# On Dissing Public Reason: A Reply to Enoch*

## *Gerald Gaus*

### 1 A HOPELESS TRADITION?

In recent essays David Enoch has advanced what he believes to be a wide-ranging and thoroughly damning critique of contemporary accounts of public reason. In an essay published in this journal, my book, *The Order of Public Reason*, has been one of his targets.[1] I do not believe that it is overly sensitive to say that his critique goes beyond the norm of critical analysis; it seeks to show how the entire view is based on palpable fallacies, equivocations, conflations, and errors. The "entire tradition" — and this, I take it, includes Rawls's later work — is apparently "hopeless" (145). The charges are legion and serious. Enoch's accuses *OPR* of dangerous conflation (148), triviality (150), equivocation (156, 159), a variety of fallacies, including the "fallacy of misapplying a formalism (151),[2] and, of course, the naturalistic fallacy (150). If all that

[1] "The Disorder of Public Reason," *Ethics*, vol. 124 (October 2013): 141-76. Page references to this essay are parenthetical in the text. References to *The Order of Public Reason* (Cambridge: Cambridge University Press, 2011), are indicated in the text by "*OPR.*" See also Enoch's "Against Public Reason" in *Oxford Studies in Political Philosophy*, vol. 1, edited by David Sobel, Peter Vallentyne and Steven Wall (Oxford: Oxford University Press, forthcoming).

[2] By which Enoch apparently means that he disagrees with the conclusions I draw from my modeling of an impure coordination game because I do not expand the strategy set to include actions to get the other party to switch from the current strict Nash equilibrium to one that the agent ranks higher. It is entirely correct that in this simple model I confine the strategy set to those of the standard impure coordination games. As I stress, this is a "toy" game (*OPR*, 390); often, however, simple models that abstract from important details can be extraordinarily enlightening. I believe this is the case with modeling coordination on rules as a straightforward large-number evolutionary coordination game (especially when the coordination achieves strong networking benefits), where all really do have powerful reason to play the Nash equilibrium. For evidence that in *N*-generational impure coordination games people do act upon, and teach to the next generation, the strict Nash equilibrium, see Andrew Schotter and Barry Sopher, "Social Learning and Coordination Conventions in Intergenerational Games: An Experimental Study," *Journal of Political Economy,* vol. 11 (2003): 498–529. Philosophers not well acquainted with modeling often object to models by drawing attention to some significant variable, or some strategy, that

wasn't bad enough, this muddle leads up to a view that is "arrogant and patronistic" [sic] (175). I end up, Enoch charges, giving away the game (155), and I ultimately "lose" my "nerve" (160).

Perhaps if most theoretical differences in philosophy were the result of manifest errors, fallacies, and equivocations, this aggressive and relentlessly critical method might be enlightening. But we are dealing with deep and complicated matters; disagreement between traditions is rarely the result of the "hopeless" confusion of one. Rather, theorists in different traditions tend to see different problems as salient, interpret facts in different ways, and even disagree about principles of good philosophical reasoning. If we can explore these differences, we begin to understand why they so deeply disagree.

My aims in these comments are twofold. First, I wish to set the record straight regarding several of Enoch's indictments (it would take a treatise to address them all — and not one that I wish to write). Because he so often interprets *OPR* by relying on his own presuppositions, the resulting concoction is indeed often somewhat muddled. Having clarified a few basic points, I undertake some preliminary efforts at identifying when his brand of moral realism, and my version of public reason, differ — and, perhaps, where they are more compatible than one might think.

## 2 SOCIAL MORALITY AND FUNCTIONALISM
### 2.1 Social Morality and Personal Moral Convictions
The idea of "social morality" is by no means my invention; it is explicitly the focus of philosophers such as Peter Strawson, Kurt Baier, and David Gauthier.[3] And though he does not focus on the term, it was the core of

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the model does not include. Sometimes, but not always, making a model more complex is advisable, but even then some variables are omitted. Though Enoch does not note it, *OPR* (339-441) does, in fact, tentatively consider some difficult problems of equilibrium change; in more recent work I have begun to model the sorts of strategies in which he is interested; the basic story becomes more complicated, but the core lesson of the standard model remains. See my essay "The Role of Conservatism in Securing and Maintaining Just Moral Constitutions: Toward a Theory of Complex Normative Systems" in *NOMOS: Conservatism* (New York: New York University Press, forthcoming).

[3] For example: Peter Strawson, "Social Morality and Individual Ideal," *Philosophy*, vol. 36 (1961): 1–17; Kurt Baier, *The Rational and the Moral Order: The Social Roots of Reason and Morality* (La Salle, IL: Open Court, 1995), 157; David Gauthier, *Morals By Agreement* (Oxford: Clarendon Press, 1986), 269.

