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Version: Published Version

Article:
Matravers, Matt (2022) Justice and Coercion in the Pandemic. Netherlands Journal of Legal Philosophy. pp. 263-269. ISSN: 2213-0721

https://doi.org/10.5553/NJLP/221307132021050002001

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Justice and Coercion in the Pandemic*

Matt Matravers

1. Introduction

The purpose of this short article is to highlight two issues in contemporary political philosophy that are not as often discussed as they should be, and that the pandemic has once again brought to light. The article begins by considering the way in which citizens' motivations are modelled in discussions of justice, and their relation to both solidarity and coercion. The first important question that arises is when and in what ways a solidaristic commitment to living together with others on just terms can be undermined. The second is how and in what ways people can be unreasonable and what the consequences of that are for public policy.

2. Justice, solidarity, and the place of coercion

For the last thirty or more years, a – if not the – dominant question in Anglophone political philosophy has been the one set by Rawls in *Political Liberalism*:

> How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable though incompatible religious, philosophical and moral doctrines?[1]

Put more pithily by Brian Barry, 'how are we to live together, given that we have different ideas about how live'.[2]

The concept of solidarity plays very little role in the answers provided to that question and more generally in contemporary political philosophy (particularly when compared to its companions, 'liberty' and 'equality').[3] This is in part because in its central uses, 'solidarity' tends to be associated with social movements and political struggles.[4] Rather, the answers come in (very roughly) two forms. One – *modus vivendi* or justice as mutual advantage – holds that stability can be achieved if each

* I am grateful to Antony Duff for comments on an earlier version of this article. I am also grateful to the Leverhulme Trust for a Major Research Fellowship (MRF-2020-090) that enabled me to complete the work on this article.

1 John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), 18. The issue, of course, goes back at least as far as the seventeenth century and the problem of toleration.

2 Brian Barry, *Justice as Impartiality* (Oxford: Clarendon Press, 1995), 77.

3 Rawls briefly discusses 'fraternity' in *A Theory of Justice*, but as Samuel Freeman comments, it 'is not a value that receives much attention in democratic capitalist societies'. John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), 105-106; Samuel Freeman, *Rawls* (London: Routledge, 2007), 197.

4 See, for example, Tommie Shelby, *We Who Are Dark: The Philosophical Foundations of Black Solidarity* (Cambridge, Mass: Harvard University Press, 2007).

doi: 10.5553/NJLP/221307132021050002012

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person advances his or her own self-interest through co-operation when compared with a non-co-operative baseline.[5] A second answer to which Rawls's political liberalism adheres – justice as impartiality or liberal neutrality – holds that stability depends on the state not advancing any particular comprehensive conception of the good, but rather providing a 'neutral' set of rules that enable each person to live in accordance with their preferred conception.[6] It is with this second type of approach that this article is mainly concerned.

Whereas justice as mutual advantage deploys motives of self-interest, for the impartialist solution to work people must be motivated by justice; they must wish to live together with others on fair terms. And this, while perhaps not the standard use, can be captured by the term solidarity. As Sally Scholz puts it in an excellent overview of the concept, 'individuals are motivated by justice to act in solidarity or to ensure just social relations'.[7] In Rawlsian parlance, which the article adopts, people must be 'reasonable'.[8]

Reasonableness has two key components. First, reasonable people accept that there are different conceptions of the good and that human reason is indeterminate with respect to any ranking of these.[9] In short, reasonable people 'accept that no conception of the good can justifiably be held with a degree of certainty that warrants its imposition on those who reject it'.[10] Second, as already noted, reasonable people are motivated to co-operate on terms that all can accept in recognition of the status of all as 'free and equal'.

For the most part, Rawls writes in ideal theory mode, which means that he assumes full compliance. However, at moments – particularly in *A Theory of Justice* – he does remark on the role of criminal law. In its most benign role, criminal law has an 'assurance' function just as justice as impartiality has the structure of an 'assurance game'.[11] For example, although I might be motivated to pay my fair (and legally mandated) share of tax, my motivation depends on being assured that others are paying their fair share too, and criminal law (and enforcement) can help with that assurance.[12]

