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The Idea of Public Reason Revisited

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INTRODUCTION

The idea of public reason, as I understand it,¹ belongs to a conception of a well ordered constitutional democratic society. The form and content of this reason—the way it is understood by citizens and how it interprets their political relationship—is part of the idea of democracy itself. This is because a basic feature of democracy is the fact of reasonable pluralism—the fact that a

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¹ See John Rawls, *Political Liberalism*, lecture VI, § 8.5 (Columbia paperback ed 1996). References to *Political Liberalism* are given by lecture and section; page numbers are also provided unless the reference refers to an entire lecture, section, or subsection. Note that the 1996 paperback edition of *Political Liberalism* contains a new second introduction which, among other things, tries to make clearer certain aspects of political liberalism. Section 5 of this introduction, *id* at l-vii, discusses the idea of public reason and sketches several changes I now make in affirming this idea. These are all followed and elaborated in what is presented here and are important to a complete understanding of the argument. Note also that the pagination of the paperback edition is the same as the original.

plurality of conflicting reasonable comprehensive doctrines,² religious, philosophical, and moral, is the normal result of its culture of free institutions.³ Citizens realize that they cannot reach agreement or even approach mutual understanding on the basis of their irreconcilable comprehensive doctrines. In view of this, they need to consider what kinds of reasons they may reasonably give one another when fundamental political questions are at stake. I propose that in public reason comprehensive doctrines of truth or right be replaced by an idea of the politically reasonable addressed to citizens as citizens.⁴

Central to the idea of public reason is that it neither criticizes nor attacks any comprehensive doctrine, religious or nonreligious, except insofar as that doctrine is incompatible with the essentials of public reason and a democratic polity. The basic requirement is that a reasonable doctrine accepts a constitutional democratic regime and its companion idea of legitimate law. While democratic societies will differ in the specific doctrines that are influential and active within them—as they differ in the western democracies of Europe and the United States, Israel, and India—finding a suitable idea of public reason is a concern that faces them all.

§ 1: THE IDEA OF PUBLIC REASON

1. The idea of public reason specifies at the deepest level the basic moral and political values that are to determine a constitutional democratic government's relation to its citizens and their relation to one another. In short, it concerns how the political relation is to be understood. Those who reject constitutional democracy with its criterion of reciprocity⁵ will of course reject the very idea of public reason. For them the political relation may be that of friend or foe, to those of a particular religious or secular community or those who are not; or it may be a relentless struggle to win the world for the whole truth. Political liberalism does

² I shall use the term *doctrine* for comprehensive views of all kinds and the term *conception* for a political conception and its component parts, such as the conception of the person as citizen. The term *idea* is used as a general term and may refer to either as the context determines.

³ Of course, every society also contains numerous unreasonable doctrines. Yet in this essay I am concerned with an ideal normative conception of democratic government, that is, with the conduct of its reasonable citizens and the principles they follow, assuming them to be dominant and controlling. How far unreasonable doctrines are active and tolerated is to be determined by the principles of justice and the kinds of actions they permit. See § 7.2.

⁴ See § 6.2.

⁵ See § 1.2.

not engage those who think this way. The zeal to embody the whole truth in politics is incompatible with an idea of public reason that belongs with democratic citizenship.

The idea of public reason has a definite structure, and if one or more of its aspects are ignored it can seem implausible, as it does when applied to the background culture.⁶ It has five different aspects: (1) the fundamental political questions to which it applies; (2) the persons to whom it applies (government officials and candidates for public office); (3) its content as given by a family of reasonable political conceptions of justice; (4) the application of these conceptions in discussions of coercive norms to be enacted in the form of legitimate law for a democratic people; and (5) citizens' checking that the principles derived from their conceptions of justice satisfy the criterion of reciprocity.

Moreover, such reason is public in three ways: as the reason of free and equal citizens, it is the reason of the public; its subject is the public good concerning questions of fundamental political justice, which questions are of two kinds, constitutional essentials and matters of basic justice;⁷ and its nature and content are public, being expressed in public reasoning by a family of reasonable conceptions of political justice reasonably thought to satisfy the criterion of reciprocity.

It is imperative to realize that the idea of public reason does not apply to all political discussions of fundamental questions, but only to discussions of those questions in what I refer to as the public political forum.⁸ This forum may be divided into three parts: the discourse of judges in their decisions, and especially of the judges of a supreme court; the discourse of government officials, especially chief executives and legislators; and finally, the discourse of candidates for public office and their campaign managers, especially in their public oratory, party platforms, and political statements.⁹ We need this three-part division because, as I note later, the idea of public reason does not apply in the same

⁶ See text accompanying notes 12-15.

⁷ These questions are described in Rawls, *Political Liberalism*, lecture VI, § 5 at 227-30 (cited in note 1). Constitutional essentials concern questions about what political rights and liberties, say, may reasonably be included in a written constitution, when assuming the constitution may be interpreted by a supreme court, or some similar body. Matters of basic justice relate to the basic structure of society and so would concern questions of basic economic and social justice and other things not covered by a constitution.

⁸ There is no settled meaning of this term. The one I use is not I think peculiar.

⁹ Here we face the question of where to draw the line between candidates and those who manage their campaigns and other politically engaged citizens generally. We settle this matter by making candidates and those who run their campaigns responsible for what is said and done on the candidates' behalf.

way in these three cases and elsewhere.¹⁰ In discussing what I call the wide view of public political culture,¹¹ we shall see that the idea of public reason applies more strictly to judges than to others, but that the requirements of public justification for that reason are always the same.

Distinct and separate from this three-part public political forum is what I call the background culture.¹² This is the culture of civil society. In a democracy, this culture is not, of course, guided by any one central idea or principle, whether political or religious. Its many and diverse agencies and associations with their internal life reside within a framework of law that ensures the familiar liberties of thought and speech, and the right of free association.¹³ The idea of public reason does not apply to the background culture with its many forms of nonpublic reason nor to media of any kind.¹⁴ Sometimes those who appear to reject the idea of public reason actually mean to assert the need for full and open discussion in the background culture.¹⁵ With this political liberalism fully agrees.

Finally, distinct from the idea of public reason, as set out by the five features above, is the *ideal* of public reason. This ideal is realized, or satisfied, whenever judges, legislators, chief execu-

¹⁰ Often writers on this topic use terms that do not distinguish the parts of public discussion, for example, such terms as "the public square," "the public forum," and the like. I follow Kent Greenawalt in thinking a finer division is necessary. See Kent Greenawalt, *Religious Convictions and Political Choice* 226-27 (Oxford 1988) (describing, for example, the differences between a religious leader's preaching or promoting a pro-life organization and leading a major political movement or running for political office).

¹¹ See § 4.

¹² Rawls, *Political Liberalism*, lecture I, § 2.3 at 14 (cited in note 1).

¹³ The background culture includes, then, the culture of churches and associations of all kinds, and institutions of learning at all levels, especially universities and professional schools, scientific and other societies. In addition, the nonpublic political culture mediates between the public political culture and the background culture. This comprises media—properly so named—of all kinds: newspapers, reviews and magazines, TV and radio, and much else. Compare these divisions with Habermas's account of the public sphere. See Rawls, *Political Liberalism*, lecture IX, § 1.3 at 382 n 13 (cited in note 1).

¹⁴ See *id.*, lecture VI, § 3 at 220-22.

¹⁵ See David Hollenbach, S.J., *Civil Society: Beyond the Public-Private Dichotomy*, 5 *The Responsive Community* 15 (Winter 1994/95). For example, he says:

Conversation and argument about the common good will not occur initially in the legislature or in the political sphere (narrowly conceived as the domain in which interests and power are adjudicated). Rather it will develop freely in those components of civil society that are the primary bearers of cultural meaning and value—universities, religious communities, the world of the arts, and serious journalism. It can occur wherever thoughtful men and women bring their beliefs on the meaning of the good life into intelligent and critical encounter with understandings of this good held by other peoples with other traditions. In short, it occurs wherever education about and serious inquiry into the meaning of the good life takes place.

Id. at 22.

tives, and other government officials, as well as candidates for public office, act from and follow the idea of public reason and explain to other citizens their reasons for supporting fundamental political positions in terms of the political conception of justice they regard as the most reasonable. In this way they fulfill what I shall call their duty of civility to one another and to other citizens. Hence, whether judges, legislators, and chief executives act from and follow public reason is continually shown in their speech and conduct on a daily basis.

How though is the ideal of public reason realized by citizens who are not government officials? In a representative government citizens vote for representatives—chief executives, legislators, and the like—and not for particular laws (except at a state or local level when they may vote directly on referenda questions, which are rarely fundamental questions). To answer this question, we say that ideally citizens are to think of themselves *as if* they were legislators and ask themselves what statutes, supported by what reasons satisfying the criterion of reciprocity, they would think it most reasonable to enact.¹⁶ When firm and widespread, the disposition of citizens to view themselves as ideal legislators, and to repudiate government officials and candidates for public office who violate public reason, is one of the political and social roots of democracy, and is vital to its enduring strength and vigor.¹⁷ Thus citizens fulfill their duty of civility and support the idea of public reason by doing what they can to hold government officials to it. This duty, like other political rights and duties, is an intrinsically moral duty. I emphasize that it is not a legal duty, for in that case it would be incompatible with freedom of speech.

2. I now turn to a discussion of what I have labeled the third, fourth, and fifth aspects of public reason. The idea of public reason arises from a conception of democratic citizenship in a constitutional democracy. This fundamental political relation of citizenship has two special features: first, it is a relation of citizens within the basic structure of society, a structure we enter only by birth and exit only by death;¹⁸ and second, it is a relation of free

¹⁶ There is some resemblance between this criterion and Kant's principle of the original contract. See Immanuel Kant, *The Metaphysics of Morals: Metaphysical First Principles of the Doctrine of Right* §§ 47-49 at 92-95 (AK 6:315-18) (Cambridge 1996) (Mary Gregor, trans and ed); Immanuel Kant, *On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice,' Part II*, in *Kant: Political Writings* 73-87 (AK 8: 289-306) (Cambridge 2d ed 1991) (Hans Reiss, ed, H.B. Nisbet, trans).

¹⁷ See also § 4.2.

¹⁸ Rawls, *Political Liberalism*, lecture I, § 2.1 at 12 (cited in note 1). For concerns about exiting only by death, see id, lecture IV, § 1.2 at 136 n 4.

and equal citizens who exercise ultimate political power as a collective body. These two features immediately give rise to the question of how, when constitutional essentials and matters of basic justice are at stake, citizens so related can be bound to honor the structure of their constitutional democratic regime and abide by the statutes and laws enacted under it. The fact of reasonable pluralism raises this question all the more sharply, since it means that the differences between citizens arising from their comprehensive doctrines, religious and nonreligious, may be irreconcilable. By what ideals and principles, then, are citizens who share equally in ultimate political power to exercise that power so that each can reasonably justify his or her political decisions to everyone?

To answer this question we say: Citizens are reasonable when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their own interests in particular situations, provided that other citizens also accept those terms. The criterion of reciprocity requires that when those terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept them, as free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position.¹⁹ Citizens will of course differ as to which conceptions of political justice they think the most reasonable, but they will agree that all are reasonable, even if barely so.

Thus when, on a constitutional essential or matter of basic justice, all appropriate government officials act from and follow public reason, and when all reasonable citizens think of themselves ideally as if they were legislators following public reason, the legal enactment expressing the opinion of the majority is legitimate law. It may not be thought the most reasonable, or the most appropriate, by each, but it is politically (morally) binding on him or her as a citizen and is to be accepted as such. Each thinks that all have spoken and voted at least reasonably, and

¹⁹ The idea of reciprocity has an important place in Amy Gutmann and Dennis Thompson, *Democracy and Disagreement* chs 1-2 and passim (Belknap 1996). However, the meaning and setting of our views are not the same. Public reason in political liberalism is purely political, although political values are intrinsically moral, whereas Gutmann and Thompson's account is more general and seems to work from a comprehensive doctrine.

therefore all have followed public reason and honored their duty of civility.