Rawls's work from the 1950's through the 70's. Despite Enoch's expressed skepticism (149), there is indeed strong — in my opinion, overwhelming — evidence that all viable human societies (i.e., ones that are not disintegrating or are characterized by war and chaos), from small-scale forger societies to large-scale market orders,[4] have possessed a system of widely shared moral rules. That they are shared is critical, for such rules provide the basis of shared normative and empirical expectations as to what others will demand of one, and how competing claims will be adjudicated. To use Rawls's phrase, these are the sorts of things social morality must do if it is to play its "expected role in human life."[5] Without shared normative expectations (what I expect other people ought to do, and what they think I ought to do) and empirical expectations (what I expect other people will actually do, and what they expect I will do), cooperation is impaired and social conflict aggravated. As I stress in *OPR* (chap. 4), there is strong evidence that people take this social morality seriously: they experience guilt when they fail to conform to it, and experience the reactive attitudes when others fail to.

I stress the term "social morality" more than, say, does Gauthier, as I make no claim that social morality encompasses the whole of the moral realm: it does not supplant personal conviction about the requirements of, or truth about, morality. Indeed, the entire account supposes that our societies are composed of individuals who, like Enoch, have definite views about moral truth, and their views of these matters in no way depend on others sharing them (as they will stress, their truth does not depend on *anyone*'s belief). Others, of course, have different views of morality and its truths. But so far from *OPR* dismissing them, a main aim of *OPR* is to connect these deep convictions to the normative status of our shared, social morality. Indeed, as we shall see, unless they are so connected, the shared rules of which I have been speaking will not have normative status (§3.2). However, *OPR* does adamantly insist that in a society in which there are deep and wide disagreements among reasonable people, direct appeal to these controversial accounts of

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[4] I examine the evidence concerning forager societies in "The Egalitarian Species," *Social Philosophy and Policy*, vol. 31 (2), forthcoming.

[5] John Rawls, "The Independence of Moral Theory" in *John Rawls: Collected Papers*, edited by S. Freeman (Cambridge, MA: Harvard University Press, 1999): 286.

morality cannot perform the expected and necessary role of social morality of coordinating our normative demands. And Enoch should concur; as he stresses, indeed celebrates, we often are "fighting in the arena" (175) of moral contestation: we debate the nature and demands of moral truth, as interpreted by the many moral theories that confront us. While this is an important engine of moral enlightenment, it is also an admission that appealing to such moral beliefs cannot perform the role of coordinating our moral claims and expectations. Sometimes we need contestation, but we also require coordination.

*2.2 Functionalism*
My stress on the expected *role* of social morality implies that it has a function. Enoch is skeptical: "talk of the function of social morality… makes perfect sense if we're talking about a social phenomenon but arguably makes little sense if we're talking about a normative one" (146). Does, he asks, morality itself have a function? "(Compare—the study of physics has a function, perhaps, but does physics itself?)" (149). These skeptical remarks assume that social phenomena cannot be normative, but that is precisely the point of debate between us. (I shall argue that this is an implausible assumption, §3.1). I certainly concur that physics itself does not have a function; the question, though, is whether we are to adopt Enoch's view that physics is the enlightening model for morality or — as he recognizes — my view that, at least concerning social morality, law is the better model (146, 149). Like Philip Kitcher, *OPR* understands social morality as a sort of tool or social technology for human cooperation that is, perhaps, *the* innovation of our species.[6]

Now there is no direct way to adjudicate this dispute between the physics and social technology models: we have no shared methods to test for normativity, our intuitions conflict, and ordinary language is, I think, inconclusive.[7] These are different concepts of morality. As with

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[6] Philip Kitcher, *The Ethical Project* (Cambridge, MA: Harvard University Press, 2011), esp. chaps. 2 and 6. Kitcher maintains that "[t]o declare that our ancestors *invented* ethics is to deny that they *discovered* it or that it was *revealed* to them." Ibid., 7.

[7] Though we can see many thoughtful non-philosophers supposing a functional view, e.g., Elliot Turiel, Melainie Killen, and Charles C. Helwig. "Morality: Its Structure, Functions and Vagaries," in *The Emergence of Morality in Young Children*, edited by Jerome Kagan and Sharon Lamb (Chicago: Chicago University Press, 1987), 155–243.

many theoretical disputes (and such is the debate about the concept of morality), the only answer is which concept is part of a more satisfying, comprehensive, and compelling understanding of our normative lives, including our judgments, criticisms, justifications, excuses and punishments. On my view the moral life has genuine costs — guilt, bad conscience, and rebuke — which can cause great suffering; if all this truly serves no purpose, it seems far too much like neurosis. A more prosaic advantage of an account that admits functionalism for at least some domains of the moral is that philosophic analysis of morality links up with, and makes sense of, the work of ethnographers and evolutionary theorists, who consistently suppose that morality is a socially adaptive cultural form that is basic to cooperation.[8] To be sure, on Enoch's perspective, taking these social scientific investigations into account is probably not very important, so we see here disagreement about what even constitutes reasons for theory choice. That is why these are such difficult matters.[9]

