

Deception and Public Reason

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Abstract

In this paper, I claim that the state, like any other organism, strives to seek out and maintain the conditions required for its own survival. One of the ways that it does this is by supplanting the ordinary language of public debate with its own specialist vocabulary (“official language”), hoping to influence political discourse after its own interest. This has implications for the freedom of citizens in a democracy. When the state is successful in insisting upon the use of its own language to describe its activities, this frustrates the efforts of citizens to distinguish legitimate political authority from unjustified coercion, which is precisely what they ought to be doing when exercising their public reason. In other words, citizens are deprived of the linguistic resources that they need in order to freely and independently evaluate the actions of their leaders. The politically useful tool of public relations management thereby becomes an instrument for the linguistic domination of citizens, used to secure their assent to contentious state action or to stifle their opposition. Toward the end of the paper, I use the invention of the term “unlawful enemy combatant” by the US government under George Bush to illustrate the point. The aim is to use this example to begin building a theory of legitimate political reasoning that citizens may use to resist this kind of domination.

In the first episode of the television show *The Thick of It*, a politician en route to a press conference is commanded by his spin-doctor *not* to announce the policy that he is on his way to announce. Too late to turn back, the hapless minister is forced instead to tell the assembled journalists that the purpose of the press conference is to remind them of the effective but dull work that his department does in the ordinary course of business, and that there is no new policy to announce. When it later transpires that the policy does in fact have the Prime Minister’s endorsement, the same politician is dispatched yet again

to tell the media that at the earlier press conference, he *did* announce the policy that he did not, in fact, announce. The minister's attempts to convince the press that something that never really happened actually did happen, through a series of humorous linguistic contortions, is an exercise in *doublethink* that would not have been out of place in George Orwell's *Nineteen Eighty Four*. The only difference is that here it is played for laughs rather than terror.

While the show is of course satirical – accentuating for comic effect the ineptitude of a politician who is bullied by the spin doctors and special advisers who, we are left in no doubt, *really* hold the reigns of power – we do not have to look too hard to find similar examples of doublespeak in public life. From the targeted deployment of spin, to the use of intentionally misleading euphemism, all the way up to outright lying, deceptive practices have firmly established themselves as commonly used techniques of rule, even in the advanced democracies. It is strange then that accounts of deception – of its sources and prevalence in modern politics, and of its disruptive effects on the efforts of citizens to assess the actions of their leaders and rulers - figure so infrequently in contemporary theories of public reason.

In an attempt to remedy this deficiency, in these pages I begin to construct such an account. I claim that state officials frequently use spin in order to subvert the very process of public reasoning itself. In other words, spinning constitutes a tool or method that those in power use to extract from citizens the very legitimation that they are supposed to receive from the public via the free use of its reason. The particular way in which spinning achieves this – and perhaps this explains, at least in part, its prevalence in modern politics – is through the bending and reshaping of the linguistic source material

available to those engaged in public reasoning processes. To précis the argument that follows: I claim that when the language of public debate is distorted by those in power, as it is in cases of spinning, the deliberative efforts of citizens are circumvented, diminishing their efforts to call their leaders to account and causing public reason to break down. This paper constitutes an investigation into this phenomenon. Once some preliminary matters of clarification have been dealt with, namely, the specification of what I understand public reason to be, a positive argument about spinning is advanced, one that is inspired by the sort of realism now associated with Bernard Williams. Think of this argument as a tentative experiment in realist political theorizing.

Toward a Realist Account of Public Reason

I understand the idea of public reason, at the most general level, to refer to public debate among citizens about what they ought, collectively, to do. Whenever citizens are engaged in debates about matters of public, political concern, they are engaged in processes of public reasoning. These processes constitute a discursive complex with multiple, overlapping layers; citizens debate with one another at one level, but at another level they are also in debate with those in positions of official power. The chief activity that characterizes this complex is the *giving* and *taking* of reasons, publicly accessible to all, concerning the proper course of collective action. When the state says, for example, “we shall invade Iraq because Saddam Hussein possesses weapons of mass destruction and his regime poses a threat to global peace and security,” citizens who reply “are you sure? Can you provide evidence for this claim?” are engaged in public reasoning about a proposed course of collective action. Both sides – rulers and ruled – trade reasons about

the relative merits of taking one course of action over another. This giving and taking of reasons is an extremely commonplace activity in a democracy, affecting both issues of great constitutional significance as well as the humdrum matters of everyday public policy. That we recognize this activity as so familiar explains the general appeal of those theories that place the deliberative enterprise at the heart of our understanding of democracy, i.e. theories of deliberative democracy. While there are numerous different theories tied together by this family name, each of these understand the scope and ends of public reason in slightly different ways.