Hence the idea of political legitimacy based on the criterion of reciprocity says: Our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions—were we to state them as government officials—are sufficient, and we also reasonably think that other citizens might also reasonably accept those reasons. This criterion applies on two levels: one is to the constitutional structure itself, the other is to particular statutes and laws enacted in accordance with that structure. To be reasonable, political conceptions must justify only constitutions that satisfy this principle.

To make more explicit the role of the criterion of reciprocity as expressed in public reason, note that its role is to specify the nature of the political relation in a constitutional democratic regime as one of civic friendship. For this criterion, when government officers act from it in their public reasoning and other citizens support it, shapes the form of their fundamental institutions. For example—I cite an easy case—if we argue that the religious liberty of some citizens is to be denied, we must give them reasons they can not only understand—as Servetus could understand why Calvin wanted to burn him at the stake—but reasons we might reasonably expect that they, as free and equal citizens, might reasonably also accept. The criterion of reciprocity is normally violated whenever basic liberties are denied. For what reasons can both satisfy the criterion of reciprocity and justify denying to some persons religious liberty, holding others as slaves, imposing a property qualification on the right to vote, or denying the right of suffrage to women?

Since the idea of public reason specifies at the deepest level the basic political values and specifies how the political relation is to be understood, those who believe that fundamental political questions should be decided by what they regard as the best reasons according to their own idea of the whole truth—including their religious or secular comprehensive doctrine—and not by reasons that might be shared by all citizens as free and equal, will of course reject the idea of public reason. Political liberalism views this insistence on the whole truth in politics as incompatible with democratic citizenship and the idea of legitimate law.

3. Democracy has a long history, from its beginning in classical Greece down to the present day, and there are many different ideas of democracy.²⁰ Here I am concerned only with a well or-

²⁰ For a useful historical survey see David Held, *Models of Democracy* (Stanford 2d ed

dered constitutional democracy—a term I used at the outset—understood also as a deliberative democracy. The definitive idea for deliberative democracy is the idea of deliberation itself. When citizens deliberate, they exchange views and debate their supporting reasons concerning public political questions. They suppose that their political opinions may be revised by discussion with other citizens; and therefore these opinions are not simply a fixed outcome of their existing private or nonpolitical interests. It is at this point that public reason is crucial, for it characterizes such citizens' reasoning concerning constitutional essentials and matters of basic justice. While I cannot fully discuss the nature of deliberative democracy here, I note a few key points to indicate the wider place and role of public reason.

There are three essential elements of deliberative democracy. One is an idea of public reason,²¹ although not all such ideas are the same. A second is a framework of constitutional democratic institutions that specifies the setting for deliberative legislative bodies. The third is the knowledge and desire on the part of citizens generally to follow public reason and to realize its ideal in their political conduct. Immediate implications of these essentials are the public financing of elections, and the providing for public occasions of orderly and serious discussion of fundamental questions and issues of public policy. Public deliberation must be made possible, recognized as a basic feature of democracy, and set free from the curse of money.²² Otherwise politics is dominated by corporate and other organized interests who

1997). Held's numerous models cover the period from the ancient polis to the present time and he concludes by asking what democracy should mean today. In between he considers the several forms of classical republicanism and classical liberalism, as well as Schumpeter's conception of competitive elite democracy. Some figures discussed include Plato and Aristotle; Marsilius of Padua and Machiavelli; Hobbes and Madison; Bentham, James Mill and J. S. Mill; Marx with socialism and communism. These are paired with schematized models of the characteristic institutions and their roles.

²¹ Deliberative democracy limits the reasons citizens may give in supporting their political opinions to reasons consistent with their seeing other citizens as equals. See Joshua Cohen, *Deliberation and Democratic Legitimacy*, in Alan Hamlin and Philip Petit, eds, *The Good Polity: Normative Analysis of the State* 17, 21, 24 (Basil Blackwell 1989); *Review Symposium on Democracy and Its Critics*, 53 J Pol 215, 223-24 (1991) (comments of Joshua Cohen); Joshua Cohen, *Democracy and Liberty* 13-17 (manuscript on file with U Chi L Rev), in Jon Elster, ed, *Deliberative Democracy* (forthcoming 1997).

²² Ronald Dworkin, *The Curse of American Politics*, NY Rev Books 19 (Oct 17, 1996) (describing why "money is the biggest threat to the democratic process"). Dworkin also argues forcefully against the grave error of the Supreme Court in *Buckley v Valeo*, 424 US 1 (1976). Dworkin, NY Rev Books at 21-24. See also Rawls, *Political Liberalism*, lecture VIII, § 12 at 359-63 (cited in note 1) (*Buckley* is "dismaying" and raises the risk of "repeating the mistake of the *Lochner* era.").

through large contributions to campaigns distort if not preclude public discussion and deliberation.

Deliberative democracy also recognizes that without widespread education in the basic aspects of constitutional democratic government for all citizens, and without a public informed about pressing problems, crucial political and social decisions simply cannot be made. Even should farsighted political leaders wish to make sound changes and reforms, they cannot convince a misinformed and cynical public to accept and follow them. For example, there are sensible proposals for what should be done regarding the alleged coming crisis in Social Security: slow down the growth of benefits levels, gradually raise the retirement age, impose limits on expensive terminal medical care that prolongs life for only a few weeks or days, and finally, raise taxes now, rather than face large increases later.²³ But as things are, those who follow the "great game of politics" know that none of these sensible proposals will be accepted. The same story can be told about the importance of support for international institutions (such as the United Nations), foreign aid properly spent, and concern for human rights at home and abroad. In constant pursuit of money to finance campaigns, the political system is simply unable to function. Its deliberative powers are paralyzed.

§ 2: THE CONTENT OF PUBLIC REASON

1. A citizen engages in public reason, then, when he or she deliberates within a framework of what he or she sincerely regards as the most reasonable political conception of justice, a conception that expresses political values that others, as free and equal citizens might also reasonably be expected reasonably to endorse. Each of us must have principles and guidelines to which we appeal in such a way that this criterion is satisfied. I have proposed that one way to identify those political principles and guidelines is to show that they would be agreed to in what in *Political Liberalism* is called the original position.²⁴ Others will think that different ways to identify these principles are more reasonable.

Thus, the content of public reason is given by a family of political conceptions of justice, and not by a single one. There are

²³ Paul Krugman, *Demographics and Destiny*, NY Times Book Rev 12 (Oct 20, 1996), reviewing and describing proposals in Peter G. Peterson, *Will America Grow Up Before It Grows Old? How the Coming Social Security Crisis Threatens You, Your Family, and Your Country* (Random House 1996), and Charles R. Morris, *The AARP: America's Most Powerful Lobby and the Clash of Generations* (Times Books 1996).

²⁴ Rawls, *Political Liberalism*, lecture I, § 4 at 22-28 (cited in note 1).

many liberalisms and related views, and therefore many forms of public reason specified by a family of reasonable political conceptions. Of these, justice as fairness, whatever its merits, is but one. The limiting feature of these forms is the criterion of reciprocity, viewed as applied between free and equal citizens, themselves seen as reasonable and rational. Three main features characterize these conceptions:

First, a list of certain basic rights, liberties, and opportunities (such as those familiar from constitutional regimes);

Second, an assignment of special priority to those rights, liberties, and opportunities, especially with respect to the claims of the general good and perfectionist values; and

Third, measures ensuring for all citizens adequate all-purpose means to make effective use of their freedoms.²⁵

Each of these liberalisms endorses the underlying ideas of citizens as free and equal persons and of society as a fair system of cooperation over time. Yet since these ideas can be interpreted in various ways, we get different formulations of the principles of justice and different contents of public reason. Political conceptions differ also in how they order, or balance, political principles and values even when they specify the same ones. I assume also that these liberalisms contain substantive principles of justice, and hence cover more than procedural justice. They are required to specify the religious liberties and freedoms of artistic expression of equal citizens, as well as substantive ideas of fairness involving fair opportunity and ensuring adequate all-purpose means, and much else.²⁶

Political liberalism, then, does not try to fix public reason once and for all in the form of one favored political conception of justice.²⁷ That would not be a sensible approach. For instance, political liberalism also admits Habermas's discourse conception

²⁵ Here I follow the definition in Rawls, *Political Liberalism*, lecture I, § 1.2 at 6, lecture IV, § 5.3 at 156-57 (cited in note 1).

²⁶ Some may think the fact of reasonable pluralism means the only forms of fair adjudication between comprehensive doctrines must be only procedural and not substantive. This view is forcefully argued by Stuart Hampshire in *Innocence and Experience* (Harvard 1989). In the text above, however, I assume the several forms of liberalism are each substantive conceptions. For a thorough treatment of these issues, see the discussion in Joshua Cohen, *Pluralism and Proceduralism*, 69 *Chi Kent L Rev* 589 (1994).

²⁷ I do think that justice as fairness has a certain special place in the family of political conceptions, as I suggest in Rawls, *Political Liberalism*, lecture IV, § 7.4 (cited in note 1). But this opinion of mine is not basic to the ideas of political liberalism and public reason.

of legitimacy (sometimes said to be radically democratic rather than liberal),²⁸ as well as Catholic views of the common good and solidarity when they are expressed in terms of political values.²⁹ Even if relatively few conceptions come to dominate over time, and one conception even appears to have a special central place, the forms of permissible public reason are always several. Moreover, new variations may be proposed from time to time and older ones may cease to be represented. It is important that this be so; otherwise the claims of groups or interests arising from social change might be repressed and fail to gain their appropriate political voice.³⁰

2. We must distinguish public reason from what is sometimes referred to as secular reason and secular values. These are not the same as public reason. For I define secular reason as reasoning in terms of comprehensive nonreligious doctrines. Such doctrines and values are much too broad to serve the purposes of public reason. Political values are not moral doctrines,³¹ however available or accessible these may be to our reason and common sense reflection. Moral doctrines are on a level with religion and

²⁸ See Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* 107-09 (MIT 1996) (William Rehg, trans) (defining the discourse principle). Seyla Benhabib in her discussion of models of public space in *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Routledge 1992), says that: "The discourse model is the only one which is compatible both with the general social trends of our societies and with the emancipatory aspirations of new social movements like the women's movement." Id at 113. She has previously considered Arendt's agonistic conception, as Benhabib calls it, and that of political liberalism. But I find it hard to distinguish her view from that of a form of political liberalism and public reason, since it turns out that she means by the public sphere what Habermas does, namely what *Political Liberalism* calls the background culture of civil society in which the ideal of public reason does not apply. Hence political liberalism is not limiting in the way she thinks. Also, Benhabib does not try to show, so far as I can see, that certain principles of right and justice belonging to the content of public reason could not be interpreted to deal with the problems raised by the women's movement. I doubt that this can be done. The same holds for Benhabib's earlier remarks in Seyla Benhabib, *Liberal Dialogue Versus a Critical Theory of Discursive Legitimation*, in Nancy L. Rosenblum, ed, *Liberalism and the Moral Life* 143, 154-56 (Harvard 1989), in which the problems of the women's movement were discussed in a similar way.

²⁹ Deriving from Aristotle and St. Thomas, the idea of the common good is essential to much of Catholic moral and political thought. See, for example, John Finnis, *Natural Law and Natural Rights* 153-56, 160 (Clarendon 1980); Jacques Maritain, *Man and the State* 108-14 (Chicago 1951). Finnis is especially clear, while Aquinas is occasionally ambiguous.

³⁰ Thus, Jeremy Waldron's criticism of political liberalism as not allowing new and changing conceptions of political justice is incorrect. See Jeremy Waldron, *Religious Contributions in Public Deliberation*, 30 San Diego L Rev 817, 837-38 (1993). See the reply to Waldron's criticisms in Lawrence B. Solum, *Novel Public Reasons*, 29 Loyola LA L Rev 1459, 1460 (1996) ("[G]eneral acceptance of a liberal ideal of public reason would permit the robust evolution of political discourse.")