5 See, for example, David Gauthier, *Morals by Agreement* (Oxford: Clarendon, 1986).
6 See, for example, Barry, *Justice as Impartiality*; Will Kymlicka, 'Liberal Individuality and Liberal Neutrality', *Ethics* 99, no. 4 (1989).
7 Sally J. Scholz, 'Solidarity', in *International Encyclopedia of Ethics*, ed. Hugh LaFollette (Wiley, 2019).
8 Rawls, *Political Liberalism*, 50ff.
9 That is, they accept 'the burdens of judgment'. See Rawls, *Political Liberalism*, 56-57.
10 Barry, *Justice as Impartiality*, 169.
11 Barry contrasts justice as mutual advantage, which he argues has the structure of a prisoner's dilemma, with justice as impartiality, which has the structure of an assurance game: 'if I am motivated by a desire to behave fairly, I will want to do what the rules mandated by justice and impartiality require so long as enough other people are doing the same.' Barry, *Justice as Impartiality*, 51. For an excellent – and different – account of the structures of modern social contract theory, see Albert Weale, *Modern Social Contract Theory* (Oxford: Oxford University Press, 2020).
12 Rawls makes this point explicitly, Rawls, *A Theory of Justice*, 240. For discussion, see Matt Matravers, *Justice and Punishment: The Rationale of Coercion* (Oxford: Oxford University Press, 2000), 144f.

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What of a less benign role? Rawls – together with Rawlsians and others writing in Anglophone political philosophy – tend not to say a great deal about what to do with the '*un*reasonable'.[13] In *A Theory of Justice*, Rawls briefly comments that, 'it can even happen that there are many who do not find a sense of justice for their good; but if so, the forces making for stability are weaker. Under such conditions penal devices will play a much larger role in the social system'.[14] More generally, the thought common to liberal impartialists seems to be that if people are unreasonable, then there is little that can be done but to oppose and (try to) control them. This is implicit in Barry's choice of a detail from Goya's 'Fight with Cudgels' as the cover of his book. At the extreme, the message is that the choice is between reasonableness and violent conflict. It is more explicit in the later Rawls where stability is contrasted with 'endless and destructive civil strife',[15] and those who hold unreasonable views such that they 'reject one or more democratic freedoms', and who would impose those views on others, confront us with what Rawls describes as 'the practical task of containing them – like war and disease – so that they do not overturn political justice'.[16]

Thus, coercion plays two roles in maintaining a just impartial liberal regime. It contributes to the assurance needed by those whose co-operation stems from their motivation to live together with others on fair terms, as long as others are similarly motivated, and it 'polices' the boundaries of the community in order to tackle those who are unreasonable.

The COVID-19 pandemic has understandably strained almost every aspect of life and governance. This includes, I believe, the fundamental building blocks of liberal impartialism and it is to this that the next two sections turn.

3. 'Assurance' in the pandemic

One largely neglected issue in contemporary political philosophy is at what point social relations become such as to make it irrational for at least some citizens to continue to co-operate. Interestingly, this issue is pertinent to both traditions of theorizing identified above. For those who propound justice as mutual advantage,

13 Noticeable early exceptions were Marilyn Friedman, 'John Rawls and the Political Coercion of Unreasonable People', in *The Idea of a Political Liberalism: Essays on Rawls*, ed. Victoria Davion and Clark Wolf (Lanham, MD: Rowman & Littlefield Publishers, 2000), Erin Kelly and Lionel McPherson, 'On Tolerating the Unreasonable', *Journal of Political Philosophy* 9, no. 1 (2001), and Jonathan Quong, 'The Rights of Unreasonable Citizens', *Journal of Political Philosophy* 12, no. 3 (2004).

14 Rawls, *A Theory of Justice*, 576.

15 Rawls, *Political Liberalism*, 159.

16 Rawls, *Political Liberalism*, 64n. It is interesting to note the comparative absence of commentary on this footnote when compared to the outrage expressed by many liberal commentators at Günther Jacobs's suggestion of an 'enemy criminal law'; Günther Jacobs, 'On the Theory of Enemy Criminal Law', in *Foundational Texts in Modern Criminal Law*, ed. Markus D. Dubber (Oxford: Oxford University Press, 2014). More generally, and with thanks to Antony Duff for discussion of this point, Rawls's claim here seems rather too quick. It is important that the unreasonable – those who reject democratic freedoms – threaten others in practical ways, and if they are to be treated like 'war and disease', that they are impervious to reason.

doi: 10.5553/NJLP/221307132021050002012

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the answer is at least clear in principle: it is irrational to continue to co-operate when co-operation is less advantageous than non-co-operation. However, identifying that point is not easy given the counterfactual (what would my life be like were I to defect?).