### 3 POSITIVE, TRUE, AND ABSOLUTE SOCIAL MORALITY

*3.1 Coordination as a Social Fact*

According to *OPR*, then, social morality has the fundamental task of providing the framework for human social life and cooperation. Now this task can only be achieved when we coordinate on a common set of moral rules. Because social morality has the job of coordinating our normative and empirical expectations, it is of no avail for each to have her own idiosyncratic view of it. I can have a terrific idea as to what the ideal social morality would be, but for me alone to act on it cannot do the job; indeed, even if we all happened to share the same view of morality (say, we all had the same intuitions about moral truth) but did not know this fact (i.e., there was not public knowledge of it), we would not have coordinated normative and empirical expectations. What is required is

[8] See, for example, Christopher Boehm, *Moral Origins: The Evolution of Virtue, Altruism and Shame* (New York: Basic Books, 2012). See also Kitcher, *The Ethical Project*, esp. chaps. 1 and 2.

[9] Some believe that an admission that a theory of public reason makes controversial claims is a sign of self-defeat, as if such a theory must be no more than a list of platitudes. This, of course, would be absurd. I consider in what respects a theory of public reason can, and cannot, make controversial claims in "On Theorizing About Public Reason," *European Journal of Analytic Philosophy*, vol. 9 (2013): 64-85.

that people actually share, and know that they share, common normative and empirical expectations about each other. Because of the *functional requirement,* a social morality thus has an *existence requirement*: only if the rules of a social morality, *M* in society *S,* are sufficiently widely shared among members of *S* (they have the relevant shared beliefs, intentions, attitudes and behaviors), and it is sufficiently widely known that they share these, can *M* be the social morality of *S.* A social morality is partly constituted by the coordinated beliefs, intentions, and attitudes of the members of society. It is social not simply in the sense that it pertains to social matters (any morality can have social matters as its content), but it is also social in its constitutive conditions. Thus, *OPR* maintains that *M*'s normative status depends on a social fact: if *M* satisfies the existence requirement it is what I call the "positive morality" of *S,* and only if *M* is a positive morality of *S,* can it be a normatively justified social morality in *S.* Of course we can work to bring about a better positive morality, but until the normative and empirical expectations are actually in place it is only a proposal, as of yet incapable of performing social morality's coordination functions.

This existence requirement underlies a great deal of Enoch's ire. He most strenuously objects that my analysis, depending as it does on the existence requirement, is a highly dubious "blending" of the "sociological and normative" (148). I must, he says, provide a "metaphysical" thesis to explain this odd blending; since I do not present one, *OPR*'s analysis of social morality constitutes a "conflation" of the normative and sociological (148), which ends up first "flirting" with (149), and then committing (150), the dreaded (but never clearly explicated) naturalistic fallacy (150).[10] Some readers of Enoch have been impressed with this, going so far as to suggest that *OPR* needs a Hegelian theory of history to show why normative truth converges with the actual.[11]

Does it require a heavy-duty metaphysical thesis to maintain: only if social fact *F* applies to (is true about) *X,* can *X* have normative status?

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[10] I stress "never clearly explicated" as it really is difficult to get a clear and rigorous statement of the precise nature of this fallacy. I am prepared to accept that some, but not other, versions constitute a genuine fallacy. The term, I believe, is over-used.

[11] See for example Giulia Bistagnino, "Gerald Gaus and the Task of Political Philosophy," *European Journal of Analytic Philosophy*, vol. 9 (2103): 14-24.

(Note that this is the form of the existence requirement: only if the fact of wide uptake and public knowledge applies to a set of moral rules, can that set of moral rules have the normative status of a social morality). I see no problem at all with this very common claim. We admit innumerable instances of it without metaphysical reservations. A marriage between Alf and Betty may well have great value, but this value depends on a social fact, that they have been married (only if the social fact of marriage applies to Alf and Betty, can their relationship have the normative value of marriage). Or consider: it is wrong to counterfeit currency *X*. This requires a variety of widely shared beliefs and practices in a society ("sociological" matters) as to what constitutes a currency: unless these beliefs exist, *X* is not a currency, and so *X* cannot be counterfeited. One last example that moves us closer to social morality: suppose Alf has a moral obligation to obey the instructions of the leader of society *S*, who is Betty. Over time, however, it eventuates that nobody else is paying Betty's commands the slightest attention, and they often ridicule her, making her something of an outcast. These social facts undercut her status as leader. Perhaps she would still be the best leader, and if Alf came up with a blueprint for a great leader, it would be a plan to make Betty the leader. But that plan would not itself *make* Betty the leader, and if the obligation depends on the social fact that Betty is the leader, there is no obligation to obey her.

