In Defense of John Rawls's Solution to the Problem of Incompatible Pluralism in Democratic Society and an Application of Political Liberalism in Our Own

An Honors Thesis for the Department of Philosophy

John J. Lapin

Tufts University,

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No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.

— Sir Winston Churchill
House of Commons
November 11, 1947

The government can do no more to advance the human excellence, or the values of perfection, than it can to advance Catholicism or Protestantism, or any other religion.

— John Rawls
Political Liberalism, p. 179

Abstract

Most political philosophies have tried to argue in favor of a particular idea of the good and have tried to convince others to endorse that idea. But can we really hope to enact public policy based on a single idea of the good in a democracy, where there is a pluralism of reasonable views? In this thesis, I argue that the only way we can hope to create legitimate and stable public policy is by setting aside the points of contention, since we will never agree on those anyway, and since enacting policy for everyone based exclusively on a particular view would be unduly coercive to those who do not hold that view. I will argue that we have a duty to our fellow citizens to deliberate publicly by presenting each other justifications for views that we reasonably think other citizens like us would accept. In the first half of my thesis, I will explore and defend John Rawls's expression of this view. Though I will use the contemporary abortion debate as an example of a contentious culture war issue that could be resolved through a Rawlsian framework, the solution could be used for other issues, too. In the second half of my thesis, I will broaden his view to apply it to our actual polity to show how we can make 21st century American democracy more legitimate, stable, and transparent.

I. Introduction

The power of a democracy comes from the collective voice of its citizens. But how does a pluralistic society, in which people hold different morals, philosophies, and religions, or what John Rawls calls "comprehensive doctrines," agree on what that voice should say? This is an issue of societal pluralism, and discussion of the problems and solutions of this sort of pluralism is clearer if we consider seemingly incompatible views about contemporary issues. In this thesis, I will use the abortion debate in the United States as my main example, but the ideas I present could easily be applied to other contentious issues, like same-sex marriage, immigration reform, or gun control. The question I will answer is how we can create policy we all can endorse in the face of such seemingly incompatible pluralism, and how such reasoning and consensus could help our own government become more legitimate and stable.[1]

Disagreement about the permissibility of abortion has been public and somewhat irreconcilable at least since 1973, with the Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113. Politicians and citizens have different solutions to the problems confronting our society, and these different solutions come from different comprehensive doctrines. Some choose to take their guidance from their religion, which they believe is preeminent over the Constitution. At least publicly, pro-life proponents take one of three views. They argue either that there is no constitutional

[1] *Legitimacy* concerns the government's justifiable use of coercive political power. If democratic power is the power of citizens acting collectively, legitimacy concerns ask when government can coerce citizens to obey a single law, given the inherent pluralism in democracy. *Stability* asks similar questions from a different angle. Why would anyone obey a law imposed on her by people she disagrees with, even if it is a so-called "legitimate" law? If citizens disobey these laws, the political system will be unstable. (*See Leif Wener's "John Rawls,"* Stanford Encyclopedia of Philosophy.)

right to an abortion, or that we ought to amend the Constitution to make abortion illegal, by arguing, for instance, that life begins at conception, or that abortion ought to be prohibited because it is against their religion. Others think religion has no place in public policy. But even some of these people think the Constitution was divinely inspired, which ought to guide interpretation of it. Given the significant disagreement, can we to find consensus and create acceptable public policy? And if so, how is this possible?

Disagreement and pluralism are inherent features of democracy,[2] so we should not (nor does Rawls) try to avoid pluralism itself—for that would amount to ignoring society's diversity—but rather, in speaking of a "solution," we should try to mitigate the effects of pluralism. In this thesis, I will address how we, as individual members of a democratic society with a plurality of incompatible comprehensive doctrines, can move forward on an idea of justice, without sacrificing these doctrines. As I see it, one of the main problems limiting our agreement is that citizens have different ideas of how rationally to resolve disagreement, which I will explore later.

In *Political Liberalism* and "The Idea of Public Reason Revisited," John Rawls presents an argument for how the problem of pluralism might be addressed.[3] He calls his solution to preserving comprehensive doctrines while ensuring stability

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[2] By 'democracy', I mean something like a system of government that is "of the people, by the people, and for the people," in which a set of free and equal citizens plays a significant role in the creation of constitutional essentials and public policy. This may be done through elected representation or through a popular vote of the citizenry.