³¹ See note 2 for my definition of *doctrine*.

first philosophy. By contrast, liberal political principles and values, although intrinsically moral values, are specified by liberal political conceptions of justice and fall under the category of the political. These political conceptions have three features:

First, their principles apply to basic political and social institutions (the basic structure of society);

Second, they can be presented independently from comprehensive doctrines of any kind (although they may, of course, be supported by a reasonable overlapping consensus of such doctrines); and

Finally, they can be worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime, such as the conceptions of citizens as free and equal persons, and of society as a fair system of cooperation.

Thus, the content of public reason is given by the principles and values of the family of liberal political conceptions of justice meeting these conditions. To engage in public reason is to appeal to one of these political conceptions—to their ideals and principles, standards and values—when debating fundamental political questions. This requirement still allows us to introduce into political discussion at any time our comprehensive doctrine, religious or nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support. I refer to this requirement as *the proviso*, and consider it in detail below.³²

A feature of public reasoning, then, is that it proceeds entirely within a political conception of justice. Examples of political values include those mentioned in the preamble to the United States Constitution: a more perfect union, justice, domestic tranquillity, the common defense, the general welfare, and the blessings of liberty for ourselves and our posterity. These include under them other values: so, for example, under justice we also have equal basic liberties, equality of opportunity, ideals concerning the distribution of income and taxation, and much else.

The political values of public reason are distinct from other values in that they are realized in and characterize political institutions. This does not mean that analogous values cannot characterize other social forms. The values of effectiveness and efficiency may characterize the social organization of teams and clubs, as well as the political institutions of the basic structure of

³² See § 4.

society. But a value is properly political only when the social form is itself political: when it is realized, say, in parts of the basic structure and its political and social institutions. It follows that many political conceptions are nonliberal, including those of aristocracy and corporate oligarchy, and of autocracy and dictatorship. All of these fall within the category of the political.³³ We, however, are concerned only with those political conceptions that are reasonable for a constitutional democratic regime, and as the preceding paragraphs make clear, these are the ideals and principles expressed by reasonable liberal political conceptions.

3. Another essential feature of public reason is that its political conceptions should be complete. This means that each conception should express principles, standards, and ideals, along with guidelines of inquiry, such that the values specified by it can be suitably ordered or otherwise united so that those values alone give a reasonable answer to all, or to nearly all, questions involving constitutional essentials and matters of basic justice. Here the ordering of values is made in the light of their structure and features within the political conception itself, and not primarily from how they occur within citizens' comprehensive doctrines. Political values are not to be ordered by viewing them separately and detached from one another or from any definite context. They are not puppets manipulated from behind the scenes by comprehensive doctrines.³⁴ The ordering is not distorted by those doctrines provided that public reason sees the ordering as reasonable. And public reason can indeed see an ordering of political values as reasonable (or unreasonable), since institutional structures are open to view and mistakes and gaps within the political ordering will become exposed. Thus, we may be confident that the ordering of political values is not distorted by particular reasonable comprehensive doctrines. (I emphasize that the only criterion of distortion is that the ordering of political values be itself unreasonable.)

The significance of completeness lies in the fact that unless a political conception is complete, it is not an adequate framework of thought in the light of which the discussion of fundamental political questions can be carried out.³⁵ What we cannot do in

³³ Here see Rawls, *Political Liberalism*, lecture IX, § 1.1 at 374-75 (cited in note 1).

³⁴ This thought I owe to Peter de Marneffe.

³⁵ Note here that different political conceptions of justice will represent different interpretations of the constitutional essentials and matters of basic justice. There are also different interpretations of the same conception, since its concepts and values may be taken in different ways. There is not, then, a sharp line between where a political conception ends and its interpretation begins, nor need there be. All the same, a conception greatly limits its possible interpretations, otherwise discussion and argument could not

public reason is to proceed directly from our comprehensive doctrine, or a part thereof, to one or several political principles and values, and the particular institutions they support. Instead, we are required first to work to the basic ideas of a complete political conception and from there to elaborate its principles and ideals, and to use the arguments they provide. Otherwise public reason allows arguments that are too immediate and fragmentary.

4. I now note several examples of political principles and values to illustrate the more specific content of public reason, and particularly the various ways in which the criterion of reciprocity is both applicable and subject to violation.

(a) As a first example, consider the value of autonomy. It may take two forms: one is political autonomy, the legal independence and assured integrity of citizens and their sharing equally with others in the exercise of political power; the other is purely moral and characterizes a certain way of life and reflection, critically examining our deepest ends and ideals, as in Mill's ideal of individuality.³⁶ Whatever we may think of autonomy as a purely moral value, it fails to satisfy, given reasonable pluralism, the constraint of reciprocity, as many citizens, for example, those holding certain religious doctrines, may reject it. Thus moral autonomy is not a political value, whereas political autonomy is.

(b) As a second example, consider the familiar story of the Good Samaritan. Are the values appealed to properly political values and not simply religious or philosophical values? While the wide view of public political culture allows us, in making a proposal, to introduce the Gospel story, public reason requires us to justify our proposal in terms of proper political values.³⁷

(c) As a third example, consider appeals to desert in discussing the fair distribution of income: people are wont to say

proceed. For example, a constitution declaring the freedom of religion, including the freedom to affirm no religion, along with the separation of church and state, may appear to leave open the question whether church schools may receive public funds, and if so, in what way. The difference here might be seen as how to interpret the same political conception, one interpretation allowing public funds, the other not; or alternatively, as the difference between two political conceptions. In the absence of particulars, it does not matter which we call it. The important point is that since the content of public reason is a family of political conceptions, that content admits the interpretations we may need. It is not as if we were stuck with a fixed conception, much less with one interpretation of it. This is a comment on Kent Greenawalt, *Private Consciences and Public Reasons* 113-20 (Oxford 1995), where *Political Liberalism* is said to have difficulty dealing with the problem of determining the interpretation of political conceptions.

³⁶ John Stuart Mill, *On Liberty* ch 3 ¶¶ 1-9 (1859), in 18 *Collected Works of John Stuart Mill* 260-75 (Toronto 1977) (John M. Robson, ed).

³⁷ See § 4.1 on the proviso and the example of citing the Gospel story. For a detailed consideration of the wide view of public political culture, see generally § 4.

that ideally distribution should be in accordance with desert. What sense of desert do they have in mind? Do they mean that persons in various offices should have the requisite qualifications—judges must be qualified to judge—and all should have a fair opportunity to qualify themselves for favored positions? That is indeed a political value. But distribution in accordance with moral desert, where this means the moral worth of character, all things considered, and including comprehensive doctrines, is not. It is not a feasible political and social aim.

(d) Finally, consider the state's interest in the family and human life. How should the political value invoked be specified correctly? Traditionally it has been specified very broadly. But in a democratic regime the government's legitimate interest is that public law and policy should support and regulate, in an ordered way, the institutions needed to reproduce political society over time. These include the family (in a form that is just), arrangements for rearing and educating children, and institutions of public health generally. This ordered support and regulation rests on political principles and values, since political society is regarded as existing in perpetuity and so as maintaining itself and its institutions and culture over generations. Given this interest, the government would appear to have no interest in the particular form of family life, or of relations among the sexes, except insofar as that form or those relations in some way affect the orderly reproduction of society over time. Thus, appeals to monogamy as such, or against same-sex marriages, as within the government's legitimate interest in the family, would reflect religious or comprehensive moral doctrines. Accordingly, that interest would appear improperly specified. Of course, there may be other political values in the light of which such a specification would pass muster: for example, if monogamy were necessary for the equality of women, or same-sex marriages destructive to the raising and educating of children.³⁸

5. The four examples bring out a contrast to what I have above called secular reason.³⁹ A view often expressed is that while religious reasons and sectarian doctrines should not be invoked to justify legislation in a democratic society, sound secular arguments may be.⁴⁰ But what is a secular argument? Some

³⁸ Of course, I don't here attempt to decide the question, since we are concerned only with the kinds of reasons and considerations that public reasoning involves.

³⁹ See § 2.2.

⁴⁰ See Robert Audi, *The Place of Religious Argument in a Free and Democratic Society*, 30 San Diego L Rev 677 (1993). Here Audi defines a secular reason as follows: "A secular reason is roughly one whose normative force does not evidentially depend on the

think of any argument that is reflective and critical, publicly intelligible and rational, as a secular argument; and they discuss various such arguments for considering, say, homosexual relations unworthy or degrading.⁴¹ Of course, some of these arguments may be reflective and rational secular ones (as so defined). Nevertheless, a central feature of political liberalism is that it views all such arguments the same way it views religious ones, and therefore these secular philosophical doctrines do not provide public reasons. Secular concepts and reasoning of this kind belong to first philosophy and moral doctrine, and fall outside of the domain of the political.

Thus, in considering whether to make homosexual relations between citizens criminal offenses, the question is not whether those relations are precluded by a worthy idea of full human good as characterized by a sound philosophical and nonreligious view, nor whether those of religious faith regard it as sin, but primarily whether legislative statutes forbidding those relations infringe the civil rights of free and equal democratic citizens.⁴² This question calls for a reasonable political conception of justice specifying those civil rights, which are always a matter of constitutional essentials.

§ 3: RELIGION AND PUBLIC REASON IN DEMOCRACY

1. Before examining the idea of the wide view of public political culture, we ask: How is it possible for those holding religious doctrines, some based on religious authority, for example, the Church or the Bible, to hold at the same time a reasonable political conception that supports a reasonable constitutional democratic regime? Can these doctrines still be compatible for the right reasons with a liberal political conception? To attain this compatibility, it is not sufficient that these doctrines accept a democratic government merely as a *modus vivendi*. Referring to citizens holding religious doctrines as citizens of faith we ask:

existence of God or on theological considerations, or on the pronouncements of a person or institution qua religious authority." *Id.* at 692. This definition is ambiguous between secular reasons in the sense of a nonreligious comprehensive doctrine and in the sense of a purely political conception within the content of public reason. Depending on which is meant, Audi's view that secular reasons must also be given along with religious reasons might have a role similar to what I call *the proviso* in § 4.1.

⁴¹ See the discussion by Michael Perry of John Finnis's argument, which denies that such relations are compatible with human good. *Religion in Politics: Constitutional and Moral Perspectives* ch 3 at 85-86 (Oxford 1997).

⁴² Here I follow T.M. Scanlon's view in *The Difficulty of Tolerance*, in David Heyd, ed, *Tolerance: An Elusive Virtue* 226 (Princeton 1996). While the whole is instructive, § 3 at 230-33 is especially relevant here.

How is it possible for citizens of faith to be wholehearted members of a democratic society who endorse society's intrinsic political ideals and values and do not simply acquiesce in the balance of political and social forces? Expressed more sharply: How is it possible—or is it—for those of faith, as well as the nonreligious (secular), to endorse a constitutional regime even when their comprehensive doctrines may not prosper under it, and indeed may decline? This last question brings out anew the significance of the idea of legitimacy and public reason's role in determining legitimate law.

To clarify the question, consider two examples. The first is that of Catholics and Protestants in the sixteenth and seventeenth centuries when the principle of toleration was honored only as a *modus vivendi*.⁴³ This meant that should either party fully gain its way it would impose its own religious doctrine as the sole admissible faith. A society in which many faiths all share this attitude and assume that for the indefinite future their relative numbers will stay roughly the same might well have a constitution resembling that of the United States, fully protecting the religious liberties of sharply divided religions more or less equal in political power. The constitution is, as it were, honored as a pact to maintain civil peace.⁴⁴ In this society political issues might be discussed in terms of political ideas and values so as not to open religious conflict and arouse sectarian hostility. The role of public reason here serves merely to quiet divisiveness and encourage social stability. However, in this case we do not have stability for the right reasons, that is, as secured by a firm allegiance to a democratic society's political (moral) ideals and values.

Nor again do we have stability for the right reasons in the second example—a democratic society where citizens accept as political (moral) principles the substantive constitutional clauses that ensure religious, political, and civil liberties, when their allegiance to these constitutional principles is so limited that none is willing to see his or her religious or nonreligious doctrine losing ground in influence and numbers, and such citizens are prepared to resist or to disobey laws that they think undermine their positions. And they do this even though the full range of religious and other liberties is always maintained and the doctrine

⁴³ See Rawls, *Political Liberalism*, lecture IV, § 3.4 at 148 (cited in note 1).