There is no hint whatsoever of a naturalistic fallacy in any of this; there is no equation or conflation of the moral with the sociological, nor any attempt to derive an "ought" from premises that contain only "is" statements.[12] *OPR* does not depict any sociological fact as sufficient for a normative social morality, but it does hold that such facts are necessary. A normative social morality must meet the existence requirement *and* be normatively justified. Enoch is again skeptical: he makes the somewhat puzzling remark that "conjunctions rarely help in solving theoretical problems" (147). There is no explanation of this sweeping claim; it seems quite mistaken. Would one say: "sets of conditions that are individually necessary and jointly sufficient rarely help in solving philosophical problems"?

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[12] To employ a line from Peter Strawson "the metaphysics was in the eye of the metaphysician." "Freedom and Resentment," *Proceedings of the British Academy*, vol. 48 (1962): 188-211 at p. 209.

*3.2 True Morality and Convergent Normativity*

The existence requirement is, then, a necessary, but not a sufficient, condition for a social morality to possess normative status. For a social morality to exist there must be coordination on what can be normatively demanded of one, and how one's claims against others will be resolved. We now must distinguish two very different senses in which a person can share a normative expectation with others. In one case, which characterizes a strictly positive morality, there is wide agreement on what people believe is normatively expected of one, and indeed one may advance against others "oughts" based on this. But this does not imply that anyone truly endorses the requirements and demands as normative. Given the moral and other evaluational beliefs of any member of the society, she might see the social morality, *M*, as making unreasonable and immoral demands, yet all may continue to act on *M*, and demand that others do so too, perhaps fearing social disapproval and other punishment.[13] Contrast this to a case in which each, drawing on her own normative perspective, endorses the positive morality as truly normative. Following Kurt Baier, I call such a system of social morality a "true morality." Such a system is characterized by *convergent normativity*, and so has three great virtues.[14]

(*i*) It is a stable basis for social morality, for each sees that it is endorsed by her (controversial) vision of moral truth. When, under conditions of reasonable disagreement, convergent normativity does not obtain, many are apt to cynically view their social morality. It claims to determine the correct adjudication of claims, yet when some think through these matters, they find it is simply the customary code, or the view of the powerful to which they must conform. This is certainly apt to

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[13] This is no mere fanciful example. Cristina Bicchieri shows how social rules that are widely disapproved of nevertheless can generate such shared expectations and enforcement. See her *Norms in The Wild* (Cambridge: Cambridge University Press, forthcoming).

[14] See further my essay, "On the Appropriate Mode of Justifying a Public Moral Constitution," *The Harvard Review of Philosophy*, vol. 19 (2013): 4-22, an essay that Enoch cites.

weaken their commitment; as moral agents they do not see why they should internalize its rules, feel guilt when they violate them, and so on. In turn, this is almost certainly corrosive of the shared normative and empirical expectations upon which, I have argued, human social life depends.

(*ii*) As Rawls observes, if convergent normativity obtains, if anyone has the truth about morality, then our social morality is itself in conformity with such truth.[15] I am aware that some are not especially concerned about their own fallibility in these matters, and do not seek the confirmation of other perspectives. However, to those who are convinced there is an ultimate truth about morality but are impressed by how difficult it is to reason well about these matters, a social morality characterized by convergent normativity is a great good.

(*iii*) Most importantly, *OPR* argues that, on the most plausible account of the reactive attitudes, what I have been calling a "true morality" allows each of us to suppose that violators appropriately experience guilt, and that those treated wrongly in social morality appropriately feel resentment. Enoch is entirely correct that this account of responsibility and the reactive attitudes is by no means indisputable; there are certainly others. I do believe, however, that the body of recent philosophical work on moral responsibility endorses some version of *OPR*'s general Strawsonian approach; of course even within this family of approaches there are subtle differences. What is important is that these approaches stress that the reactive attitudes require that one experiencing the attitude inquire into (or, at least make suppositions about) the perspectives of others, to see how they view the interaction to which one objects. One's own belief in the objective moral wrongness is not enough; one must see how the other understands the situation. On *OPR*'s account, one must see whether the other's normative perspective deems the rule to be normatively justified. Did she really know better? And if not, in what way can she be held responsible?[16]

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[15] John Rawls, *Political Liberalism*, expanded edn. (New York: Columbia University Press, 2005), 128.

[16] David Shoemaker distinguishes the conditions for moral and legal responsibility in his excellent essay, "Psychopathy, Responsibility, and the Moral/Conventional Distinction," *The Southern Journal of Philosophy*, vol. 49, Special Supplemental (2011): 99-124.