[3] Though Rawls was prolific, these two works in particular best deal with the problem of incompatible pluralism and most clearly enunciate Rawls's solution to the problem. *Political Liberalism* [*PL*] (first published in 1993) expanded his more famous work *A Theory of Justice* [*TJ*] (first published in 1971), in which Rawls provides the framework for a system of justice against which we may consider the justice of our own society. *PL* reworks that solution to deal with multiple (often competing and often personal or idiosyncratic) ideas of the good. "The Idea of Public Reason Revisited" ["PRR"] (1997) rephrases the ideas of *PL* and responds to post-1993 objections to that latter work.

and legitimacy *political liberalism*. Rawls shows it to be stable through the ideas of *overlapping consensus* and *public reason*, which I will discuss below. The basic idea, however, is that because citizens will not reach agreement on their comprehensive doctrines, they will need "to consider what kinds of reasons they may reasonably give one another when fundamental political questions are at stake" in order to "specify … 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" (Rawls, "PRR" 766). Political liberalism, through overlapping consensus and citizens' good faith deliberation of constitutional essentials on a shared set of reasons we reasonably think others will accept, can make our government more legitimate. In order to show that political liberalism is a useful project to consider for our own government, I will first vindicate Rawls against his detractors, and then demonstrate proper application of a broader form of public reason.

To do this, I will discuss the issue of abortion as a case study for how consensus and public reason can mitigate the divisiveness of pluralism. I will then consider the main objections against Rawls's solution of political liberalism—(1) that he underestimates the depth of disagreement and unwillingness to abide by the strict intelligibility and reasonableness requirements and leaves us without any meaningful way to make evaluations, (2) that Rawls engages in "philosophical sleight of hand" in disguising political liberalism, which is actually a comprehensive doctrine itself, and privileging it above other comprehensive doctrines. These first

two objections have a substantive concern that Rawls is trying to do too much or set the results of deliberation in advance and that Rawls appeals to rationality improperly. After I show that Rawls is able to defend against these particular objections, I will consider the possibility that they might not go far enough and will attempt to exculpate Rawls from a potentially more fundamental problem, namely (3) that he does not adequately address how political liberalism might work in a democratic society. This final objection shows that we can consider rationality as a mechanism that can be expanded if needed.

Though there have been substantial objections to Rawls's work, I have chosen to examine these principal objections because they deal with what I take to be the biggest obstacle to acceptance of political liberalism; namely, that people have different ideas of what it is to engage in reasonable and rational discussion with one another. The first two objections define rationality as making decisions to bring about what we think is most important. On their account, acting rationally is making decisions to bring about a determinate idea of the good. They argue that political liberalism is trying to impose its own idea of rationality and preset the rules—and maybe even the content—of debate. The final objection pushes the notions of rationality and public reason toward actual political discussion.

Even if Rawls gives us enough to show that these objections are not fatal, there may be practical problems. It is not clear how we can ensure that the system of justice will be workable and stable, in the sense of not being changed as capriciously as public opinion. Nor is it clear that political considerations will take

precedence over comprehensive doctrines of morality and the good in creating a system of justice, especially since, at some point, government will have to impose a scheme of justice.[4] But, because of pluralism and diversity in the society, some people will find the scheme undesirable, even though they may have chosen it when asked to set aside their comprehensive doctrines and public policy for us all to live under. In other words, will citizens be sufficiently motivated to comply with reasonable principles of justice, as opposed to their comprehensive doctrines? Is a consensus-based scheme viable? In showing political liberalism to be a successful solution to the problem of incompatible pluralism, I will attempt to answer some of these questions.

Ultimately, I will show that Rawls has given us enough material to defend him.[5] Even if the four principal objections are undamaging, they are crucial to helping us see how we can modify our view of public reason, not as the objectors call for, but in another way. In vindicating Rawls against these objections and showing that political liberalism is a suitable solution to the problem of incompatible yet reasonable pluralism, I will conclude the thesis by arguing that a looser and more robust public reason and deliberation than the one Rawls outlines is key to making

[4] We might be hesitant to say democratic government "imposes" a system of justice, given that the governmental power in a democracy is said to be just the aggregate power of constituent citizens. Nevertheless, all power is coercive. Because of this, legitimate governance requires that its power cannot itself come from coercive means (Laden, "Public Reason" 4230). Put differently, a government's power cannot come from reasons that some citizens will reasonably reject; otherwise, it is unduly coercive and illegitimate.