⁴⁴ See Kent Greenawalt's example of the society of Diverse Fervent Believers in Greenawalt, *Private Consciences and Public Reasons* at 16-18, 21-22 (cited in note 35).

in question is completely secure. Here again democracy is accepted conditionally and not for the right reasons.

What these examples have in common is that society is divided into separate groups, each of which has its own fundamental interest distinct from and opposed to the interests of the other groups and for which it is prepared to resist or to violate legitimate democratic law. In the first example, it is the interest of a religion in establishing its hegemony, while in the second, it is the doctrine's fundamental interest in maintaining a certain degree of success and influence for its own view, either religious or nonreligious. While a constitutional regime can fully ensure rights and liberties for all permissible doctrines, and therefore protect our freedom and security, a democracy necessarily requires that, as one equal citizen among others, each of us accept the obligations of legitimate law.⁴⁵ While no one is expected to put his or her religious or nonreligious doctrine in danger, we must each give up forever the hope of changing the constitution so as to establish our religion's hegemony, or of qualifying our obligations so as to ensure its influence and success. To retain such hopes and aims would be inconsistent with the idea of equal basic liberties for all free and equal citizens.

2. To expand on what we asked earlier: How is it possible—or is it—for those of faith, as well as the nonreligious (secular), to endorse a constitutional regime even when their comprehensive doctrines may not prosper under it, and indeed may decline? Here the answer lies in the religious or nonreligious doctrine's understanding and accepting that, except by endorsing a reasonable constitutional democracy, there is no other way fairly to ensure the liberty of its adherents consistent with the equal liberties of other reasonable free and equal citizens. In endorsing a constitutional democratic regime, a religious doctrine may say that such are the limits God sets to our liberty; a nonreligious doctrine will express itself otherwise.⁴⁶ But in either case, these

⁴⁵ See Rawls, *Political Liberalism*, lecture V, § 6 at 195-200 (cited in note 1).

⁴⁶ An example of how a religion may do this is the following. Abdullahi Ahmed An-Na'im, in his book *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* 52-57 (Syracuse 1990), introduces the idea of reconsidering the traditional interpretation of Shari'a, which for Muslims is divine law. For his interpretation to be accepted by Muslims, it must be presented as the correct and superior interpretation of Shari'a. The basic idea of An-Na'im's interpretation, following the late Sudanese author *Ustadh* Mahmoud Mohamed Taha, is that the traditional understanding of Shari'a has been based on the teachings of the later Medina period of Muhammad, whereas the teachings of the earlier Mecca period of Muhammad are the eternal and fundamental message of Islam. An-Na'im claims that the superior Mecca teachings and principles were rejected in favor of the more realistic and practical (in a seventh-century historical context) Medina teachings because society was not yet ready for their implementation. Now

doctrines formulate in different ways how liberty of conscience and the principle of toleration can cohere with equal justice for all citizens in a reasonable democratic society. Thus, the principles of toleration and liberty of conscience must have an essential place in any constitutional democratic conception. They lay down the fundamental basis to be accepted by all citizens as fair and regulative of the rivalry between doctrines.

Observe here that there are two ideas of toleration. One is purely political, being expressed in terms of the rights and duties protecting religious liberty in accordance with a reasonable political conception of justice. The other is not purely political but expressed from within a religious or a nonreligious doctrine, as when, for example, it was said above that such are the limits God sets on our liberty. Saying this offers an example of what I call reasoning from conjecture.⁴⁷ In this case we reason from what we believe, or conjecture, may be other people's basic doctrines, religious or philosophical, and seek to show them that, despite what they might think, they can still endorse a reasonable political conception of justice. We are not ourselves asserting that ground of toleration but offering it as one they could assert consistent with their comprehensive doctrines.

§ 4: THE WIDE VIEW OF PUBLIC POLITICAL CULTURE

1. Now we consider what I call the wide view of public political culture and discuss two aspects of it. The first is that reasonable comprehensive doctrines, religious or nonreligious, may be

that historical conditions have changed, An-Na'im believes that Muslims should follow the earlier Mecca period in interpreting Shari'a. So interpreted, he says that Shari'a supports constitutional democracy. *Id* at 69-100.

In particular, the earlier Mecca interpretation of Shari'a supports equality of men and women, and complete freedom of choice in matters of faith and religion, both of which are in accordance with the constitutional principle of equality before the law. An-Na'im writes:

The Qur'an does not mention constitutionalism, but human rational thinking and experience have shown that constitutionalism is necessary for realizing the just and good society prescribed by the Qur'an.

An Islamic justification and support for constitutionalism is important and relevant for Muslims. Non-Muslims may have their own secular or other justifications. As long as all are agreed on the principle and specific rules of constitutionalism, including complete equality and non-discrimination on grounds of gender or religion, each may have his or her own reasons for coming to that agreement.

Id at 100. (This is a perfect example of overlapping consensus.) I thank Akeel Bilgrami for informing me of An-Na'im's work. I also owe thanks to Roy Mottahedeh for valuable discussion.

⁴⁷ See § 4.3.

introduced in public political discussion at any time, provided that in due course proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support. This injunction to present proper political reasons I refer to as *the proviso*, and it specifies public political culture as distinct from the background culture.⁴⁸ The second aspect I consider is that there may be positive reasons for introducing comprehensive doctrines into public political discussion. I take up these two aspects in turn.

Obviously, many questions may be raised about how to satisfy the proviso.⁴⁹ One is: when does it need to be satisfied? On the same day or some later day? Also, on whom does the obligation to honor it fall? It is important that it be clear and established that the proviso is to be appropriately satisfied in good faith. Yet the details about how to satisfy this proviso must be worked out in practice and cannot feasibly be governed by a clear family of rules given in advance. How they work out is determined by the nature of the public political culture and calls for good sense and understanding. It is important also to observe that the introduction into public political culture of religious and secular doctrines, provided the proviso is met, does not change the nature and content of justification in public reason itself. This justification is still given in terms of a family of reasonable political conceptions of justice. However, there are no restrictions or requirements on how religious or secular doctrines are themselves to be expressed; these doctrines need not, for example, be by some standards logically correct, or open to rational appraisal, or evidentially supportable.⁵⁰ Whether they are or not is a matter to be decided by those presenting them, and how they want what they say to be taken. They will normally have practical reasons for wanting to make their views acceptable to a broader audience.

2. Citizens' mutual knowledge of one another's religious and nonreligious doctrines expressed in the wide view of public political culture⁵¹ recognizes that the roots of democratic citizens' allegiance to their political conceptions lie in their respective com-

⁴⁸ Rawls, *Political Liberalism*, lecture I, § 2.3 at 13-14 (cited in note 1) (contrasting public political culture with background culture).

⁴⁹ I am indebted here to valuable discussion with Dennis Thompson.

⁵⁰ Greenawalt discusses Franklin Gamwell and Michael Perry, who do evidently impose such constraints on how religion is to be presented. See Greenawalt, *Private Consciences and Public Reasons* at 85-95 (cited in note 35).

⁵¹ Again, as always, in distinction from the background culture, where I emphasize there are no restrictions.

prehensive doctrines, both religious and nonreligious. In this way citizens' allegiance to the democratic ideal of public reason is strengthened for the right reasons. We may think of the reasonable comprehensive doctrines that support society's reasonable political conceptions as those conceptions' vital social basis, giving them enduring strength and vigor. When these doctrines accept the proviso and only then come into political debate, the commitment to constitutional democracy is publicly manifested.⁵² Made aware of this commitment, government officials and citizens are more willing to honor the duty of civility, and their following the ideal of public reason helps foster the kind of society that ideal exemplifies. These benefits of the mutual knowledge of citizens' recognizing one another's reasonable comprehensive doctrines bring out a positive ground for introducing such doctrines, which is not merely a defensive ground, as if their intrusion into public discussion were inevitable in any case.

Consider, for example, a highly contested political issue—the issue of public support for church schools.⁵³ Those on different sides are likely to come to doubt one another's allegiance to basic constitutional and political values. It is wise, then, for all sides to introduce their comprehensive doctrines, whether religious or secular, so as to open the way for them to explain to one another how their views do indeed support those basic political values. Consider also the Abolitionists and those in the Civil Rights Movement.⁵⁴ The proviso was fulfilled in their cases, however

⁵² Political liberalism is sometimes criticized for not itself developing accounts of these social roots of democracy and setting out the formation of its religious and other supports. Yet political liberalism does recognize these social roots and stresses their importance. Obviously the political conceptions of toleration and freedom of religion would be impossible in a society in which religious freedom were not honored and cherished. Thus, political liberalism agrees with David Hollenbach, S.J., when he writes:

Not the least important of [the transformations brought about by Aquinas] was his insistence that the political life of a people is not the highest realization of the good of which they are capable—an insight that lies at the root of constitutional theories of limited government. And though the Church resisted the liberal discovery of modern freedoms through much of the modern period, liberalism has been transforming Catholicism once again through the last half of our own century. The memory of these events in social and intellectual history as well as the experience of the Catholic Church since the Second Vatican Council leads me to hope that communities holding different visions of the good life can get somewhere if they are willing to risk conversation and argument about these visions.

David Hollenbach, S.J., *Contexts of the Political Role of Religion: Civil Society and Culture*, 30 San Diego L Rev 877, 891 (1993). While a conception of public reason must recognize the significance of these social roots of constitutional democracy and note how they strengthen its vital institutions, it need not itself undertake a study of these matters. For the need to consider this point I am indebted to Paul Weithman.

⁵³ See Rawls, *Political Liberalism*, lecture VI, § 8.2 at 248-49 (cited in note 1).

⁵⁴ See *id.*, lecture VI, § 8.3 at 249-51. I do not know whether the Abolitionists and King

much they emphasized the religious roots of their doctrines, because these doctrines supported basic constitutional values—as they themselves asserted—and so supported reasonable conceptions of political justice.

3. Public reasoning aims for public justification. We appeal to political conceptions of justice, and to ascertainable evidence and facts open to public view, in order to reach conclusions about what we think are the most reasonable political institutions and policies. Public justification is not simply valid reasoning, but argument addressed to others: it proceeds correctly from premises we accept and think others could reasonably accept to conclusions we think they could also reasonably accept. This meets the duty of civility, since in due course the proviso is satisfied.

There are two other forms of discourse that may also be mentioned, though neither expresses a form of public reasoning. One is declaration: here we each declare our own comprehensive doctrine, religious or nonreligious. This we do not expect others to share. Rather, each of us shows how, from our own doctrines, we can and do endorse a reasonable public political conception of justice with its principles and ideals. The aim of doing this is to declare to others who affirm different comprehensive doctrines that we also each endorse a reasonable political conception belonging to the family of reasonable such conceptions. On the wide view, citizens of faith who cite the Gospel parable of the Good Samaritan do not stop there, but go on to give a public justification for this parable's conclusions in terms of political values.⁵⁵ In this way citizens who hold different doctrines are reassured, and this strengthens the ties of civic friendship.⁵⁶

The second form is conjecture, defined thus: we argue from what we believe, or conjecture, are other people's basic doctrines, religious or secular, and try to show them that, despite what they might think, they can still endorse a reasonable political conception that can provide a basis for public reasons. The ideal of pub-

thought of themselves as fulfilling the purpose of the proviso. But whether they did or not, they could have. And had they known and accepted the idea of public reason, they would have. I thank Paul Weithman for this point.

⁵⁵ Luke 10:29-37. It is easy to see how the Gospel story could be used to support the imperfect moral duty of mutual aid, as found, say, in Kant's fourth example in the *Grundlegung*. See Immanuel Kant, *Groundwork for the Metaphysics of Morals* AK 4:423, in Mary Gregor, trans, *Practical Philosophy* (Cambridge 1996). To formulate a suitable example in terms of political values only, consider a variant of the difference principle or of some other analogous idea. The principle could be seen as giving a special concern for the poor, as in the Catholic social doctrine. See John Rawls, *A Theory of Justice* § 13 (Belknap 1971) (defining the difference principle).