Enoch is right to point out that judgments of wrongness need not entail judgments of responsibility, and so there is a "gap" — something he notices that I recognize, but about which he thinks I am "unhelpful" (163). Let me try harder to help. It is typically the case, given the account I have offered, that controversial judgments of wrongness do not support moral responsibility judgments. When we interrogate the other person's point of view, we see that even given diligent good reasoning, she cannot see the force of our claim. Now in the case of social morality, to divorce judgments of wrongness from judgments of responsibility would undermine it as an effective tool. Social morality is critically a practice of responsibility. As I have emphasized, it requires shared normative and empirical expectations; maintaining a true social morality requires maintaining these expectations — rebuking people who do not act on the shared justified rules (their actions undermine empirical expectations) and those who make mistakes about what the rules require (and so undermine shared normative expectations). So, while the very idea of a judgment of wrongness does not entail the practice of responsibility, in social morality these are intimately linked. Every complexity is not a fallacy or conflation.

The extent to which Enoch's interpretation tends to presuppose his own understanding of morality is nicely brought out in another conflation charge. According to *OPR*, because moral agents are committed to a moral life with responsibility relations and the reactive attitudes towards strangers, if Alf thinks through his first-personal perspective, he will appreciate that he is committed to a social morality that we all share. Enoch writes:

> But this argument dangerously conflates the singular and the plural first-person pronouns. If the problem is connecting to the concerns that led me down the path of moral inquiry, then surely the only person whose "positive morality" should be of interest to me is, well, me. Even if my answers fail to connect with the moral judgments and practices of everyone else, this will in no way make my answers somehow irrelevant to the question I was asking, because it was me asking these questions (148).

Now I trust at this point it is manifest that the idea of a personal or individual positive social morality is entirely alien to *OPR*'s analysis: it simply is not sensible to say that only person *whose positive [social]*

*morality* should be of interest to me is me. Positive social morality exists (i.e., it is a "positive fact") only if the existence requirement is met, which depends on the beliefs, attitudes, etc. being shared within a collectivity, not simply by an individual.[17] So let us interpret this charge as saying that each of us should only be concerned with whether the current shared positive social morality is normatively justified from his own perspective. However, we have seen that a shared network of empirical and normative expectations is necessary for social morality to perform its expected functions in human life; I have just pointed to three great advantages of these normative expectations being very widely justified. So, on the account offered in *OPR*, one's first-personal reflections lead one to appreciate, on one's own view of the world, the great good of *us* sharing empirical and justified normative expectations that support a practice of moral responsibility. Unlike an account of morality such as Enoch's, the social moral enterprise is (partly) an inherently collective one, which we can only achieve together. A social morality that is normative for me, but not for most others, would be unable to sustain the relations of moral responsibility that I seek.

### 3.3 Absolute Morality and Human Rights

It is with respect to what I call (again, following Baier), "absolute morality" that, according to Enoch, I give the game away and lose my nerve (160). Roughly, we have yet another equivocation claim, this time between two accounts of having a reason. The basic criticism is that, on *OPR*'s official account, the important category for a justification to Alf that he act on moral rule *R* is that "he has a reason to do so," where this (again, roughly) means that after a "respectable amount of good reasoning" Alf would recognize an undefeated reason that he ought to act on *R*. It may well be, I admit, that there could *exist* an objective reason that applies to Alf, but if he would not arrive at it as an undefeated conclusion in a respectable deliberation, he does not *have* that reason. Now Enoch is convinced that I abandon this account of reason in my account of absolute morality, which includes an account of human rights. Here, he insists, *OPR* appeals simply to what reasons there *are* —

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[17] *OPR* ( 167) argues that there must be some threshold percentage of the group, less than the entire group, which shares the relevant beliefs, intentions, etc.

objective reasons that apply to Alf whether he sees them or not. If there are human rights that apply to all true moralities, even if people do not now acknowledge the relevant claims, surely those rights cannot be grounded in the reasons people *have*, but only in the reasons that *exist*. Interestingly, Jonathan Quong agrees with this general principle, but since he interprets *OPR* as being based throughout on the reasons that people "have," he holds that *OPR* cannot adequately take account of human rights.[18]

Without admitting to losing my nerve, I do confess that I find the problem of universal (or near-universal) moral considerations in social morality an especially difficult one, and I am not confident that thus far I have articulated a fully adequately account. I stress "in social morality," for it is easy to assert that there are universal claims of wrongness by appealing, say, to controversial moral theories such as Enoch's. But if our aim is a world in which human rights claims get real traction and uptake in different cultures (and are not viewed as alien western impositions), this easy route is not terribly satisfying. *My* question is: can human rights claims be grounded in social morality, which is inherently a shared, socially recognized, enterprise?

To gain a bit of perspective, it may help to recall an earlier version of this debate. T. H. Green, in his *Lectures on the Principles of Political Obligation,* maintained that "rights *are made* by [social] recognition. There is no right but thinking makes it so…."[19] Green thus appears to advance the:

> *Rights Recognition Thesis:* "Alf has right *T* in society *S*" only if *T* is recognized in *S* as Alf's right.