[5] Though some have argued that Rawls's theory is "unrealistic," and I will discuss various enunciations of this objection in § V, it must be clear that Rawls gives an ideal theory, and his goal is to present a system of justice that reasonable people would agree on, to show how that agreement would come about and to encourage us to consider our own system to determine whether it is truly just. His theory is thus unrealistic only if people would refuse to contemplate issues of justice, but I will set this objection aside for now on the grounds that analogous objections are often raised against the whole of philosophy. Objections of this ilk, then, are beyond the scope of this thesis.

American democracy more legitimate, stable, transparent, and representative. I will show this by returning to a discussion of just what it means to be rational and to engage in rational discussion. I will argue that public reason is central to any discussion of democracy and pluralism and that it must be open not just to the political culture but also to the citizenry at large, tasked with creating truly democratic policy. The framework laid out here and in Rawls's work can guide a genuinely public dialogue of all citizens in a broader range of issues, not only on constitutional essentials, and can thereby improve the health of our democracy.

II. Beginning on Rawls

In *Political Liberalism*, Rawls considers how it is possible for "justice as fairness," his theory of distributive justice, outlined in *Theory of Justice*, to come about in a society in which we disagree about ideas of the good. In *Theory of Justice*, Rawls argues that a society of truly free and equal, reasonable and rational citizens, would choose specific principles of justice that would together form *justice as fairness*, but, as I will discuss below, political liberalism is more abstract and allows for many different conceptions of justice to be offered and deliberated on. An endorsement of justice as fairness is not imperative to acceptance of political liberalism. Rather, we can think of justice as fairness as an example of how Rawls's methodology can show how we can mitigate the effects of seemingly incompatible pluralism of reasonable people. In this section, I will provide a brief background on the key ideas and vocabulary of Rawls's idea of political liberalism, which will be

necessary to engage more deeply with the material. To begin, however, I will briefly describe justice as fairness.

Roughly, the idea of justice as fairness rests on the *liberty* and the *equality* principles. The first says that everyone has the same right to basic liberties, of conscience, association, speech, equality before the law, participation in government, etc. This first principle, the liberty principle, makes liberal society an association of equal citizens. The second principle, the equality principle, says that social and economic institutions are to satisfy two conditions. First, each person is to have equal powers and opportunity to achieve favorable socioeconomic position, and second, according to the difference principle, which is part of the equality principle, all social or economic inequalities are to be arranged so that they do the greatest benefit to the least advantaged. The difference principle embodies equality-based reciprocity (*JF* 42-3).

In arguing for these principles, Rawls constructs a hypothetical thought experiment called the *original position*, which people enter into to decide the general principles of governance and constitutional essentials, as we might find in the Bill of Rights to the U.S. Constitution, for all of society to live under. In order that members of society may be *equal* and *reasonable*, and choose principles that are fair to all members of society, Rawls places participants behind a *veil of ignorance*, which removes from their knowledge any identity characteristics or information that could cloud their judgment. Unlike the participants in theories of social contracts of past philosophers, which arise from a state of nature and in

which parties know everything about themselves,[6] Rawls's participants are ignorant of their social and economic classes, race, sex, sexual orientation, gender identity, etc. They only know general facts and laws about societies and people, of general human behavior, of economics, and of sciences to make decisions. Yet participants are intelligent, make no errors in reasoning, and choose political principles on the basis of pursuing what is recognized as most valuable according to their comprehensive conception of the good (Rawls, *PL* 52-3). With the veil of ignorance in place, reasonableness is a constraint on self-interested actors, making them choose principles that are fair to all social positions because they are ignorant of whom they are. Though some objectors disagree, as I will discuss later, participants have significant knowledge; they are only ignorant of that which might set them apart and, on Rawls's view, might make their judgment less impartial.