Hobbes, of course, thought that life would be so terrible – 'solitary, poor, nasty brutish, and short'[17] – in the absence of co-operation that any conditions up to violent death were advantageous, but this account seems too extreme, which is one reason why liberal impartialists regard justice as mutual advantage as inherently unstable.[18] People motivated solely by self-interest will defect from co-operative agreements as soon as it is to their advantage to do so. However, while liberal impartialists are quick to identify this as a flaw in the position of their opponents, they are mostly silent about the point at which conditions of injustice render it irrational for citizens to continue to act on their sense of justice, yet there must be such a point.

This issue raises profound questions about degrees of inequality, poverty, and inequality of opportunity, that go well beyond the scope of this article. Here I merely want to point out two ways in which the pandemic has contributed to the urgency of at least beginning to address the issue. First, the pandemic exacerbated existing inequalities in myriad ways, both nationally and internationally. The lived experience of lockdowns, for example, was very different for those with certain types of jobs and accommodation. Appeals to 'solidarity' – to the claim that 'we are all in this together' – whilst commonly heard from those in power could not disguise the obvious fact that some were a great deal more comfortable than others for reasons that, as Rawls puts it, 'cannot possibly be justified by an appeal to the notions of merit or desert'.[19] Of course, such inequalities are, and always have been, pervasive, but their arbitrariness comes into focus in the face of a natural disaster such a COVID-19.

Internationally, the situation is more complex not least because it is unclear that the international order can be modelled on the primarily domestic theory of liberal neutrality.[20] That said, if anything the imbalance in vaccine provision is likely to exacerbate the sense that the international order is not based on principles of equality between nations. Indeed, the argument for providing vaccines across the globe has less of a solidaristic air and more of the feel of justice as mutual advantage, in that what is motivating richer countries is the proposition that it is not in their self-interest to have regions of the world conducive to the creation of new variants.

17 Thomas Hobbes, *Leviathan: With Selected Variants from the Latin Edition of 1668* (Indianapolis: Hackett, 1994), 76.

18 On instability as a flaw in justice as mutual advantage, see Barry, *Justice as Impartiality*.

19 Rawls, *A Theory of Justice*, 7.

20 Rawls, of course, thought that it could not (at least in any straightforward sense). See *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999).

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Second, at least in the UK, the appeal to solidarity was undermined by the conduct of some of those in power, leading to a widespread sense that there was 'one rule for us [the governed] and another for them [those in power]'. The most notorious, but not the only, case was of the Prime Minister's special adviser, Dominic Cummings, who whilst infected with COVID-19 travelled from London to his parents-in-law's property in Northern England and then whilst there travelled with his family to a nearby town for a sight-seeing outing, in at least apparent breach of the regulations in force at the time.[21]

I do not want to suggest that inequalities, or the actions of one, or even several, politicians in breaking lockdown rules should lead others to conclude that their continued co-operation on just terms is irrational, but rather to make two points. First, although we can model justice as impartiality as an assurance game, it is of course not a 'one-shot' game. The motivation to live together with others on just terms needs to extend over time and is thus liable to slow erosion. Only time will tell, but perhaps COVID-19 will prove to have done significant damage to the case for acting on one's sense of justice. Second, my purpose is mainly just to raise the question. If the theory of political liberal regimes depends on positing a *shared* motivation to act justly[22] – and it does – then it matters greatly whether that condition holds and that is surely something that contemporary political philosophers should address.

4. Unreasonableness in the pandemic

Rawls's reference (quoted above) to those who 'reject one or more democratic freedoms', and Barry's invocation of imposing (or not) one's own conception of the good on others, provide clues to a clear sense of 'the unreasonable'. To take a contemporary example, consider the Taliban in Afghanistan: certain in the rightness of their beliefs, they impose them on others. Confronted by such persons within its boundaries, a liberal society may have little choice but to opt, perhaps not for fighting with cudgels, but for 'containment'.[23]

However, unreasonableness may not manifest only in such extreme examples – in people who appeal 'to religious truth or claims to racial, gender or ethnic superiority in political argument'.[24] Such appeals are ruled out because they fail to respect others and violate the demands that flow from accepting the limits of human rea-

21 For an overview of the story, see https://www.theguardian.com/world/2020/may/29/from-evasion-to-evisceration-how-the-dominic-cummings-lockdown-story-unfolded-durham.

22 This condition can take stronger and weaker forms. At its strongest, we might say that each person is motivated to act justly *if and only if* sufficient others are so motivated. A weaker form, a version of which I defend in *Justice and Punishment*, depends on the assumption that others are motivated by justice not being undermined or shown to be irrational.