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The core idea is that rights ascriptions instantiate an interpersonal recognition that the right holder has a certain status to advance moral claims on others. The Rights Recognition Thesis allows that "Alf ought to have right *T* in society *S*" can be a true moral statement regardless of whether Alf's possession of *T* is recognized in *S*, but unless social recognition occurs, there would not actually be a practice in which Alf actually possesses *T*. Now W. D. Ross thought this implausible: "It would imply that slaves, for instance, acquired the moral right to be free only at the moment when a majority of mankind, or of some particular community, formed the opinion that they ought to be free, i.e., when the particular person whose conversion to such a view changed a minority into a majority changed his mind. Such a view, of course, cannot consistently be maintained…."[20] Green's view was, I think, rather more subtle than Ross credits — I do not think explicit recognition is required. As Green pointed out, the slave engages in social relations, in which others implicitly recognize duties and obligations. If he has a family, he has rights in that family; if he engages in cooperative activities with citizens, he has the rights implicit in those practices; even if he has obligations as a slave, the masters commit themselves to accepting that slaves possess moral personality and the status of responsible agents. The basis of a right to be free, Green suggested, already exists: it is anchored in the way the society already conceives of the slave — the existing conception implicitly grounds the rights being claimed. So we might rephrase Green's more subtle view as the:

> *Expanded Rights Recognition Thesis:* "Alf has right *T* in society *S*" only if *T* is explicitly recognized in *S* as Alf's right, is implicitly recognized in his relations with other members of *S*, or in the way they conceive of Alf.

Now *OPR* does not embrace even the Expanded Rights Recognition Thesis without qualification, for it allows that, given one's comprehensive moral view, one may be justified in asserting "Alf has right *T* in society *S*" even if there is no implicit or explicit recognition of this. However, insofar as our concern is with social morality and its practice of interpersonal responsibility, the Expanded Rights Recognition

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[20] W. D. Ross, *The Right and the Good* (Oxford: Clarendon Press, 1930), 51.

Thesis is roughly correct. The critical insight we can draw from Green's analysis is that an interpersonally recognizable demand that slaves have a right to be free, and which the claimant can hold slave owners responsible for ignoring, is not based on a mere claim to better intuit the moral truth whether the owners see it or not, but in calling attention to a status that the owners are committed to but are not truly honoring, and that is why we can hold them responsible for failing to explicitly recognize these rights. Human right claims that conform to the Expanded Rights Recognition Thesis and yet go unheeded warrant the reactive attitudes.

*OPR* seeks to elaborate a conception of human rights based on Green's insight. Suppose we consider all social orders in which people conceive of themselves as what I call "self-directing agents," with their own purposes and plans, and who see their actions as inherently directed at their own ends. (These might be almost all social orders, though it is an empirical matter whether that is so.) From this, can we show that some general principles of treatment are implicit in their practices and self-conceptions? Such principles would be "transcendent," as they would transcend any specific true morality; they would be principles that call for the institution of specific rights that are grounded in morality as such, at least insofar as the morality is one among such self-directed agents. And yet, unlike a mere claim (even if true) to human rights based on intuitions of moral truth such as Ross's or Enoch's, an extended existence condition would be met, as the grounds for human rights demands would be implicit in the social order. And just because this extended existence condition would be met we could say, first, that these human rights are grounded in public reason and, secondly, that because they are so grounded they are apt to be an effective basis for instituting explicit rights, since the case for them can get real traction, building up from commitments already implicit in a society.[21] It is by connecting human rights to the underlying values and conceptions of the person in a social order that they become real ways of interacting, rather than simply external criticisms, say, by liberal interventionists, who claim, perhaps correctly, to know better than other peoples. As Martin

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[21] Compare Rawls's idea that human rights are implicit in the idea of social cooperation in *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 65, 68.

Luther King stressed, the aim of the reformer is to produce "tension in the mind" of the oppressor — the aim of *OPR* is to develop a conception of human rights that inherently generates such tension.[22]

### 4 THE PUZZLE OF MORAL AUTHORITY AMONG EQUALS

*4.1 Content Simpliciter or Judgment of Content?*

A basic claim of *OPR* — to which Enoch objects even more than usual — is that a true morality (a positive morality justified through convergent normativity) provides the ground for exercises of moral authority that nevertheless recognize others as equal moral persons. Before we can see whether any solution is adequate, we have to understand the problem to which it responds. The problem on which *OPR* focuses is that moral claims, demands, rebuke, resentment, and indignation — as I have stressed, not only judgments of wrongness but the practice of moral responsibility — inherently constitute a claim to moral authority over another in that, at this moment, one is claiming that another should defer to one's judgment about what is to be done. So a claim to superiority at the moment of demand is part of the practice of social morality. When Alf makes a moral demand on Betty to φ, he is not simply (perhaps not at all) arguing with her that she φs, asking her, or pleading with her. He is saying that she must, whether or not she concurs with his demand. Alf is thus insisting that on this matter his judgment about social morality, rather than Betty's, is to be followed by Betty; his judgment is directive for her.