If we press for a more specific and normatively interesting formulation of the requirements of public reason, we are compelled to offer a theory about the kinds of reasons that can, and cannot, permissibly be used to justify actions and choices that lead to the coercive use of state power. This is what Rawls has in mind when he says that public officials realize the ideal of public reason, in their speech and conduct, when they “explain to other citizens their reasons for supporting fundamental political positions *in terms of* the political conception of justice they regard as most reasonable [my emphasis].”¹ When public reason is specified in these normatively more demanding terms, we begin to move from an *idea* of public reason, a descriptive account of a certain kind of public, political discussion, to an *ideal* of public reason, one that invokes an associated concept: political legitimacy. On this view, “our exercise of political power is proper only when we sincerely believe that reasons we would offer for our political actions ... are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons.”²

This ideal of reciprocity - which demands that legislators must consider whether the reasons they give for their actions or decisions could reasonably be accepted by those affected by them, even if only hypothetically speaking – emerges, apparently, from the self-understanding of a constitutional democracy, a form of political community in which citizens regard one another as free and equal. It is, in other words, a demand that legislators act on a duty of civility when they offer reasons for their actions and decisions. If they are successful in doing so, the coercive measures that they enact are thereby endowed with legitimacy.

These arguments are to be understood against the background of Rawls's wider project in defending political liberalism. Political liberalism demands that the reasons used by state officials in their dealings with citizens, and by citizens in their dealings with one another, to justify the coercive use of state power are drawn from a common stock or fund of reasons that are shared by all, even though those individuals may themselves endorse all manner of private, comprehensive doctrines. In other words, public reason is part of Rawls's strategy to deal with the fact of reasonable value pluralism, and as such serves as both: (a) a theory of political legitimacy fit for a constitutional democracy; and (b) as a method for securing the kind of stability required if political liberalism is to gain the adherence of those who are supposed to live under its lights. For Rawls, the form of the theory of public reason is given by the reasonable acceptability test, while its content, that is to say, the principles that actually determine what constitutes reasonable acceptability for us, here and now, is apparently given by "a family of political conceptions of justice," of which, evidently, Rawls's theory of political liberalism is but one. It is not my intention to interrogate Rawls's theory of public reason any further,

though I do think it important to point out a blindspot that he seems to have in his thinking about the matter. It is this blindspot that I want to exploit in order to reorient the theory of public reason in a realist direction.

Although the ideal of public reason is itself supposed to regulate the collective use of coercive state power, Rawls does not seem to take into account a feature of everyday politics that appears to have large consequences for his view (or any view of public reason that is similar to his own). This is that those who speak on behalf of the state in discussions about matters of public political concern *already* wield more power than citizens, simply by virtue of the position that they occupy as part of the state apparatus. This innocuous fact becomes significant once we realize that this inequality of power becomes manifest in the deliberative process itself, as an imbalance of discursive power between rulers and ruled. This imbalance is ever-present and unavoidable, because it is built into the nature of politics itself. In other words, representatives of the state, secure in the trappings of officialdom, already speak from a position of relative privilege and strength when they encounter citizens in conversational spaces of the sort taken to constitute the realm of public reasoning.

Of the many consequences that follow from this, one in particular stands out as crucially significant. The very existence of this imbalance in discursive power gives the state official an extra interest in the deliberative process that the individual citizen does not have: an interest in maintaining his position of supremacy. Indeed, I believe this interest gives the state representative or official, in reality, a large *disincentive* to act on the duty of civility that Rawls believes that the theory of public reason otherwise imposes on him. The peculiar characteristic of those who hold power is that they seldom want to

give it up, and will frequently think of ingenious reasons as to why you should let them keep it.

This blindspot in the Rawlsian understanding of public reason arises because of a much wider problem endemic to this genre of political theorizing. That is, it begins by working up an idealized principle of public reasoning, one that officials in the non-ideal world are then taken to aspire to enact in their dealings with citizens. As such it, is an example of what Bernard Williams calls “political moralism,” his label for those kinds of view that make the moral prior to the political.³ Political moralism can take the form of either the *enactment* model, in which moral theory precisely prescribes certain political ends (like utilitarianism), or the *structural* model, which derives normative conditions of co-existence for a political community (like Rawls’s political liberalism). Williams thinks that we would benefit from starting our reflections at the opposite end. If we do so, we might end up with a very different, and much more modest, account of liberalism. So political thought should begin with the political, not the moral. Now, he says, there are very few things that we can say about the domain of the political that are not platitudinous. But we should be not concerned about that. One such platitude is that we all politics is constituted by relations of power, between the powerful and the powerless. It is inherent in the nature of politics, Williams thinks, that the powerful coerce the powerless, and it is also inherent in the very idea of legitimate politics that this coercion must somehow be justified.