⁵⁶ For the relevance of this form of discourse I am indebted to discussion with Charles Larmore.

lic reason is thereby strengthened. However, it is important that conjecture be sincere and not manipulative. We must openly explain our intentions and state that we do not assert the premises from which we argue, but that we proceed as we do to clear up what we take to be a misunderstanding on others' part, and perhaps equally on ours.⁵⁷

§ 5: ON THE FAMILY AS PART OF THE BASIC STRUCTURE

1. To illustrate further the use and scope of public reason, I shall now consider a range of questions about a single institution, the family.⁵⁸ I do this by using a particular political conception of justice and looking at the role that it assigns to the family in the basic structure of society. Since the content of public reason is determined by all the reasonable political conceptions that satisfy the criterion of reciprocity, the range of questions about the family covered by this political conception will indicate the ample space for debate and argument comprehended by public reason as a whole.

⁵⁷ I will mention another form of discourse that I call witnessing: it typically occurs in an ideal, politically well ordered, and fully just society in which all votes are the result of citizens' voting in accordance with their most reasonable conception of political justice. Nevertheless, it may happen that some citizens feel they must express their principled dissent from existing institutions, policies, or enacted legislation. I assume that Quakers accept constitutional democracy and abide by its legitimate law, yet at the same time may reasonably express the religious basis of their pacifism. (The parallel case of Catholic opposition to abortion is mentioned in § 6.1.) Yet witnessing differs from civil disobedience in that it does not appeal to principles and values of a (liberal) political conception of justice. While on the whole these citizens endorse reasonable political conceptions of justice supporting a constitutional democratic society, in this case they nevertheless feel they must not only let other citizens know the deep basis of their strong opposition but must also bear witness to their faith by doing so. At the same time, those bearing witness accept the idea of public reason. While they may think the outcome of a vote on which all reasonable citizens have conscientiously followed public reason to be incorrect or not true, they nevertheless recognize it as legitimate law and accept the obligation not to violate it. In such a society there is strictly speaking no case for civil disobedience and conscientious refusal. The latter requires what I have called a nearly just, but not fully just, society. See Rawls, *A Theory of Justice* § 55 (cited in note 55).

⁵⁸ I have thought that J.S. Mill's landmark *The Subjection of Women* (1869), in 21 *Collected Works of John Stuart Mill* 259 (cited in note 36), made clear that a decent liberal conception of justice (including what I called justice as fairness) implied equal justice for women as well as men. Admittedly, *A Theory of Justice* should have been more explicit about this, but that was a fault of mine and not of political liberalism itself. I have been encouraged to think that a liberal account of equal justice for women is viable by Susan Moller Okin, *Justice, Gender, and the Family* (Basic Books 1989); Linda C. McClain, "Atomistic Man" Revisited: *Liberalism, Connection, and Feminist Jurisprudence*, 65 S Cal L Rev 1171 (1992); Martha Nussbaum, *Sex and Social Justice* (Oxford forthcoming 1998) (a collection of her essays from 1990 to 1996, including *The Feminist Critique of Liberalism*, her Oxford Amnesty Lecture for 1996); and Sharon A. Lloyd, *Situating a Feminist Criticism of John Rawls's Political Liberalism*, 28 Loyola LA L Rev 1319 (1995). I have gained greatly from their writings.

The family is part of the basic structure, since one of its main roles is to be the basis of the orderly production and reproduction of society and its culture from one generation to the next. Political society is always regarded as a scheme of social cooperation over time indefinitely; the idea of a future time when its affairs are to be concluded and society disbanded is foreign to the conception of political society. Thus, reproductive labor is socially necessary labor. Accepting this, a central role of the family is to arrange in a reasonable and effective way the raising of and caring for children, ensuring their moral development and education into the wider culture.⁵⁹ Citizens must have a sense of justice and the political virtues that support political and social institutions. The family must ensure the nurturing and development of such citizens in appropriate numbers to maintain an enduring society.⁶⁰

These requirements limit all arrangements of the basic structure, including efforts to achieve equality of opportunity. The family imposes constraints on ways in which this goal can be achieved, and the principles of justice are stated to try to take these constraints into account. I cannot pursue these complexities here, but assume that as children we grow up in a small intimate group in which elders (normally parents) have a certain moral and social authority.

2. In order for public reason to apply to the family, it must be seen, in part at least, as a matter for political justice. It may be thought that this is not so, that the principles of justice do not apply to the family and hence those principles do not secure equal justice for women and their children.⁶¹ This is a misconception. It may arise as follows: the primary subject of political justice is the basic structure of society understood as the arrangement of society's main institutions into a unified system of social cooperation over time. The principles of political justice are to apply directly to this structure, but are not to apply directly to the internal life of the many associations within it, the family among them. Thus, some may think that if those principles do

⁵⁹ Rawls, *A Theory of Justice* §§ 70-76 (cited in note 55) (discussing the stages of moral development and their relevance to justice as fairness).

⁶⁰ However, no particular form of the family (monogamous, heterosexual, or otherwise) is required by a political conception of justice so long as the family is arranged to fulfill these tasks effectively and doesn't run afoul of other political values. Note that this observation sets the way in which justice as fairness deals with the question of gay and lesbian rights and duties, and how they affect the family. If these rights and duties are consistent with orderly family life and the education of children, they are, *ceteris paribus*, fully admissible.

⁶¹ See Okin, *Justice, Gender, and the Family* at 90-93 (cited in note 58).

not apply directly to the internal life of families, they cannot ensure equal justice for wives along with their husbands.

Much the same question arises in regard to all associations, whether they be churches or universities, professional or scientific associations, business firms or labor unions. The family is not peculiar in this respect. To illustrate: it is clear that liberal principles of political justice do not require ecclesiastical governance to be democratic. Bishops and cardinals need not be elected; nor need the benefits attached to a church's hierarchy of offices satisfy a specified distributive principle, certainly not the difference principle.⁶² This shows how the principles of political justice do not apply to the internal life of a church, nor is it desirable, or consistent with liberty of conscience or freedom of association, that they should.

On the other hand, the principles of political justice do impose certain essential constraints that bear on ecclesiastical governance. Churches cannot practice effective intolerance, since, as the principles of justice require, public law does not recognize heresy and apostasy as crimes, and members of churches are always at liberty to leave their faith. Thus, although the principles of justice do not apply directly to the internal life of churches, they do protect the rights and liberties of their members by the constraints to which all churches and associations are subject. This is not to deny that there are appropriate conceptions of justice that do apply directly to most if not all associations and groups, as well as to various kinds of relationships among individuals. Yet these conceptions of justice are not political conceptions. In each case, what is the appropriate conception is a separate and additional question, to be considered anew in each particular instance, given the nature and role of the relevant association, group, or relation.

Now consider the family. Here the idea is the same: political principles do not apply directly to its internal life, but they do impose essential constraints on the family as an institution and so guarantee the basic rights and liberties, and the freedom and opportunities, of all its members. This they do, as I have said, by specifying the basic rights of equal citizens who are the members of families. The family as part of the basic structure cannot violate these freedoms. Since wives are equally citizens with their husbands, they have all the same basic rights, liberties, and opportunities as their husbands; and this, together with the correct

⁶² The difference principle is defined in Rawls, *A Theory of Justice* § 13 (cited in note 55).

application of the other principles of justice, suffices to secure their equality and independence.

To put the case another way, we distinguish between the point of view of people as citizens and their point of view as members of families and of other associations.⁶³ As citizens we have reasons to impose the constraints specified by the political principles of justice on associations; while as members of associations we have reasons for limiting those constraints so that they leave room for a free and flourishing internal life appropriate to the association in question. Here again we see the need for the division of labor between different kinds of principles. We wouldn't want political principles of justice—including principles of distributive justice—to apply directly to the internal life of the family.

These principles do not inform us how to raise our children, and we are not required to treat our children in accordance with political principles. Here those principles are out of place. Surely parents must follow some conception of justice (or fairness) and due respect with regard to their children, but, within certain limits, this is not for political principles to prescribe. Clearly the prohibition of abuse and neglect of children, and much else, will, as constraints, be a vital part of family law. But at some point society has to rely on the natural affection and goodwill of the mature family members.⁶⁴

Just as the principles of justice require that wives have all the rights of citizens, the principles of justice impose constraints on the family on behalf of children who as society's future citizens have basic rights as such. A long and historic injustice to women is that they have borne, and continue to bear, an unjust share of the task of raising, nurturing, and caring for their children. When they are even further disadvantaged by the laws regulating divorce, this burden makes them highly vulnerable. These injustices bear harshly not only on women but also on their children; and they tend to undermine children's capacity to acquire the political virtues required of future citizens in a viable democratic society. Mill held that the family in his day was a school for male despotism: it inculcated habits of thought and ways of feeling and conduct incompatible with democracy.⁶⁵ If so,

⁶³ I borrow this thought from Joshua Cohen, *Okin on Justice, Gender, and Family*, 22 *Can J Phil* 263, 278 (1992).

⁶⁴ Michael Sandel supposes the two principles of justice as fairness to hold generally for associations, including families. See Michael J. Sandel, *Liberalism and the Limits of Justice* 30-34 (Cambridge 1982).

⁶⁵ Mill, *Subjection of Women* ch 2 at 283-98 (cited in note 58).

the principles of justice enjoining a reasonable constitutional democratic society can plainly be invoked to reform the family.

3. More generally, when political liberalism distinguishes between political justice that applies to the basic structure and other conceptions of justice that apply to the various associations within that structure, it does not regard the political and the nonpolitical domains as two separate, disconnected spaces, each governed solely by its own distinct principles. Even if the basic structure alone is the primary subject of justice, the principles of justice still put essential restrictions on the family and all other associations. The adult members of families and other associations are equal citizens first: that is their basic position. No institution or association in which they are involved can violate their rights as citizens.

A domain so-called, or a sphere of life, is not, then, something already given apart from political conceptions of justice. A domain is not a kind of space, or place, but rather is simply the result, or upshot, of how the principles of political justice are applied, directly to the basic structure and indirectly to the associations within it. The principles defining the equal basic liberties and opportunities of citizens always hold in and through all so-called domains. The equal rights of women and the basic rights of their children as future citizens are inalienable and protect them wherever they are. Gender distinctions limiting those rights and liberties are excluded.⁶⁶ So the spheres of the political and the public, of the nonpublic and the private, fall out from the content and application of the conception of justice and its principles. If the so-called private sphere is alleged to be a space exempt from justice, then there is no such thing.

The basic structure is a single social system, each part of which may influence the rest. Its basic principles of political justice specify all its main parts and its basic rights reach throughout. The family is only one part (though a major part) of the system that produces a social division of labor based on gender over time. Some have argued that discrimination against women in the marketplace is the key to the historical gendered division of labor in the family. The resulting wage differences between the genders make it economically sensible that mothers spend more time with their children than fathers do. On the other hand, some believe that the family itself is the linchpin⁶⁷ of gender in-

⁶⁶ Rawls, *A Theory of Justice* § 16 at 99 (cited in note 55).

⁶⁷ This is Okin's term. See Okin, *Justice, Gender, and the Family* at 6, 14, 170 (cited in note 58).

justice. However, a liberal conception of justice may have to allow for some traditional gendered division of labor within families—assume, say, that this division is based on religion—provided it is fully voluntary and does not result from or lead to injustice. To say that this division of labor is in this case fully voluntary means that it is adopted by people on the basis of their religion, which from a political point of view is voluntary,⁶⁸ and not because various other forms of discrimination elsewhere in the social system make it rational and less costly for husband and wife to follow a gendered division of labor in the family.

Some want a society in which division of labor by gender is reduced to a minimum. But for political liberalism, this cannot mean that such division is forbidden. One cannot propose that equal division of labor in the family be simply mandated, or its absence in some way penalized at law for those who do not adopt it. This is ruled out because the division of labor in question is connected with basic liberties, including the freedom of religion. Thus, to try to minimize gendered division of labor means, in political liberalism, to try to reach a social condition in which the remaining division of labor is voluntary. This allows in principle that considerable gendered division of labor may persist. It is only involuntary division of labor that is to be reduced to zero.