Rawls thinks parties behind the veil of ignorance will choose justice as fairness for rational reasons toward achieving the good in line with their comprehensive doctrines, because under the two principles any distribution of wealth would benefit the least well off, and since representatives do not know their socioeconomic level, it is rational to choose a scheme that would benefit them regardless of their wealth level, and especially if they turn out to be less well-off. Being forced to choose behind a veil of ignorance makes their choices reasonable. Though I will discuss the mechanics and specifics of political liberalism, public reason, and overlapping consensus in § IV, it should begin to be clear why

[6] See, for example, John Locke's *Second Treatise on Government* (1689) and Jean-Jacques Rousseau's *The Social Contract* (1762).

deliberation of the sort Rawls characterizes by way of using this thought experiment is key to the stability and legitimacy of public policy and government. A system of justice is legitimate if, acting reasonably and rationally, free and equal citizens would endorse its coercive power (Rawls, *PL* 137). Therefore, if a system of justice is illegitimate, it will be unstable because citizens will not endorse it. Political liberalism, then, can give us legitimacy and stability in government.

The thought experiment, and hence Rawls's argument for the liberty and equality principles, will appeal to people who are both rational and reasonable. We can relate to parties trying to maximize their goods, to why a veil of ignorance is imposed upon them, because we think justice should speak to our interests as both rational and reasonable beings, and to those less well-off hoping to better themselves. This is because we agree that citizens are *equal* in their potential, even if they may have aptitudes and capacities of various degrees. In other words, though different citizens may be more equipped to handle certain tasks, all are given equal opportunity and potential for advancement. They are also equal in their right to "take part in, and determine the outcome of constitutional processes that establish the laws with which they are to comply" (Rawls, *TJ* 194). People are *free* in their ability to determine their own comprehensive doctrines, and they are citizens of a democratic society who enjoy personal liberty. Furthermore, Rawls says people are free and equal if they possess the two moral powers: a capacity for a sense of justice and for a conception of the good. The first allows them to understand and act from reasonable principles of justice, and the second allows consideration of worthy

pursuits and ordering of "elements to guide … over a complete life" (Rawls, *PL* 104). Together, these powers are crucial in allowing people to propose and evaluate conceptions of justice within deliberative democracy. Indeed, it is crucial that we consider free and equal people because we are interested in reasonable pluralism in a democracy, as opposed to, say, in a monarchy or oligarchy. Were parties not free and equal, constitutional essentials and distributive justice would be decided by a single person or by a group of people, and the issues that concern us would not appear.

Reasonable people are amenable to cooperation with each other through the constraints of the original position, since they are interested in both maximizing their good and making sure that if they turn out to be the least well-off they will not be totally disadvantaged.[7] This is why the veil of ignorance is appealing to us. We think cooperating on fair terms is important.[8] Rawls thinks citizens will offer and endorse mutually acceptable rules and ideas, as long as they have the reason to believe others will follow the same rules. In so doing, they recognize that imposing their own religious, moral, or philosophical views on others is unduly coercive, and they appreciate that truly public policy cannot be created out of such coercion. These are some of the effects of following the norms of conversation, which emphasize that in speaking with others, especially in productive conversation, it is

[7] I will argue later that citizens can be reasonable (and rational) in offering one another comprehensive doctrine-neutral grounds for accepting a particular position, without requiring the constraints of the original position. Indeed, the looser notion of public reason I advance is dependent on the reasonableness and rationality of private citizens.

[8] I take this point as crucial both to Rawls's project and to my later expansion of it. I will argue for an idea of what it is to deliberate together with other people. Rawls's argument here appeals to our sense of being reasonable and how engagement with other people on matters of politics draws on this sense of reasonableness. As I will show later, this is left out of other accounts of what it is to reason to a conclusion about a political problem.

necessary that each party recognizes the other as equal and reasonable in a relevant way. In conversing, citizens accept the universal *burdens of judgment*, which are subjective circumstances that can limit agreement. As active participants in democratic society, they fulfill the obligation of the "duty of civility [and the criterion of reciprocity] to one another and to other citizens" (Rawls, "PRR" 770, 789).[9] In other words, recognizing the greater good of legitimate political power, Rawls thinks they will sacrifice some of their liberty and accept rules they may not entirely agree with. It is in this distinction that we will find the solution to the problem of reasonable pluralism.