That those who are subject to rule by others should seek to have the coercive authority exercised over them justified – or *legitimated* - in a particular way is what Bernard Williams calls the “Basic Legitimation Demand” (BLD).⁴ The legitimacy

question technically arises as the second, rather than first, political question because, as Williams rightly points out, strictly speaking the first political question is always in fact “the securing of order, protection, safety, trust, and the conditions of cooperation.”⁵ The attempt to resolve *this* question comes necessarily before any other, since its successful resolution makes all else possible; it is the *sine qua non* of all political life. Historically, the need for the state to satisfy the second question was thought to have been taken care of as soon as it answered the first. This is what Hobbes thought: for him, once the state solved the basic security problem, the legitimacy question no longer arose in any interesting form.⁶ The authority of the state could be said to be legitimate simply *because* and *insofar as* it solved the security question, and only if it should strike at the very security of the individuals it was supposed to protect would the duty of subjects to obey Leviathan dissolve. The state arrived to remove the problem of terror. Once it did so, that was all there was to it. That is the purpose of politics.

Of course, *we* no longer think that security and political legitimacy so neatly coincide. That the state provides a measure of relative security – relative, that is, to the alternative, i.e. the state of nature – no longer counts, by itself, as a successful legitimation of political authority in a liberal democracy. For reasons having to do with the historical emergence of liberalism as a tradition of moral and political thinking, and of democracy as a way of organizing our political affairs, we now demand a higher standard of legitimation within our political system. In other words, security has become a necessary but not sufficient condition for the legitimacy of the liberal democratic state and its actions. These more robust conditions and requirements, which take us to liberalism, reflect the modern suspicion that the state, which was intended to solve the

problem of terror, might actually reinsert itself into our lives as an agent of terror. This is the problem that Williams's favored brand of liberalism – the liberalism of fear – attempts to solve.

As Williams points out, we – the citizens of such a state - now expect that a more sophisticated legitimation account must accompany the state's various attempts at coercion. A legitimation account is just an articulation of the reasons why one party (for example, a citizen) should obey the command of another (the state). This account might be given expressly along with an order or it might be reconstructed hypothetically, but either way it is owed by the state to its citizens because it is only through the offering such an account that the state can successfully legitimate – i.e. justify – its coercive authority. There is not much that Williams has to say about how the legitimation account functions, but one key idea that can help us fill it with content is what he calls the Critical Theory test. Simply put, this prompts the powerless to reflect on the following question: if they were to see how they came to believe that the authority of those in power was justified, would they give it up.⁷ If they would reject them, because for example they came to see that they had accept the authority of the rulers because of force or fraud, then the authority of the powerful has not been legitimated.

Now, what Williams has in mind in this model is the attempt of one group of people (the powerful) to coerce another group who are subject to its authority (the powerless). This is admittedly not quite the same thing that is going on in the ordinary practices of public reason that I have in mind, for example when citizens are deciding whether or not the state's adoption of a particular course of action has been successfully legitimated. In these kinds of cases, which I take to comprise the majority of ordinary

examples of public reasoning, the group that is subject to the coercive use of state power is not always the same – for example, when a citizens are debating with their leaders about the efficacy of imposing military or economic sanctions on another nation. Still, I think this model can be pressed into service here. There is no need to think that the basic legitimation demand is only made once, at the founding of political community. And political legitimacy is not something that can be achieved once, then stored in reserve and spent by the state on those later occasions on which it is needed (*pace* the tradition, signatures on the social contract at T_0 do not necessarily legitimate the actions of the state at T_1 , T_2 , T_3 etc.). Legitimacy is instead a quality of the ever-changing dynamics of all political action. As such, it is *always* the subject of political debate and the object of citizens’ judgment.