Enoch objects: "The normative force — what Gaus misleadingly calls authority, I think — comes from the content of what I said, not from the fact that I said it. There is no interesting sense in which authority is claimed…" (159). To be sure, Alf and Betty's dispute is about the content of social morality, and yes, Alf is not insisting that Betty should do as he demands just because it is he who demands it. Alf is, however, claiming that Betty must do as he demands because *he correctly judges* the content while *Betty's judgment is incorrect*. By demanding that she defer to his interpretation of the content — and should she fail to defer she will be

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[22] Martin Luther King, "Letter from a Birmingham Jail" in *Why We Can't Wait* (Boston: Beacon Press, 2011): 85-110.

blamed, rebuked, and punished — Alf is relying on the superiority of his judgment about the content. They had a theoretical dispute about content, which has now been resolved by a claim to superiority of judgment; Alf is claiming a superior status to direct Betty's action because his judgment is superior. It is this sense is which he claims authority for his judgment.[23] I can't quite make sense of the demand that another conforms to your interpretation of disputed content, while insisting that this stance is making no claims about the superiority of your judgment about the content.

*4.2 Authority and Authoritarianism*
*OPR* is especially concerned with distinguishing two different types of claims to such authority.

(*i*) Alf might claim that Betty should defer to his judgment, "$\phi$ is the required act (so $\phi$!)" because $\phi$ is required by a true or correct moral rule or principle *R*, though Betty cannot appreciate *R*'s normativity. Here Alf is not simply claiming the authority to say that Betty has misapplied the rule in a particular case (something social morality simply cannot do without), he is claiming the authority — the superior stance — to deem what rules are normative in the first place. Alf assumes the role of a teacher or leader, guiding the actions of those who cannot appreciate *R*'s normative nature. I describe this as an authoritarian stance; the authoritarian nature of the stance is not modified if Alf is right about the normative basis of his demand. Enoch appears to disagree: if Betty truly has a moral duty to $\phi$, even if as a competent and diligent moral reasoner she cannot conclude she has such a duty, there is nothing "objectionably authoritarian" about making her conform to it (159). The qualifier "objectionably" is, I think, important; presumably Enoch understands some demands as authoritarian, but not objectionably so.

Now here we arrive at a critical point. *Prima facie*, it might seem that Enoch and I simply have a deep moral disagreement: he believes that some authoritarianism is permissible while I maintain that it is never permissible. Not so. *OPR* claims that endogenous to our social morality and our practice of responsibility is the supposition that the subjects of my moral claims are my equals in the sense that they can grasp their

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[23] See further my *Justificatory Liberalism* (New York: Oxford University Press, 1996), 122-29.

normative grounds (223-24). It is because others can grasp why they do wrong that we can hold them responsible for their wrongdoing. We might call this the "Fundamental Supposition." The problem *OPR* sets itself is to discover what, if any, social morality is consistent with this Fundamental Supposition — seeing others as moral equals, and so as seeing them as able to grasp the normative grounds of our claims against them? In this light authoritarianism is not rejected as morally impermissible (that would be to appeal to yet another controversial moral claim), but because it simply cannot qualify as a solution to this problem. It is inconsistent with understanding others as having equal standing to determine the normativity of our morality, and so undermines our social morality of responsibility — something, I have argued, that all can see as critical to social life.

The objection to authoritarian leaders at the heart of *OPR* is not they fail to act on the right answers, or that they commit moral wrong by ordering others around, but the way they view the subjects of their authority and so undermine responsibility. Whether or not Marxism is the normatively correct view, and whether or not it is in the ultimate interests of the workers to bring about the dictatorship of the proletariat, Lenin's vanguard elite is quintessentially authoritarian. It is premised on the assumption that, because the working class is in the grips of false consciousness, those over whom authority is exercised cannot appreciate its normative basis. They are to be led by their superiors.

(*ii*) In contrast, a system of social morality based on convergent normativity is one in which the members of a social order, when engaging in "a respectable" amount of reasoning on the basis of their own evaluative perspectives, can appreciate the normative basis of the moral demand, "Conform to rule $R$, do $\phi$!" Their perspective endorses the normativity of $R$. To be sure Alf, the demander, is still insisting that in this case that Betty $\phi$ (there is thus still a claim to authority), but Alf only makes this demand when he has a well-grounded belief that Betty can appreciate the normativity of $R$. If, for example, Alf is making a demand on Enoch, he would check that Enoch's own brand of moral realism endorses the normativity of $R$. Enoch asks is this "any less objectionably authoritarian" than (*i*)? (166).