Hence the family is a crucial case for seeing whether the single system—the basic structure—affords equal justice to both men and women. If the gendered division of labor in the family is indeed fully voluntary, then there is reason to think that the single system realizes fair equality of opportunity for both genders.

4. Since a democracy aims for full equality for all its citizens, and so of women, it must include arrangements to achieve it. If a basic, if not the main, cause of women's inequality is their greater share in the bearing, nurturing, and caring for children in the traditional division of labor within the family, steps need to be taken either to equalize their share, or to compensate them

⁶⁸ On this point, see Rawls, *Political Liberalism*, lecture VI, § 3.2 at 221-22 (cited in note 1). Whether it is properly voluntary, and if so, under what conditions, is a disputed question. Briefly, the question involves the distinction between the reasonable and the rational explained thus: an action is voluntary in one sense, but it may not be voluntary in another. It may be voluntary in the sense of rational: doing the rational thing in the circumstances even when these involve unfair conditions; or an action may be voluntary in the sense of reasonable: doing the rational thing when all the surrounding conditions are also fair. Clearly the text interprets "voluntary" in the second sense: affirming one's religion is voluntary when all of the surrounding conditions are reasonable, or fair. In these remarks I have assumed that the subjective conditions of voluntariness (whatever they may be) are present and have only noted the objective ones. A full discussion would lead us far afield.

for it.⁶⁹ How best to do this in particular historical conditions is not for political philosophy to decide. But a now common proposal is that as a norm or guideline, the law should count a wife's work in raising children (when she bears that burden as is still common) as entitling her to an equal share in the income that her husband earns during their marriage. Should there be a divorce, she should have an equal share in the increased value of the family's assets during that time.

Any departure from this norm would require a special and clear justification. It seems intolerably unjust that a husband may depart the family taking his earning power with him and leaving his wife and children far less advantaged than before. Forced to fend for themselves, their economic position is often precarious. A society that permits this does not care about women, much less about their equality, or even about their children, who are its future.

The crucial question may be what precisely is covered by gender-structured institutions. How are their lines drawn? If we say the gender system includes whatever social arrangements adversely affect the equal basic liberties and opportunities of women, as well as those of their children as future citizens, then surely that system is subject to critique by the principles of justice. The question then becomes whether the fulfillment of these principles suffices to remedy the gender system's faults. The remedy depends in part on social theory and human psychology, and much else. It cannot be settled by a conception of justice alone.

In concluding these remarks on the family, I should say that I have not tried to argue fully for particular conclusions. Rather, to repeat, I have simply wanted to illustrate how a political conception of justice and its ordering of political values apply to a single institution of the basic structure and can cover many (if not all) of its various aspects. As I have said, these values are given an order within the particular political conception to which they are attached.⁷⁰ Among these values are the freedom and equality of women, the equality of children as future citizens, the freedom of religion, and finally, the value of the family in securing the orderly production and reproduction of society and of its culture from one generation to the next. These values provide

⁶⁹ See Victor R. Fuchs, *Women's Quest for Economic Equality* (Harvard 1988). Chapters 3 and 4 summarize the evidence for saying the main cause is not, as it is often said, employer discrimination, while chapters 7 and 8 propose what is to be done.

⁷⁰ See § 2.3.

public reasons for all citizens. So much is claimed not only for justice as fairness but for any reasonable political conception.

§ 6: QUESTIONS ABOUT PUBLIC REASON

I now turn to various questions and doubts about the idea of public reason and try to allay them.

1. First, it may be objected that the idea of public reason would unreasonably limit the topics and considerations available for political argument and debate, and that we should adopt instead what we may call the open view with no constraints. I now discuss two examples to rebut this objection.

(a) One reason for thinking public reason is too restrictive is to suppose that it mistakenly tries to settle political questions in advance. To explain this objection, let's consider the question of school prayer. It might be thought that a liberal position on this question would deny its admissibility in public schools. But why so? We have to consider all the political values that can be invoked to settle this question and on which side the decisive reasons fall. The famous debate in 1784-1785 between Patrick Henry and James Madison over the establishment of the Anglican Church in Virginia and involving religion in the schools was argued almost entirely by reference to political values alone. Henry's argument for establishment was based on the view that:

Christian knowledge hath a natural tendency to correct the morals of men, restrain their vices, and preserve the peace of society, which cannot be effected without a competent provision for learned teachers⁷¹

Henry did not seem to argue for Christian knowledge as good in itself but rather as an effective way to achieve basic political values, namely, the good and peaceable conduct of citizens. Thus, I take him to mean by "vices," at least in part, those actions contrary to the political virtues found in political liberalism,⁷² and expressed by other conceptions of democracy.

Leaving aside the obvious difficulty of whether prayers can be composed that satisfy all the needed restrictions of political

⁷¹ See Thomas J. Curry, *The First Freedoms: Church and State in America to the Passage of the First Amendment* 139-48 (Oxford 1986). The quoted language, which appears in *id.* at 140, is from the preamble to the proposed "Bill Establishing a Provision for Teachers of the Christian Religion" (1784). Note that the popular Patrick Henry also provided the most serious opposition to Jefferson's "Bill for Establishing Religious Freedom" (1779), which won out when reintroduced in the Virginia Assembly in 1786. Curry, *The First Freedoms* at 146.

⁷² For a discussion of these virtues, see Rawls, *Political Liberalism*, lecture V, § 5.4 at 194-95 (cited in note 1).

justice, Madison's objections to Henry's bill turned largely on whether religious establishment was necessary to support orderly civil society. He concluded it was not. Madison's objections depended also on the historical effects of establishment both on society and on the integrity of religion itself. He was acquainted with the prosperity of colonies that had no establishment, notably Pennsylvania; he cited the strength of early Christianity in opposition to the hostile Roman Empire, and the corruption of past establishments.⁷³ With some care, many if not all of these arguments can be expressed in terms of the political values of public reason.

Of special interest in the example of school prayer is that it brings out that the idea of public reason is not a view about specific political institutions or policies. Rather, it is a view about the kind of reasons on which citizens are to rest their political cases in making their political justifications to one another when they support laws and policies that invoke the coercive powers of government concerning fundamental political questions. Also of special interest in this example is that it serves to emphasize that the principles that support the separation of church and state should be such that they can be affirmed by all free and equal citizens, given the fact of reasonable pluralism.

The reasons for the separation of church and state are these, among others: It protects religion from the state and the state from religion; it protects citizens from their churches⁷⁴ and citizens from one another. It is a mistake to say that political liberalism is an individualist political conception, since its aim is the protection of the various interests in liberty, both associational and individual. And it is also a grave error to think that the separation of church and state is primarily for the protection of secular culture; of course it does protect that culture, but no more so than it protects all religions. The vitality and wide acceptance

⁷³ See James Madison, *Memorial and Remonstrance* (1785), in *The Mind of the Founder* 8-16 (Bobbs-Merrill 1973) (Marvin Meyers, ed). Paragraph 6 refers to the vigor of early Christianity in opposition to the empire, while paragraphs 7 and 11 refer to the mutually corrupting influence of past establishments on both state and religion. In the correspondence between Madison and William Bradford of Pennsylvania, whom he met at Princeton (College of New Jersey), the freedom and prosperity of Pennsylvania without an establishment is praised and celebrated. See 1 *The Papers of James Madison* (Chicago 1962) (William T. Hutchinson and William M.E. Rachal, eds). See especially Madison's letters of 1 December 1773, id at 100-01; 24 January 1774, id at 104-06; and 1 April 1774, id at 111-13. A letter of Bradford's to Madison, 4 March 1774, refers to liberty as the genius of Pennsylvania. Id at 109. Madison's arguments were similar to those of Tocqueville I mention below. See also Curry, *The First Freedoms* at 142-48 (cited in note 71).

⁷⁴ It does this by protecting the freedom to change one's faith. Heresy and apostasy are not crimes.

of religion in America is often commented upon, as if it were a sign of the peculiar virtue of the American people. Perhaps so, but it may also be connected with the fact that in this country the various religions have been protected by the First Amendment from the state, and none has been able to dominate and suppress the other religions by the capture and use of state power.⁷⁵ While some have no doubt entertained that aim since the early days of the Republic, it has not been seriously tried. Indeed, Tocqueville thought that among the main causes of the strength of democracy in this country was the separation of church and state.⁷⁶ Po-

⁷⁵ What I refer to here is the fact that from the early days of the Emperor Constantine in the fourth century Christianity punished heresy and tried to stamp out by persecution and religious wars what it regarded as false doctrine (for example, the crusade against the Albigenses led by Innocent III in the 13th century). To do this required the coercive powers of the state. Instituted by Pope Gregory IX, the Inquisition was active throughout the Wars of Religion in the 16th and 17th centuries. While most of the American Colonies had known establishments of some kind (Congregationalist in New England, Episcopalian in the South), the United States, thanks to the plurality of its religious sects and the First Amendment which they endorsed, never did. A persecuting zeal has been the great curse of the Christian religion. It was shared by Luther and Calvin and the Protestant Reformers, and it was not radically changed in the Catholic Church until Vatican II. In the Council's Declaration on Religious Freedom—*Dignitatis Humanae*—the Catholic Church committed itself to the principle of religious freedom as found in a constitutional democratic regime. It declared the ethical doctrine of religious freedom resting on the dignity of the human person; a political doctrine with respect to the limits of government in religious matters; a theological doctrine of the freedom of the Church in its relations to the political and social world. All persons, whatever their faith, have the right of religious liberty on the same terms. *Declaration on Religious Freedom (Dignitatis Humanae): On the Right of the Person and of Communities to Social and Civil Freedom in Matters Religious* (1965), in Walter Abbott, S.J., ed, *The Documents of Vatican II* 675, 692-96 (Geoffrey Chapman 1966). As John Courtney Murray, S.J., said: "A long-standing ambiguity had finally been cleared up. The Church does not deal with the secular order in terms of a double standard—freedom for the Church when Catholics are in the minority, privilege for the Church and intolerance for others when Catholics are a majority." John Courtney Murray, S.J., *Religious Freedom*, in Abbott, ed, *Documents of Vatican II* at 672, 673. See also the instructive discussion by Paul E. Sigmund, *Catholicism and Liberal Democracy*, in R. Bruce Douglas and David Hollenbach, S.J., eds, *Catholicism and Liberalism: Contributions to American Public Philosophy* (Cambridge 1994). See especially id at 233-39.

⁷⁶ Alexis de Tocqueville, 1 *Democracy in America* 294-301 (Perennial Library 1988) (J.P. Mayer, ed, George Lawrence, trans). In discussing "The Main Causes That Make Religion Powerful in America," Tocqueville says the Catholic priests "all thought that the main reason for the quiet sway of religion over their country was the complete separation of church and state. I have no hesitation in stating that throughout my stay in America I met nobody, lay or cleric, who did not agree about that." Id at 295. He continues:

There have been religions intimately linked to earthly governments, dominating men's souls both by terror and by faith; but when a religion makes such an alliance, I am not afraid to say that it makes the same mistake as any man might; it sacrifices the future for the present, and by gaining a power to which it has no claim, it risks its legitimate authority. . . .

Hence religion cannot share the material strength of the rulers without being burdened with some of the animosity roused against them.

Id at 297. He remarks that these observations apply all the more to a democratic country,

litical liberalism agrees with many other liberal views in accepting this proposition.⁷⁷ Some citizens of faith have felt that this separation is hostile to religion and have sought to change it. In doing this I believe they fail to grasp a main cause of the strength of religion in this country and, as Tocqueville says, seem ready to jeopardize it for temporary gains in political power.

(b) Others may think that public reason is too restrictive because it may lead to a stand-off⁷⁸ and fail to bring about decisions on disputed issues. A stand-off in some sense may indeed happen, not only in moral and political reasoning but in all forms of reasoning, including science and common sense. Nevertheless, this is irrelevant. The relevant comparison is to those situations in which legislators enacting laws and judges deciding cases must make decisions. Here some political rule of action must be laid down and all must be able reasonably to endorse the process by which a decision is reached. Recall that public reason sees the office of citizen with its duty of civility as analogous to that of judge with its duty of deciding cases. Just as judges are to decide cases by legal grounds of precedent, recognized canons of statutory interpretation, and other relevant grounds, so citizens are to reason by public reason and to be guided by the criterion of reciprocity, whenever constitutional essentials and matters of basic justice are at stake.