When a citizen engages in public reason by trading reasons with state officials, what she is aiming to do is to evaluate the intended use of state power by assessing the legitimation account that has been offered by those officials to justify their plans or decisions. She seeks to distinguish political action that is legitimated by good reasoning, because it is adequately supported by an effective legitimation account, from political action that is imposed by sheer brute force, and is therefore appropriately subject to critique. As Williams makes clear in his elaboration of the idea of the BLD, an attempt at coercion is never successfully justified, or converted into legitimate political authority, merely on account of the *fact* that one party is more powerful than the other and get its way by simple virtue of its superior strength. In other words, might does not make right. Similarly, the state’s defense of its activities and actions may only bear the imprimatur of legitimacy if it is offered in terms of effective public reasons, and is not successful simply

because the state has somehow coerced its citizens to accept its proposed plan of action (to précis what follows: spinning is one means by which state officials often try to achieve just this kind of coercion, however). This amounts to an application of Williams's Critical Theory principle, which when modified for our immediate purpose, asks of those who have been compelled by the state: if they were to understand properly how the state has convinced them of the rightness of its plan of action, would they resist it?⁸

Of course, an individual cannot simply reject, out of hand, any claim that the state makes over her when it suits her own interest to do so. That would completely undercut the possibility of stable, political rule altogether. What I am suggesting instead is that individuals in their capacity as citizens retain some residual discretion to judge the legitimacy of the authority that the state is attempting to assert (either directly over them, or in the decision about whether to adopt a controversial decision or action that may affect others). When citizens are involved in making this judgment, what they are really asking themselves (and each other – for this is inherently deliberative issue) is this: has the state's plan of action been successfully legitimated? Now, what actually counts as a successful legitimation is not at issue here: the answer to *that* question is given by the *content* of public reason, rather than the *form* of it, and what the content of public reason will look like varies in its specific details from one political community to another. In a liberal political community, for example, it might correspond to Rawls's reasonable acceptability requirement, which roughly amounts to a consideration of whether the state's proposed actions faithfully reflect the values taken to be embedded in a constitutional democracy. A realist theory of public reason does not, it seems to me, have

to say much about that sort of thing. Instead, it simply announces what kinds of legitimation are definitely ruled *out* in exercises in public reasoning, namely purported legitimations that stem from the exercise of pure power.

But all is not lost. From here we can begin to construct a critique of existing practices. Even in a democracy there can be a simple break down in processes by which the legitimation account is delivered. Officers of the state might simply ignore the legitimation demand made by citizens and proceed with their actions without even attempting to answer it. This would amount to the most obvious a form of domination. But this is often not a viable strategy. In a politically mature, democratic setting, a government that is obstinate and unresponsive to justificatory demands made by an informed debating public is unlikely to last for very long. Instead, and far more interestingly, the state often pursues a vastly more durable strategy for getting its own way. It does this by manufacturing the legitimation that it requires, only then to extract it from a seemingly submissive, already-primed and pliant public. This is part of the state's ideological impulse, its drive to secure the conditions required for its own survival by manipulating, to the extent that it can, the background context in which public reasoning operates.

A Reorientation

To sum up the argument so far: realism forces us to confront the first fact of politics: that, by necessity, it involves relations of power - between the powerful and the powerless, or between the rulers and ruled. Realism (or, more accurately, it's stablemate, the liberalism of fear) shifts our perspective to that of the powerless rather than the

powerful, leading us to evince a healthy skepticism toward the behavior of those who act from a position of superior power and the ways that they justify their position of relative strength. To push the argument back specifically toward the idea of public reason: to adopt a realist orientation toward the idea of public reason would, I suggest, lead us to consider the ways in which powerful political actors have an interest in maintaining their rule, a goal that they achieve by subverting public discussion about proposed courses of collective action, loading the conversation in their favor, so to speak and using power rather than reasons to secure the agreement of citizens.

The kind of subversion that I investigate here is that achieved by the deployment by rulers of manipulative practices that attach to the *language* of politics, like spinning. I use ‘spinning’ and ‘spin’ as all encompassing terms to cover a range of linguistic practices. What they all share in common is that they are deceptive or misleading, and that they are commonly deployed when the state wishes to convince a skeptical public that its reasons for action are valid (especially in cases where the decision or action in question is highly controversial, such as going to war). The state, acting through its official organs, representatives and agencies, is certainly not the only political actor with an interest in shaping public debate in this way: private corporations and media organizations count among those who also leverage their power by spinning, and indeed they are often remarkably successful in doing so. Their role, however, in the deliberative complex of public affairs falls outside the remit of this paper. Here, I shall focus on attempts of state officials to manipulate the language of public debate. Their aim is simple: to secure their own rule by leveraging their discursive power and neutralizing opposition to their (contentious) actions. These practices lay on a spectrum: in the most

extreme cases, attempts at linguistic manipulation or massaging shade into instances of outright deception.