23 Quong, 'The Rights of Unreasonable Citizens'.

24 Quong, 'The Rights of Unreasonable Citizens', 315. For an interesting attempt to distinguish 'the unreasonable' from 'the partially reasonable' and 'the non-reasonable', see Benedetta Giovanola and Roberta Sala, 'The Reasons of the Unreasonable: Is Political Liberalism Still an Option?', *Philosophy & Social Criticism* (2021).

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son (the burdens of judgment) and the lack of certainty when it comes to conceptions of the good. But there must a 'flip side' to the argument from the burdens of judgment that applies when human reason *is* sufficient, if not for 'certainty' than for justifiably acting on its demands.

Consider, for example, vaccination. The argument for vaccination against COVID-19 rests on the weight of scientific evidence for its safety and efficacy and on the evidence of the effects of the virus on unvaccinated populations. Generally, propositions that express the consensus of scientific opinion are uncontroversial and orthogonal to the concerns of political liberals. However, this is clearly not the case in relation to the pandemic and vaccination.

We can distinguish between two factions of those who reject vaccination. On the one hand, there are those who reject the scientific evidence perhaps on the basis of some conspiracy theory such as that the virus does not exist and that governments are using vaccinations to inject computer chips into their citizens. On the other, there are those who accept the existence of the virus and the efficacy of the vaccination but think that it is not the proper role of Government to require vaccinations. What makes the case interesting is that vaccination is both an instance of 'healthcare', for which informed voluntary consent is usually a touchstone, and an 'other-regarding' action given that vaccination reduces the chances of spreading the virus.

Are those who believe the conspiracy theory and who refuse to be vaccinated unreasonable? In one sense, it is difficult to say. The standard ways of understanding unreasonableness tend to focus on accepting the burdens of judgment and the 'fact of reasonable pluralism'. Even those who believe in the conspiracy theory *might* accept that others reasonably disagree. However, such a conclusion would hollow out political liberalism, given how much of public policy depends on scientific evidence. If citizens can reasonably reject, for example, the science behind policies aimed at public health or at reversing the effects of climate change, then political liberal states would be paralyzed. As noted above, there must be a 'flip side' to accepting the burdens of judgment, which is accepting when they do not apply. Of course, accepting that leads to further complex questions about the degree to which we can clearly demarcate matters that are subject to scientific consensus and matters that are subject to reasonable disagreement, and I suspect that line is both more important and less discussed than it should be.

A finding that conspiracy theory 'anti-vaxxers' are unreasonable does not necessarily mean that such people can be forced to be vaccinated, but before turning to that consider the second group. This group rejects vaccination by appeal to some account of limited government. They are not obviously unreasonable as long as their conception of limited government is capacious enough to encompass the demands of justice.[25] However, it does not follow that their refusal to be vaccinated must

25 On this important caveat, see Samuel Freeman, 'Illiberal Libertarians: Why Libertarianism Is Not a Liberal View', *Philosophy & Public Affairs* 30, no. 2 (2001).

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necessarily be respected any more than that it would follow that the state could not enforce the wearing of seat belts in cars because some people believe that to do so is to go beyond its proper remit.

The differences with respect to reasonableness, then, may have little or no policy significance, although it will matter to political deliberation. A policy of mandatory vaccination, or one of voluntary vaccination but 'vaccine passports' being required for access to certain places or events, will need to be justified in the usual ways by reference to what is practicable and has the best outcomes. This article has nothing to add to that issue. However, in deliberating over what to do, the second group has a say in that its members can engage with other citizens about what is within the scope of legitimate government. The first does not, as a refusal to accept the scientific consensus is unreasonable, although there will surely be reasons to foster what Giovanola and Sala call 'inclusion through engagement' both to demonstrate respect for persons, if not for their views, and to try to convince them of the scientific consensus.

5. Conclusion

In various ways, the pandemic has brought to the fore issues that have been with us for a very long time. Most contemporary democratic states are marked by inequalities in wealth, income, and opportunities. In many, political discourse is not characterized by reasonableness, but by unreasonable forms of populism and conspiracy theories. The point of this article has not been to resolve how we should deal with these issues, but to highlight the ways in which they pose a challenge to one (and, I think, the dominant) mode of Anglophone liberal theorizing. Inequalities undermine solidarity in practice, but also strike at the foundational premise of liberalism: that each person is motivated to live together with others on fair terms on the condition that others are so motivated. Similarly, unreasonableness and conspiracies undermine public reason, but also pose a theoretical challenge in demarcating the limits of the reasonable.[26]

26 Matej Cíbik and Pavol Hardoš, 'Conspiracy Theories and Reasonable Pluralism', *European Journal of Political Theory* (2020).

doi: 10.5553/NJLP/221307132021050002012