Finally, Rawls thinks people are *rational* in that they are able to make their own decisions and to determine how best to pursue their idea of the good, and they engage in judgment and deliberation to successfully achieve that idea (*PL* 50-1). Here, Rawls is talking about a notion of rationality separate from the idea of being reasonable and deliberating fairly with other people. Though they are not entirely self-interested, rational agents do not have a moral sensibility that motivates their fair cooperation. In other words, they may lack a reasonable sense of what it is to cooperate fairly with other people. "Rational people lack what Kant calls in the *Religion*, Ak, VI: 26, 'the predisposition to moral responsibility'" (Rawls, *PL* 51, f5). According to Rawls, rationality and reasonableness—recognition that fellow citizens

[9] In this deontological view, Rawls was inspired both by Kant and by Rousseau. Rousseau "argued that people could unite into a legitimate political society if they placed themselves under the supreme direction of the general will, [which] is best understood not as an alien force that dominates political society, but as a set of principles that govern a certain kind of reasoning that Rousseau thinks we ought to engage in as citizens" (Laden, "Public Reason" 4231).

are reasonable, rational, free, and equal—are both necessary for the legitimate exercise of government power in a democracy based on deliberation and consensus.

The society in which such deliberation takes place is *well-ordered* so long as (1) its citizens abide by a political conception of justice, as opposed to a particular comprehensive doctrine, which not all citizens can be reasonably expected to endorse, and (2) unreasonable comprehensive doctrines do not undermine the justice of institutions and constitutional essentials (Rawls, *PL* 39).[10] Rawls often uses the term *deliberative democracy* to refer to a well-ordered society. I will do so as well.[11]

In the next section, I will discuss the issue of abortion specifically. Then, I will show how political liberalism functions. Next, I will defend Rawls against his objectors. Finally, I will argue that public debate enhances our ability to resolve both matters of constitutional importance and broader policy questions. Though Rawls does not discuss a practical application of public reason and political liberalism, I will use a looser notion of the framework he provides in showing how we may apply it to our own system of government and make it more legitimate and stable.

[10] Some object to these social-contract arguments by arguing that citizens unhappy with a scheme of justice can simply leave the society. But Rawls's well-ordered society is closed. We enter it by birth and leave it only by death. This is so in order to show that leaving society is not a viable option for citizens. Not only would leaving a society be quite difficult, if not impossible for many people, but also if we allow citizens to leave society, the issues of publicly endorsed conceptions of justice are not important to ordering democratic government.
[11] Unlike in *A Theory of Justice*, in which Rawls writes of democracy as a means of just distribution of wealth, here he is interested in democracy as a "political system where citizens make decisions on the basis of an exchange of reasons" (Laden, "Public Reason" 4231).

III. Abortion—A Case Study in Incompatible Pluralism

To consider how overlapping consensus and public reason might solve the problem of irreconcilable and divisive pluralism in a democratic society, let's examine conflicts about abortion. Though some may think the issue of abortion was solved when the Supreme Court ruled some prohibitions to abortion unconstitutional in *Roe v. Wade*, the issue remains contentious in contemporary political discussion.[12] And the stakes are high, with one side equating abortion with murder, and the other seeing its prohibition as one of the last institutional impediments to women's true equality. The question at hand is not just whether abortion is right or wrong. Rather, we are curious whether it is possible for people who disagree about questions of the good—because of different comprehensive doctrines—to create a stable constitutional regime based on reasonable and publicly justifiable principles. In using the abortion debate as a case study for what a dialogue of public reason might look like, we can begin by exploring each side's view.

According to the Pew Forum on Religion & Public Life, the percentage of Americans supporting the availability of legal abortion has declined in recent years from 54% to 47%. Additionally, 45% would like to see abortion illegal in all cases, and 41% favor making abortion more difficult to obtain, up around 10% from 2007.[13] However, with the recent increase in anti-abortion, anti-birth control rhetoric from

[12] Indeed, access to abortion was somewhat un-political, with pro-life and pro-choice Americans on both sides of the aisle. Some scholars argue that *Roe* resulted in a backlash of protests and new state laws that have made abortion more difficult to obtain. Others, like Reva Siegel and Linda Greenhouse, argue that President Nixon's re-election campaign politicized the issue in order to unify the Republican Party and secure a second term. (See Jill Lepore, "This is Forty: The Anniversary of *Roe v. Wade*," *The New Yorker*, 18 Jan. 2013, and Linda Greenhouse and Reva B. Siegel, "Before (and After) *Roe v. Wade*: New Questions About Backlash," 120 Yale L.J. 2028 (2011)).