That public officials should sometimes be less than truthful should come as no surprise to anyone. As we all know, this is in fact a commonplace of everyday life. Hannah Arendt was quite right when she said long ago that: “[n]o-one has ever doubted that truth and politics are on rather bad terms with each other and no-one ... has ever counted truthfulness among the political virtues.”⁹ But here I connect this everyday observation to an argument about the way in which public reasoning in a democracy is systematically subverted by the state itself through linguistic conceits, or spinning. The language of politics supplies the source material for the articulation of public reasons, the currency of processes of public reasoning. This means that when officers of the state have a monopoly on the language used to describe their actions or decisions (I call this “official language,” for short), and when that language is successful in conquering the public sphere at large, the circuits of public reasoning have been compromised. A realist political theory of public reason lays bare this short-circuiting.

Language, Power and Spin

The relationship between power and language bursts onto the scene as a political problem because, as Nietzsche knew only too well, language *is itself* a medium of power. The “lordly right” to give names derives from uneven relations of discursive power - between those who have the ability to shape political discourse and those who do not. When those in power say “this *is* this and this” in relation to matters of political importance (for example, when they say that waterboarding is an “aggressive

interrogation technique” but not torture, or that the government’s policies on welfare will not lead to homelessness, but they may “result in individual cases of housing mobility”), they seek to mold the language of political debate after their own interest. By leveraging their power in this way, and by re-describing political phenomena in the terms of their choosing, they are able to narrow the range of deliberative possibilities open to citizens, foreclosing some possible courses of action while tilting the balance of opinion in favor of others. While this is a politically useful tactic as far as those in power are concerned, what it really amounts to is a systematic undermining of citizens’ ability to judge the legitimacy of the state’s actions for themselves. That is, to effectively exercise public reason.

The various connections between language, power and politics have historically asserted themselves in a number of by-now familiar places. In *The Apology*, Plato has Socrates express doubt that what he has to say will compel his accusers, because he will speak to them in the ordinary language used in the market place, rather than the embroidered and stylized phrases that the court is accustomed to hearing (the language of official power).¹⁰ The reader who rightly recognizes this as yet another example of the more general, Platonic antagonism between philosophy and politics will know how the story is going to end – the ordinary, frank language of philosophy will not save Socrates. What Plato is suggesting is that as soon as it enters the realm of political affairs, the ability of ordinary language, and hence philosophy itself, to compel a gathered audience of citizens toward truth is thrown radically into question. As Hannah Arendt points out, factual truth disclosed by ordinary language is vulnerable to distortion, especially “if it happens to oppose a given group’s profit or pleasure.”¹¹ She saw quite rightly that “[e]ven in the free world ... national propaganda on the government level has learned

more than a few tricks from business practices and Madison Avenue methods,” and although she thought that democratic governments had not yet “monopolized the power to decide and tell what factually is or is not,” she did not think that it was beyond the realm of possibility that one day they might.¹²

But it is George Orwell who above all did the most to capture so masterfully and terrifyingly this point. Across his novels, essays and letters, we find that Orwell was persistently preoccupied with how political hypocrisy was both an unavoidable feature of all politics, and something made possible through the misuse and abuse of ordinary language by those in positions of power. The most dramatic representation of this idea lies in the rationale for the eradication of ordinary language and its replacement by Newspeak presented in *Nineteen Eighty Four*. By shaping and controlling everyday language, the Party seeks to render the citizens of Oceania susceptible to its view of reality and to destroy their capacity for criticism, removing the conditions necessary for dissent to emerge. If its lexicographic efforts are successful, there will no longer be any words left in which the citizen could express his discontent. Ultimately he becomes “like a man in interstellar space, who has no way of knowing which direction is up and which is down,” a man who no longer has the “power of grasping that the world could be other than it is.”¹³ In this condition, the Party has unlimited power to bend him to its will. If it insists that two plus two equals five, then two plus two does in fact equal five.

What all of these images have in common is that they remind us of two important things: first, that ordinary language provides us with the source material - a vocabulary - with which to articulate dissent; but also second, that language can *suffer* under the weight of political pressure. It can be defaced by those who wield political authority and

robbed of its critical potential to reveal the true nature of things. In other words, those who might seek to use ordinary language *against* political power are already in a position of relative disadvantage. This is true of all politics, but becomes especially acute in the context of public reason, an enterprise that is premised on the notion that through the public exchange of reasons via the medium of ordinary language, political authority might be legitimated.

