While the idea of public justification is frequently conceived, by proponents and detractors alike, as a practice of philosophical reasoning about the abstract and hypothetical *justifiability* of state coercion, in which the beliefs and practices of those subject to coercion play a limited and secondary role, I have attempted in this paper to free the idea of justification from the grip of ideal theory, and to reconceive of justification as a public, political practice that must engage with the distinctive normative commitments of the agents subject to coercion by the state. Toward this end, I have developed and extended Bernard Williams's Basic Legitimation Demand, which holds that the state owes a justification to each subject (§1). I argued in §2 that this demand, as Williams presents it, make sense only on the basis of an implicit normative commitment to respecting the agential capacities of individual persons, and that this commitment provides the most plausible basis for Williams's further requirement – evident in his moral and political writings alike – that the basic institutions of the social world ought to be transparent to all who live under them. Drawing on a number of his own examples, I suggested in §3 that the ideal of transparency includes two conditions, what I call sincerity and (following Williams) intelligibility: justifications must be sincere, in that states not knowingly invoke legitimation stories to deceive their subjects or appeal to beliefs that are themselves the product of the coercion supposedly being justified; and they must be intelligible, in the sense that they must draw on their subjects' existing normative commitments, and not rely on evaluative considerations that are "external" to their existing structures of belief. By requiring states to engage in good faith with the existing commitments and morally salient capacities of individual agents, this approach provides a distinctive framework – or perhaps simply a necessary component of such a framework – from which to evaluate the legitimacy of a range of existing regimes, while remaining responsive to individual agents' own particular values and judgments about political authority.

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[legitimacy]," in light of the historical understandings prevalent in the disenchanted, individualistic societies of the modern West ("Realism and Moralism," in *IB*, p. 16).