Thus, when there seems to be a stand-off, that is, when legal arguments seem evenly balanced on both sides, judges cannot resolve the case simply by appealing to their own political views. To do that is for judges to violate their duty. The same holds with public reason: if, when stand-offs occur, citizens simply invoke grounding reasons of their comprehensive views,⁷⁹ the principle of reciprocity is violated. From the point of view of public reason, citizens must vote for the ordering of political values they sincerely think the most reasonable. Otherwise they fail to exercise political power in ways that satisfy the criterion of reciprocity.

for in that case when religion seeks political power it will attach itself to a particular party and be burdened by hostility to it. Id at 298. Referring to the cause of the decline of religion in Europe, he concludes, "I am profoundly convinced that this accidental and particular cause is the close union of politics and religion. . . . European Christianity has allowed itself to be intimately united with the powers of this world." Id at 300-01. Political liberalism accepts Tocqueville's view and sees it as explaining, so far as possible, the basis of peace among comprehensive doctrines both religious and secular.

⁷⁷ In this it agrees with Locke, Montesquieu, and Constant; Kant, Hegel, and Mill.

⁷⁸ I take the term from Philip Quinn. The idea appears in Rawls, *Political Liberalism*, lecture VI, § 7.1-2 at 240-41 (cited in note 1).

⁷⁹ I use the term "grounding reasons" since many who might appeal to these reasons view them as the proper grounds, or the true basis—religious, philosophical, or moral—of the ideals and principles of public reasons and political conceptions of justice.

In particular, when hotly disputed questions, such as that of abortion, arise which may lead to a stand-off between different political conceptions, citizens must vote on the question according to their complete ordering of political values.⁸⁰ Indeed, this is a normal case: unanimity of views is not to be expected. Reasonable political conceptions of justice do not always lead to the same conclusion;⁸¹ nor do citizens holding the same conception always agree on particular issues. Yet the outcome of the vote, as I said before, is to be seen as legitimate provided all government officials, supported by other reasonable citizens, of a reasonably just constitutional regime sincerely vote in accordance with the idea of public reason. This doesn't mean the outcome is true or correct, but that it is reasonable and legitimate law, binding on citizens by the majority principle.

Some may, of course, reject a legitimate decision, as Roman Catholics may reject a decision to grant a right to abortion. They may present an argument in public reason for denying it and fail to win a majority.⁸² But they need not themselves exercise the

⁸⁰ Some have quite naturally read the footnote in Rawls, *Political Liberalism*, lecture VI, § 7.2 at 243-44 (cited in note 1), as an argument for the right to abortion in the first trimester. I do not intend it to be one. (It does express my opinion, but my opinion is not an argument.) I was in error in leaving it in doubt whether the aim of the footnote was only to illustrate and confirm the following statement in the text to which the footnote is attached: "The only comprehensive doctrines that run afoul of public reason are those that cannot support a reasonable balance [or ordering] of political values [on the issue]." To try to explain what I meant, I used three political values (of course, there are more) for the troubled issue of the right to abortion to which it might seem improbable that political values could apply at all. I believe a more detailed interpretation of those values may, when properly developed in public reason, yield a reasonable argument. I don't say the most reasonable or decisive argument; I don't know what that would be, or even if it exists. (For an example of such a more detailed interpretation, see Judith Jarvis Thomson, *Abortion*, 20 *Boston Rev* 11 (Summer 1995), though I would want to add several addenda to it.) Suppose now, for purposes of illustration, that there is a reasonable argument in public reason for the right to abortion but there is no equally reasonable balance, or ordering, of the political values in public reason that argues for the denial of that right. Then in this kind of case, but only in this kind of case, does a comprehensive doctrine denying the right to abortion run afoul of public reason. However, if it can satisfy the proviso of the wide public reason better, or at least as well as other views, it has made its case in public reason. Of course, a comprehensive doctrine can be unreasonable on one or several issues without being simply unreasonable.

⁸¹ Rawls, *Political Liberalism*, lecture VI, § 7.1 at 240-41 (cited in note 1).

⁸² For such an argument, see Cardinal Joseph Bernardin, *The Consistent Ethic: What Sort of Framework?*, 16 *Origins* 345, 347-50 (Oct 30, 1986). The idea of public order the Cardinal presents includes these three political values: public peace, essential protections of human rights, and the commonly accepted standards of moral behavior in a community of law. Further, he grants that not all moral imperatives are to be translated into prohibitive civil statutes and thinks it essential to the political and social order to protect human life and basic human rights. The denial of the right to abortion he hopes to justify on the basis of those three values. I don't of course assess his argument here, except to say it is clearly cast in some form of public reason. Whether it is itself reasonable or not, or more

right to abortion. They can recognize the right as belonging to legitimate law enacted in accordance with legitimate political institutions and public reason, and therefore not resist it with force. Forceful resistance is unreasonable: it would mean attempting to impose by force their own comprehensive doctrine that a majority of other citizens who follow public reason, not unreasonably, do not accept. Certainly Catholics may, in line with public reason, continue to argue against the right to abortion. Reasoning is not closed once and for all in public reason any more than it is closed in any form of reasoning. Moreover, that the Catholic Church's nonpublic reason requires its members to follow its doctrine is perfectly consistent with their also honoring public reason.⁸³

I do not discuss the question of abortion in itself since my concern is not with that question but rather to stress that political liberalism does not hold that the ideal of public reason should always lead to a general agreement of views, nor is it a fault that it does not. Citizens learn and profit from debate and argument, and when their arguments follow public reason, they instruct society's political culture and deepen their understanding of one another even when agreement cannot be reached.

2. Some of the considerations underlying the stand-off objection lead to a more general objection to public reason, namely, that the content of the family of reasonable political conceptions of justice on which it is based is itself much too narrow. This objection insists that we should always present what we think are true or grounding reasons for our views. That is, the objection insists, we are bound to express the true, or the right, as seen from our comprehensive doctrines.

However, as I said in the Introduction, in public reason ideas of truth or right based on comprehensive doctrines are replaced by an idea of the politically reasonable addressed to citizens as citizens. This step is necessary to establish a basis of political reasoning that all can share as free and equal citizens. Since we are seeking public justifications for political and social institutions—for the basic structure of a political and social world—we

reasonable than the arguments on the other side, is another matter. As with any form of reasoning in public reason, the reasoning may be fallacious or mistaken.

⁸³ As far as I can see, this view is similar to Father John Courtney Murray's position about the stand the Church should take in regard to contraception in *We Hold These Truths: Catholic Reflections on the American Proposition* 157-58 (Sheed and Ward 1960). See also Mario Cuomo's lecture on abortion in his Notre Dame Lecture of 1984, in *More Than Words: The Speeches of Mario Cuomo* 32-51 (St Martin's 1993). I am indebted to Leslie Griffin and Paul Weithman for discussion and clarification about points involved in this and the preceding footnote and for acquainting me with Father Murray's view.

think of persons as citizens. This assigns to each person the same basic political position. In giving reasons to all citizens we don't view persons as socially situated or otherwise rooted, that is, as being in this or that social class, or in this or that property and income group, or as having this or that comprehensive doctrine. Nor are we appealing to each person's or each group's interests, though at some point we must take these interests into account. Rather, we think of persons as reasonable and rational, as free and equal citizens, with the two moral powers⁸⁴ and having, at any given moment, a determinate conception of the good, which may change over time. These features of citizens are implicit in their taking part in a fair system of social cooperation and seeking and presenting public justifications for their judgments on fundamental political questions.

I emphasize that this idea of public reason is fully compatible with the many forms of nonpublic reason.⁸⁵ These belong to the internal life of the many associations in civil society and they are not of course all the same; different nonpublic reasons of different religious associations shared by their members are not those of scientific societies. Since we seek a shareable public basis of justification for all citizens in society, giving justifications to particular persons and groups here and there until all are covered fails to do this. To speak of all persons in society is still too broad, unless we suppose that they are in their nature basically the same. In political philosophy one role of ideas about our nature has been to think of people in a standard, or canonical, fashion so that they might all accept the same kind of reasons.⁸⁶ In political liberalism, however, we try to avoid natural or psychological views of this kind, as well as theological or secular doctrines. Accounts of human nature we put aside and rely on a political conception of persons as citizens instead.

3. As I have stressed throughout, it is central to political liberalism that free and equal citizens affirm both a comprehensive doctrine and a political conception. However, the relation be-

⁸⁴ These two powers, the capacity for a conception of justice and the capacity for a conception of the good, are discussed in Rawls, *Political Liberalism* (cited in note 1). See especially *id.*, lecture I, § 3.2 at 19, lecture II, § 7.1 at 81, lecture III, § 3.3 at 103-04, lecture III, § 4.1 at 108.

⁸⁵ *Id.*, lecture VI, § 4 at 223-27.

⁸⁶ Sometimes the term "normalize" is used in this connection. For example, persons have certain fundamental interests of a religious or philosophical kind; or else certain basic needs of a natural kind. Again, they may have a certain typical pattern of self-realization. A Thomist will say that we always desire above all else, even if unknown to ourselves, the *Visio Dei*; a Platonist will say we strive for a vision of the good; a Marxist will say we aim for self-realization as species-beings.

tween a comprehensive doctrine and its accompanying political conception is easily misunderstood.

When political liberalism speaks of a reasonable overlapping consensus of comprehensive doctrines,⁸⁷ it means that all of these doctrines, both religious and nonreligious, support a political conception of justice underwriting a constitutional democratic society whose principles, ideals, and standards satisfy the criterion of reciprocity. Thus, all reasonable doctrines affirm such a society with its corresponding political institutions: equal basic rights and liberties for all citizens, including liberty of conscience and the freedom of religion.⁸⁸ On the other hand, comprehensive doctrines that cannot support such a democratic society are not reasonable. Their principles and ideals do not satisfy the criterion of reciprocity, and in various ways they fail to establish the equal basic liberties. As examples, consider the many fundamentalist religious doctrines, the doctrine of the divine right of monarchs and the various forms of aristocracy, and, not to be overlooked, the many instances of autocracy and dictatorship.

Moreover, a true judgment in a reasonable comprehensive doctrine never conflicts with a reasonable judgment in its related political conception. A reasonable judgment of the political conception must still be confirmed as true, or right, by the comprehensive doctrine. It is, of course, up to citizens themselves to affirm, revise, or change their comprehensive doctrines. Their doctrines may override or count for naught the political values of a constitutional democratic society. But then the citizens cannot claim that such doctrines are reasonable. Since the criterion of reciprocity is an essential ingredient specifying public reason and its content, political liberalism rejects as unreasonable all such doctrines.

In a reasonable comprehensive doctrine, in particular a religious one, the ranking of values may not be what we might expect. Thus, suppose we call *transcendent* such values as salvation and eternal life—the *Visio Dei*. This value, let's say, is higher, or superior to, the reasonable political values of a constitutional democratic society. These are worldly values and therefore on a different, and as it were lower, plane than those transcendent values. It doesn't follow, however, that these lower yet reasonable values are overridden by the transcendent values of the religious doctrine. In fact, a *reasonable* comprehensive doctrine is

⁸⁷ The idea of such a consensus is discussed at various places in Rawls, *Political Liberalism* (cited in note 1). See especially id, lecture IV, and consult the index.