As Orwell warned, the domination of official over ordinary language threatens to narrow the range of citizen's thought to the point at which "there is no way in which discontent can become articulate."¹⁴ While this is quite welcome from the point of view of the state, since it allows its officials to conduct their business without so much troublesome interference from below, from the point of view of the citizen this ought to be regarded as a pathological outcome. In order to recover the conditions necessary for the proper functioning of public reason, citizens should therefore demand that a richer variety of linguistic resources be restored to public debate. They are entitled to contest the very language of politics itself. Access to a full range of linguistic resources is not merely a decorative feature of democratic life. It is, if I am correct, an integral part and facilitator of the supervision of legitimate political authority.

If it should seem a little far-fetched to suppose that modern-day democratic governments are involved in destroying ordinary language for political purposes, we would do well to recall the words of an anonymous British civil servant, writing in *The Observer* newspaper:

The prime minister's speech on Monday was [set] to be ... the moment when he set out his vision for public services. With much excitement, Number 10 sent a

memo to all departments instructing them to use the word “modernization” instead of “reform.” Reform was thought too negative. Modernisation is exciting. Civil servants embarked on a vast deleting and editing operation as the word “reform” was ruthlessly hunted down and expelled from Westminster.¹⁵

I suspect that this will come as no surprise to anyone familiar with the thinking of those who walk the corridors of power. Not only does it remind us that spinning is now an absolutely integral part of modern government, it also hints at the way in which officials frequently forget that they are servants of the people, and that they hold their authority merely on trust. On the contrary, they conceive of themselves as the masters of an unruly population whose powers of deliberation are likely to be overtaxed when exposed to the full range of considerations that bear upon complex political issues. This ethos of elitism is combined with officials’ perennial fear that their power will soon be removed. For this reason, they are required to become excellent public relations managers as well as bureaucrats.

In order to minimize the risk of their ejection from office, state officials may therefore avail themselves of a further strategy: to reach around the raucous and impetuous discursive arena of the public sphere and to plant their own language in the public’s collective consciousness. Their hope is that citizens will come to view the everyday problems of politics through the state’s lenses rather than their own, that the state’s narrative of political events and actions should become dominant. If the linguistic conceits that they plant should take root, infiltrate the public sphere and proliferate, then the solutions that the state proposes – solutions that it wants to enforce, in part, so that it may survive - will seem especially attractive to the public at large, more appealing. They

will, after all, have been articulated in the very same language in which the problems that they are intended to solve initially *appeared* to present themselves.

Recall the argument from before: for A to have legitimate authority over B, A must communicate to B a reason with the potential to justify that authority, and only if B accepts the reason following independent judgment on the matter is A's authority, and hence her plan of actions, successfully legitimated. But one of the ways that A might try to secure B's agreement is by manipulating the linguistic context of her deliberations, setting the terms of debate in order to induce her acceptance where it might not otherwise have been forthcoming. In this way, A is able to make the proposition of control over B, her reason and her subsequent actions, seem more attractive to her than it really is. In much the same way, the state often tries to manipulate the discursive context of citizens' deliberation about contentious political matters, in order either to procure their agreement or to stifle their opposition. This is ultimately how the state is able to manufacture and then extract the very legitimation that it requires. It interferes in the giving-and-taking-of-reasons process of public reason by describing the options available in one way rather than another, in order to get the result from public political deliberations that it wants. An ingenious art, though one that is not always all that subtle, we now call this *spinning*. Its aim is to narrow the range of citizens' thought, leaving them feeling like Orwell's man floating in interstellar space, not knowing which way is up and which way is down.

I'd like to conclude this discussion with a few remarks about the present detention of "unlawful enemy combatants" at the US military base in Guantanamo Bay. The US government's vigorous efforts to ascribe this label to individuals detained in pursuit of the war on terror constitutes, I think, a timely example of the kind of linguistic

domination that I have been concerned with in this paper. The brief commentary that follows is certainly not an exhaustive discussion of the legal status of these detainees, a complex issue that is now the subject of a series of high profile US Supreme Court cases, as well as a growing scholarly literature of its own. It is, however, offered as an illustration of the kind of subversion that I have in mind when I argue that the state often loads the language of political discourse in its own favor.