Certainly it is "less authoritarian." For one thing it supposes that the normative justification of the rules we live by is not beyond anyone's

ken. When Alf checks Enoch's realism and sees that *R* is endorsed by it, then Alf can truly say that Enoch should have known better if only he took the care to exercise reasonable diligence. That surely is "less authoritarian" than saying: "I know the moral truth. Do as I demand though you cannot reason to the conclusion that you should." Lenin really is more authoritarian than Rawls. Indeed, I do not think view (*ii*) is authoritarian at all. Because Enoch refuses to allow that a moral demand involves an authority relation, he never gives us a plausible account of what a relation of justified authority — a non-authoritarian one — would look like. Any relation of authority is one is which someone takes a superior stance and tells another what to do even though she disagrees, so unless we are careful, all such relations may look "authoritarian." *OPR* asks: when is this claim to superiority consistent with seeing the other as a responsible moral agent? The proposal is: when the exercise authority is one that is grounded on the normative commitments of the person over whom the authority is exercised. That certainly is different that saying that her view of the normative doesn't really matter.[24]

### 5 CONSTITUTIONAL FRAMEWORKS AND VISIONS OF THE TRUTH

A public reason view such as that presented in *OPR* is neither committed to, nor skeptical about, notions of objective moral truth. It does not imply that public reason is the sole basis of judgments about wrongness or duty. In that sense it is not a competitor to a realist account such as Enoch's. But more than that, public reason does not require that Enoch

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[24] I suspect that Enoch might be supposing that this idea of justified authority is a sort of poor substitute for obtaining the person's consent (see 164ff). Two points should be noted. *First*, whether or not the person consented to *R* — the normative basis of the claim — would not alter the fact that, at the moment of the moral demand, she does not consent to φ-ing. That is what demands are all about, and why we must come up with an account of justified authority. *Secondly*, that the person consents to *R* is neither necessary nor sufficient for *R* to be validated by her normative commitments, unless we build quite a lot into consent. It is not sufficient, as unless consent is obtained under the requisite conditions (it is informed, the person is *thinking clearly and consistently and adequately understands her own values commitments,* is not pressured, etc.) it could not show that *R* is normative given her outlook; but this lands us back into many of the objections Enoch raises against *OPR*'s analysis. Neither is it necessary, as we all possess normative standards that are not the result of an act of consenting or promising. As Hume showed, in consent theory the person must have the prior normative standard that promises bind, and one is bound by that even if she does not consent. "Of the Original Contract" in *Essays Moral, Political and Literary* (Oxford: Oxford University Press, 1963), 452-73.

split his normative judgments into two unrelated parts, those based on his personal convictions about moral truth and those affirmed by public reason. As I have stressed, *OPR* acknowledges that he can see the rules of public reason as normative only if they are deemed acceptably normative by his own lights.

Enoch is absolutely correct about one fundamental point: at its core public reason is accommodative rather than combative. I must say I have a hard time accepting that it is arrogant to seek reconciliation by appealing to the normative perspectives of all (175). Is it arrogant to claim that in a social world such as ours, where thoughtful people disagree about moral and religious truth, no single vision of the moral truth is suitable to organize the common rules of the moral framework of a society of equal and responsible persons? To be sure, in the philosophy seminar room and on the blogs we witness an exciting — though often less-than-civil — clash of ideas. No society with any hopes of moral improvement can do without this arena of contestation. But when we step outside the seminar room, we need to know what we normatively expect from strangers and they of us. What is the normatively correct way to navigate a crowded street?; how to buy coffee in a crowded shop?; when can I call on assistance from strangers on a city street?; whether to tip the barista?; what to wear (is it permissible to wear a burka?); how to get on to, and act on, a bus or train?; may one give a political speech on the street?; what to say, and not to say, to women co-workers?; how to disagree with one's partner (is it abusive to shout?); is it your business that your neighbor yells at his wife?; what constitutes an incursion into personal space?; when is defensive action is allowed?; when and where to pray?; when to help strangers and when it is respectful to ignore their distress?; when to criticize neighbors for not maintaining their property?; what is mine and what is yours?; when to rebuke neighbors for their treatment of their children?; should you call out your neighbor for committing adultery?; what is threatening behavior from your boss?; is your neighbor to be blamed for downloading pornography?; what is a marriage?; what is a promise?; what constitutes a fair contribution to a collective effort?; what constitutes an exploitative exchange? To live together requires that we share expectations and judgments about such matters — otherwise social life will degenerate into an unregulated tussle or constant fights about

who is acting inappropriately. Social living depends on a shared moral framework, what Rawls called "a public moral constitution."[25] Like a political constitution, it provides a framework for those who disagree to live together according to rules that all can endorse, and which provides the basis for our common moral and empirical expectations. At the deepest level, I believe, my dispute with Enoch turns on whether there is such a moral framework, whether it is necessary, and whether its normative basis must be far wider than any specific vision of the moral truth. On these issues, at least, I am fully confident that I am correct.

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[25] John Rawls, "Kantian Constructivism in Moral Theory," in *John Rawls: Collected Papers*, ed. S. Freeman (Cambridge, MA: Harvard University Press, 1999): 326.