⁸⁸ See id at xviii (paperback edition).

one in which they are not overridden; it is the unreasonable doctrines in which reasonable political values are overridden. This is a consequence of the idea of the politically reasonable as set out in political liberalism. Recall that it was said: In endorsing a constitutional democratic regime, a religious doctrine may say that such are the limits God sets to our liberty.⁸⁹

A further misunderstanding alleges that an argument in public reason could not side with Lincoln against Douglas in their debates of 1858.⁹⁰ But why not? Certainly they were debating fundamental political principles about the rights and wrongs of slavery. Since the rejection of slavery is a clear case of securing the constitutional essential of the equal basic liberties, surely Lincoln's view was reasonable (even if not the most reasonable), while Douglas's was not. Therefore, Lincoln's view is supported by any reasonable comprehensive doctrine. It is no surprise, then, that his view is in line with the religious doctrines of the Abolitionists and the Civil Rights Movement. What could be a better example to illustrate the force of public reason in political life?⁹¹

4. A third general objection is that the idea of public reason is unnecessary and serves no purpose in a well established constitutional democracy. Its limits and constraints are useful primarily when a society is sharply divided and contains many hostile religious associations and secular groups, each striving to become the controlling political force. In the political societies of the European democracies and the United States these worries, so the objection goes, are idle.

⁸⁹ See § 3.2. It is sometimes asked why political liberalism puts such a high value on political values, as if one could only do that by assessing those values in comparison with transcendent values. But this comparison political liberalism does not make, nor does it need to make, as is observed in the text.

⁹⁰ On this, see Michael J. Sandel, *Review of Political Liberalism*, 107 *Harv L Rev* 1765, 1778-82 (1994), and more recently Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* 21-23 (Belknap 1996).

⁹¹ Perhaps some think that a political conception is not a matter of (moral) right and wrong. If so, that is a mistake and is simply false. Political conceptions of justice are themselves intrinsically moral ideas, as I have stressed from the outset. As such they are a kind of normative value. On the other hand, some may think that the relevant political conceptions are determined by how a people actually establish their existing institutions—the political given, as it were, by politics. Viewed in this light, the prevalence of slavery in 1858 implies that Lincoln's criticisms of it were moral, a matter of right and wrong, and certainly not a matter of politics. To say that the political is determined by a people's politics may be a possible use of the term *political*. But then it ceases to be a normative idea and it is no longer part of public reason. We must hold fast to the idea of the political as a fundamental category and covering political conceptions of justice as intrinsic moral values.

However, this objection is incorrect and sociologically faulty. For without citizens' allegiance to public reason and their honoring the duty of civility, divisions and hostilities between doctrines are bound in time to assert themselves, should they not already exist. Harmony and concord among doctrines and a people's affirming public reason are unhappily not a permanent condition of social life. Rather, harmony and concord depend on the vitality of the public political culture and on citizens' being devoted to and realizing the ideal of public reason. Citizens could easily fall into bitterness and resentment, once they no longer see the point of affirming an ideal of public reason and come to ignore it.

To return to where we began in this Section: I do not know how to prove that public reason is not too restrictive, or whether its forms are properly described. I suspect it cannot be done. Yet this is not a serious problem if, as I believe, the large majority of cases fit the framework of public reason, and the cases that do not fit all have special features that both enable us to understand why they should cause difficulty and show us how to cope with them as they arise. This prompts the general questions of whether there are examples of important cases of constitutional essentials and basic justice that do not fit the framework of public reason, and if so, why they cause difficulty. In this paper I do not pursue these questions.

§ 7: CONCLUSION

1. Throughout, I have been concerned with a torturing question in the contemporary world, namely: Can democracy and comprehensive doctrines, religious or nonreligious, be compatible? And if so, how? At the moment a number of conflicts between religion and democracy raise this question. To answer it political liberalism makes the distinction between a self-standing political conception of justice and a comprehensive doctrine. A religious doctrine resting on the authority of the Church or the Bible is not, of course, a liberal comprehensive doctrine: its leading religious and moral values are not those, say, of Kant or Mill. Nevertheless, it may endorse a constitutional democratic society and recognize its public reason. Here it is basic that public reason is a political idea and belongs to the category of the political. Its content is given by the family of (liberal) political conceptions of justice satisfying the criterion of reciprocity. It does not trespass upon religious beliefs and injunctions insofar as these are consistent with the essential constitutional liberties, including the freedom of religion and liberty of conscience. There

is, or need be, no war between religion and democracy. In this respect political liberalism is sharply different from and rejects Enlightenment Liberalism, which historically attacked orthodox Christianity.

The conflicts between democracy and reasonable religious doctrines and among reasonable religious doctrines themselves are greatly mitigated and contained within the bounds of reasonable principles of justice in a constitutional democratic society. This mitigation is due to the idea of toleration, and I have distinguished between two such ideas.⁹² One is purely political, being expressed in terms of the rights and duties protecting religious liberty in accordance with a reasonable political conception of justice.⁹³ The other is not purely political but expressed from within a religious or a nonreligious doctrine. However, a reasonable judgment of the political conception must still be confirmed as true, or right, by a reasonable comprehensive doctrine.⁹⁴ I assume, then, that a reasonable comprehensive doctrine accepts some form of the political argument for toleration. Of course, citizens may think that the grounding reasons for toleration and for the other elements of a constitutional democratic society are not political but rather are to be found in their religious or nonreligious doctrines. And these reasons, they may well say, are the true or the right reasons; and they may see the political reasons as superficial, the grounding ones as deep. Yet there is no conflict here, but simply concordant judgments made within political conceptions of justice on the one hand, and within comprehensive doctrines on the other.

There are limits, however, to reconciliation by public reason. Three main kinds of conflicts set citizens at odds: those deriving from irreconcilable comprehensive doctrines; those deriving from differences in status, class position, or occupation, or from differences in ethnicity, gender, or race; and finally, those deriving

⁹² See § 3.2.

⁹³ See Rawls, *Political Liberalism*, lecture II, § 3.2-4 at 60-62 (cited in note 1). The main points can be set out in summary fashion as follows: (1) Reasonable persons do not all affirm the same comprehensive doctrine. This is said to be a consequence of the burdens of judgment. See note 95. (2) Many reasonable doctrines are affirmed, not all of which can be true or right (as judged from within a comprehensive doctrine). (3) It is not unreasonable to affirm any one of the reasonable comprehensive doctrines. (4) Others who affirm reasonable doctrines different from ours are, we grant, reasonable also, and certainly not for that reason unreasonable. (5) In going beyond recognizing the reasonableness of a doctrine and affirming our belief in it, we are not being unreasonable. (6) Reasonable persons think it unreasonable to use political power, should they possess it, to repress other doctrines that are reasonable yet different from their own.

⁹⁴ See § 6.3.

from the burdens of judgment.⁹⁵ Political liberalism concerns primarily the first kind of conflict. It holds that even though our comprehensive doctrines are irreconcilable and cannot be compromised, nevertheless citizens who affirm reasonable doctrines may share reasons of another kind, namely, public reasons given in terms of political conceptions of justice. I also believe that such a society can resolve the second kind of conflict, which deals with conflicts between citizens' fundamental interests—political, economic, and social. For once we accept reasonable principles of justice and recognize them to be reasonable (even if not the most reasonable), and know, or reasonably believe, that our political and social institutions satisfy them, the second kind of conflict need not arise, or arise so forcefully. Political liberalism does not explicitly consider these conflicts but leaves them to be considered by justice as fairness, or by some other reasonable conception of political justice. Finally, conflicts arising from the burdens of judgment always exist and limit the extent of possible agreement.

2. Reasonable comprehensive doctrines do not reject the essentials of a constitutional democratic polity.⁹⁶ Moreover, reasonable persons are characterized in two ways: First, they stand ready to offer fair terms of social cooperation between equals, and they abide by these terms if others do also, even should it be to their advantage not to;⁹⁷ second, reasonable persons recognize and accept the consequences of the burdens of judgment, which leads to the idea of reasonable toleration in a democratic society.⁹⁸ Finally we come to the idea of legitimate law, which reasonable citizens understand to apply to the general structure of political authority.⁹⁹ They know that in political life unanimity can rarely if ever be expected, so a reasonable democratic constitution must include majority or other plurality voting procedures in order to reach decisions.¹⁰⁰

The idea of the politically reasonable is sufficient unto itself for the purposes of public reason when basic political questions are at stake. Of course, fundamentalist religious doctrines and

⁹⁵ These burdens are discussed in Rawls, *Political Liberalism*, lecture II, § 2 (cited in note 1). Roughly, they are sources or causes of reasonable disagreement between reasonable and rational persons. They involve balancing the weight of different kinds of evidence and kinds of values, and the like, and they affect both theoretical and practical judgments.

⁹⁶ *Id.* at xviii.

⁹⁷ *Id.*, lecture II, § 1.1 at 49-50.

⁹⁸ *Id.*, lecture II, §§ 2-3.4 at 54-62.

⁹⁹ *Id.*, lecture IV, § 1.2-3 at 135-37.

¹⁰⁰ *Id.*, lecture IX, § 2.1 at 393.

autocratic and dictatorial rulers will reject the ideas of public reason and deliberative democracy. They will say that democracy leads to a culture contrary to their religion, or denies the values that only autocratic or dictatorial rule can secure.¹⁰¹ They assert that the religiously true, or the philosophically true, overrides the politically reasonable. We simply say that such a doctrine is politically unreasonable. Within political liberalism nothing more need be said.

I noted in the beginning¹⁰² the fact that every actual society, however dominant and controlling its reasonable citizens may be, will normally contain numerous unreasonable doctrines that are not compatible with a democratic society—either certain religious doctrines, such as fundamentalist religions, or certain non-religious (secular) doctrines, such as those of autocracy and dictatorship, of which our century offers hideous examples. How far unreasonable doctrines may be active and are to be tolerated in a constitutional democratic regime does not present a new and different question, despite the fact that in this account of public reason we have focused on the idea of the reasonable and the role of reasonable citizens. There is not one account of toleration for reasonable doctrines and another for unreasonable ones. Both cases are settled by the appropriate political principles of justice and the conduct those principles permit.¹⁰³ Unreasonable doctrines are a threat to democratic institutions, since it is impossible for them to abide by a constitutional regime except as a *modus vivendi*. Their existence sets a limit to the aim of fully realizing a reasonable democratic society with its ideal of public reason and the idea of legitimate law. This fact is not a defect or failure of the idea of public reason, but rather it indicates that there are limits to what public reason can accomplish. It does not diminish the great value and importance of attempting to realize that ideal to the fullest extent possible.

3. I end by pointing out the fundamental difference between *A Theory of Justice* and *Political Liberalism*. The first explicitly attempts to develop from the idea of the social contract, represented by Locke, Rousseau, and Kant, a theory of justice that is no longer open to objections often thought fatal to it, and that proves superior to the long dominant tradition of utilitarianism. *A Theory of Justice* hopes to present the structural features of

¹⁰¹ Observe that neither the religious objection to democracy nor the autocratic one could be made by public reasoning.

¹⁰² See note 3.

¹⁰³ See Rawls, *A Theory of Justice* § 35 (cited in note 55) (on toleration of the intolerant); Rawls, *Political Liberalism*, lecture V, § 6.2 at 197-99 (cited in note 1).

such a theory so as to make it the best approximation to our considered judgments of justice and hence to give the most appropriate moral basis for a democratic society. Furthermore, justice as fairness is presented there as a comprehensive liberal doctrine (although the term “comprehensive doctrine” is not used in the book) in which all the members of its well ordered society affirm that same doctrine. This kind of well ordered society contradicts the fact of reasonable pluralism and hence *Political Liberalism* regards that society as impossible.

Thus, *Political Liberalism* considers a different question, namely: How is it possible for those affirming a comprehensive doctrine, religious or nonreligious, and in particular doctrines based on religious authority, such as the Church or the Bible, also to hold a reasonable political conception of justice that supports a constitutional democratic society? The political conceptions are seen as both liberal and self-standing and not as comprehensive, whereas the religious doctrines may be comprehensive but not liberal. The two books are asymmetrical, though both have an idea of public reason. In the first, public reason is given by a comprehensive liberal doctrine, while in the second, public reason is a way of reasoning about political values shared by free and equal citizens that does not trespass on citizens’ comprehensive doctrines so long as those doctrines are consistent with a democratic polity. Thus, the well ordered constitutional democratic society of *Political Liberalism* is one in which the dominant and controlling citizens affirm and act from irreconcilable yet reasonable comprehensive doctrines. These doctrines in turn support reasonable political conceptions—although not necessarily the most reasonable—which specify the basic rights, liberties, and opportunities of citizens in society’s basic structure.