An Illustrative Example: Unlawful Enemy Combatants

The phrase “unlawful enemy combatant” has become ubiquitous in our post-9/11 world, in political contexts, appearing in public statements by US officials in defense of their actions, and in legal contexts, at the heart of litigation brought by detainees to challenge the basis of those actions. For all its prominence, however, the origins of the phrase are murky. As legal scholars have noted, “although the label has roots in some writing on the law of war, the phrase ... does not constitute a term of art in the mainstream law of war.”¹⁶ Indeed, “the nomenclature used to designate this new category [of persons] is ... a term that mixes confusingly several legal and military concepts ...it conflates a number of previously well-defined categories (especially “enemy prisoner of war,” “combatant” and “civilian combatant).”¹⁷ This is because in truth the phrase is a recent invention: the creation of imaginative linguistic entrepreneurs within the Bush administration intent on placing detainees in a particular category – some would say a legal black hole - for reasons of political expediency. What they have come up with is “a concept whose plasticity renders it unhelpful as a tool for legal regulation and whose indeterminacy vests vast discretion in the Executive.”¹⁸ Since the

administration decided that it did not need to treat detainees in accordance with the Geneva conventions if they were indeed unlawful enemy combatants rather than regular prisoners of war, it matters a great deal whether a detainee is held to come under this category of persons or not – a decision in the case of an individual constitutes a clear exertion of state power with immensely grave consequences. Such a determination is therefore a nakedly political act, used to deprive detainees of juridical rights that would otherwise have been accorded to them under law. To achieve this aim, US officials sought to expel detainees, physically and linguistically, from the realm of political community altogether. The combined force of these actions served to strip detainees of the very right to have rights.

What becomes apparent from reading the enemy combatant cases is that US government lawyers asserted, time and time again, the right of the President, acting as commander-in-chief in a time of national emergency, to decide for himself what the phrase “unlawful enemy combatant” actually meant, and to determine who was to be included within its orbit. In resisting detainees’ efforts to seek the writ of *habeas corpus* to challenge the basis of their detention, the government’s lawyers argued further that, in fact, judicial oversight of the President’s determination of the matter was precluded under the political question doctrine. In other words, the President’s authority to detain individuals was included within his war making powers. It was therefore not reviewable by the courts, on the grounds that judicial oversight would amount to an illegitimate interference with the Executive’s prerogatives over matters relating to foreign affairs. The President’s lawyers were effectively arguing that *he who is sovereign is he who gets to decide* – this time upon the word as well as the deed.

It is to the credit of the US Supreme Court that it did not accept this grotesquely self-serving argument, holding in the case of *Hamdi* that a detainee “must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government’s factual assertions before a neutral decision maker.”¹⁹ The government was undeterred. Its response was to establish the Combatant Status Review Tribunals (CSRTs) at Guantanamo Bay. Under this system, a panel of three U.S. military officers has the power to determine the status of a detainee using criteria provided by the tribunal’s terms of reference, which ultimately still reflects the administration’s preferred (and expansive) definition of the concept.²⁰ When Congress involved itself in the debate - passing the Military Commission Act of 2006, the first legislative attempt to deal with the issue - the definition became more expansive still, and the political intentions lurking behind the wording adopted in the act are self-evident. As Allison Danner puts it:

The MCA’s definition of “*lawful* enemy combatant” is loosely based on the definition of prisoners of war used by the Third Geneva Convention. The changes made to the treaty text in the MCA seem clearly designed to ensure that the Taliban forces would not qualify for lawful enemy combatant status, even though they have a strong claim to prisoner of war status under the text of the Third Geneva Convention itself.²¹

Danner argues that the controversies surrounding the definition of unlawful enemy combatants arise because of the administration’s confused legal strategy, which attempted, unsatisfactorily, to marry concepts from the law of war with those from the conventional criminal law of conspiracy. To this I would add that the administration’s efforts were also part of a broader strategy to dominate the language of political discourse surrounding the treatment of detainees, and to deprive those detainees of rights that

would otherwise have been accorded to them under law. In a dual movement, which we must conclude has at least in part been quite successful, government officials were trying to quell disquiet in the public sphere by reassuring the public that, owing to the gravity of the crimes of which they were suspected and the threat to the nation that they apparently posed, terrorist suspects were less than human – not even deserving of prisoner of war status - while at the same time trying to elude those rules of evidence and procedure that they would usually be bound to uphold in the prosecution of those detainees. This, then, is a real life example of the state’s efforts at linguistic domination.

Conclusion

Political judgment about the legitimacy question is a discursive activity that unfolds between citizens – which is, after all, the very substance of public reason - takes place in a linguistic context of public explanation and justification. In other words, the justification of authority, insofar as it takes place in this context, is a *logocentric* activity. This implies that certain preconditions must be met if citizens are to be able to come together to exercise the faculty of political judgment successfully. One such precondition is free access to a language in which the legitimacy question can be rendered intelligible in the first place – that it can be posed and, in principle at least, an answer offered in reply. Another is the presence of a free and open public sphere in which a multitude of ideas, tastes, desires, arguments and moral viewpoints can be disclosed among interested individuals. Indeed, the provision of such a space, along with a recognition of its centrality to the practice of freedom, count among the achievements of liberal political culture. To the extent that they do not provide for such spaces, or actively seek to destroy

them, non-liberal political cultures are susceptible to criticism. But even in democratic societies that possess a vibrant public sphere, citizens can still be deprived of the linguistic resources that they need in order to distinguish legitimate political authority from coercion. This is because the modern state apparatus commonly avails itself of deceptive language, cloaking its actions in technocratic jargon and anaesthetizing rhetoric, in order to befuddle its citizenry and, ultimately, to help manufacture the ideological support on which the regime is itself supposed to rest. The result is a yawning gap between the theory and practice of democracy.

In *Nineteen Eighty-Four*, Syme reveals to Winston that the ultimate aim of the composers of Newspeak is to destroy independent thought. If the language is eradicated, citizens can no longer be free. All that will remain is orthodoxy, which is simply *unconsciousness*. Sadly, efforts toward the promotion of unconsciousness pervade public life even in the advanced democracies. Alarming, these efforts are often attributable to the state itself. If they are successful, and the public sphere is overrun by our very own equivalent to Newspeak, then an everyday kind of thoughtlessness enters public life, undermining the capacity of citizens to distinguish legitimate from illegitimate state action. By moving contentious issues into the exclusive domain of expert opinion, thereby declaring them off limits as subjects of public deliberation, these linguistic structures, which have to be consciously inserted into the lifeworld because they are in fact alien to it, purport to relieve citizens of the burden of independent political judgment. But in reality they act *against* political judgment, frustrating it. Frequently they serve other, covert ends, for example by helping those in power retain and reinforce their own position of authority. The foregoing analysis suggests that the formulation of citizens'

strategies of resistance must therefore run along paths. The first consists in the unveiling of those linguistic structures that harbor covert interests. The second comprises the reassertion of democratic control over the language of politics itself. When rulers say “this *is* this and this,” citizens must be able to come together and speak back with political effect to say, “no it isn’t.”

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¹ John Rawls, “The Idea of Public Reason Revisited,” in *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 135.

² *Ibid.*, 137.

³ Bernard Williams, *In the Beginning Was the Deed* (Princeton, NJ: Princeton University Press, 2005).

⁴ *Ibid.*, 4.

⁵ *Ibid.*, 3.

⁶ *Ibid.*

⁷ Bernard Williams, *Truth and Truthfulness* (Princeton, NJ: Princeton University Press, 2002), 227.

⁸ *Ibid.*

⁹ Hannah Arendt, "Truth and Politics," in *The Portable Hannah Arendt* (London: Penguin, 2003), 545.

¹⁰ Plato, "Apology," in *Five Dialogues* (Indianapolis, IN: Hackett, 2002), 23.

¹¹ *Ibid.*, 548, 52.

¹² Arendt, "Truth and Politics," 567.

¹³ *Ibid.*, 228, 40.

¹⁴ Orwell, *Nineteen Eighty-Four*, 237.

¹⁵ Anonymous, "Diary of a Civil Servant: The Coalition Is in a Hurry. But Is It Going to Fast?," *The Observer*, 23 January 2011.

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¹⁶ Allison M. Danner, "Defining Unlawful Enemy Combatants: A Centripetal Story," *Texas International Law Journal* 43, no. 1-14 (2007): 3.

¹⁷ Karen J. Greenberg, "Caught in the War on Terror: Redefining Prisoners in the Post-9/11 Era," in *The Enemy Combatant Papers: American Justice, the Courts and the War on Terror*, ed. Karen J. Greenberg, Joshua Dratel, and Jeffrey S. Grossman (Cambridge: Cambridge University Press, 2008), x.

¹⁸ Danner, "Defining Unlawful Enemy Combatants: A Centripetal Story," 1.

¹⁹ *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) at 533 cited at *Ibid.*: 2.

²⁰ An unlawful enemy combatant was a person "who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United

States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.” Danner notes that “[t]his definition, while clearly based on the formulation used in *Hamdi*, represents a potentially significant expansion of the concept because of its reference to forces “associated” with al Qaeda.” *Ibid.*: 5.

²¹ *Ibid.*: 5-6.