[13] "Support for Abortion Slips - Pew Forum on Religion & Public Life." *Pew Forum on Religion & Public Life*. Oct. 2009. Web. 4 Oct. 2012. http://www.pewforum.org/Abortion/Support-for-Abortion-Slips.aspx.

the Republican Party, like Missouri U.S. Senate candidate Todd Aiken's "legitimate rape" comment[14] and Indiana U.S. Senate candidate Richard Mourdock's remark that pregnancy from rape is a gift from god,[15] support for comprehensive reproductive health care has returned to 2007 numbers, with 54% of respondents saying that abortion should be legal all or most of the time and 70% of Americans against overturning *Roe v. Wade*.[16] Nevertheless, Bloomberg News counts 135 new abortion restrictions in 30 states from 2010-2012, including mandating "transvaginal" ultrasounds, "limiting health insurance coverage, extending waiting periods, and making it harder for minors to get an abortion."[17] Though support for abortion's legality is at "record highs" among Americans, the pro-life politicians' opposition to abortion coverage remains strong, especially at the state level.[18]

How are we to reconcile such views when people disagree so fervently? Catholics and Evangelical Christians believe it is their duty to enact the will of their god and that abortion is murder because fetuses are people with souls and that they are negligent if they do not try to stop abortion. The other side views abortion as a necessary health procedure the prohibition of which is sexist, because part of women's equality is being able to control their own bodies, and if someone

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[14] John Eligon and Michael Schwartz, "Senate Candidate Provokes Ire With 'Legitimate Rape' Comment," *The New York Times*. 19 Aug. 2012. Web. 23 Mar. 2013. http://www.nytimes.com/2012/08/20/us/politics/todd-akin-provokes-ire-with-legitimate-rape-comment.html.
[15] Annie Groer, "Indiana GOP Senate hopeful Richard Mourdock says God 'intended' rape pregnancies," *The Washington Post*. 24 Oct. 2012. Web. 23 Mar. 2013. http://www.washingtonpost.com/blogs/she-the-people/wp/2012/10/24/indiana-gop-senate-hopeful-richard-mourdock-says-god-intended-rape-pregnancies/.
[16] "Support Grows for *Roe v. Wade*." *The Wall Street Journal*. 22 Jan. 2013. Web. 4 Feb. 2013. http://online.wsj.com/article/SB10001424127887323301104578255831504582200.html.
[17] Jennifer Daniel and Allison McCann, "Fighting *Roe v. Wade*," *Bloomberg Businessweek*, 17 Jan. 2013. Web. 28 Jan. 2013. http://www.businessweek.com/articles/2013-01-17/fighting-roe-v-dot-wade.
[18] "Support for abortion rights at record levels, but opposition still thrives." *MSNBC News: NOW with Alex Wagner*. 22 Jan. 2013. Web. 4 Feb. 2013. http://video.msnbc.msn.com/now-with-alex-wagner/50550792#50550792

else chooses when they can have an abortion, or makes abortions illegal altogether, they cannot reasonably be said to be in control of their own bodies. The Guttmacher Institute estimates that there were 1.2 million abortions performed in 2008, affecting nearly 2% of all women aged 15-44. Many of these women required abortion services to save their lives, or in the case of pregnancy by rape or incest, and nearly 70% of these women are religious.[19] On the pro-choice side, forbidding abortion is on par with forbidding necessary medical treatment.

Nevertheless, the Pew study shows that the relevance of abortion in the national dialogue has decreased among liberals; many think the issue has been solved because the right to abortion was affirmed in *Roe v. Wade*, but opposition to abortion has increased among conservatives, who are "more certain of the correctness of their own views on abortion." Even though the issue is at the forefront of political dialogue, support for "finding a middle ground on the abortion issue is down 12 points among conservative Republicans," who are more vocal in their views about abortion than are Democrats, and are also more insistent in the inerrancy of their pro-life position.[20]

There are myriad reasons for this shift, but Pew concludes that the main cause is the election of President Barack Obama, a pro-choice Democrat, and, with his election, the increased fervor of the Tea Party, an "anti-compromise," "anti-government" political movement[21] beginning in 2009.[22] Pew concludes this because

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[19] Guttmacher Institute. "Abortion in the United States." Spring 2011. Web. 4 Oct. 2012. http://www.guttmacher.org/media/presskits/abortion-US/statsandfacts.html.
[20] *Pew Forum on Religion & Public Life*, "Support for Abortion Slips." 20 October 2009.
[21] Hunt, Albert R. "Letter From Washington - Tea Party Doesn't Need Votes to Win U.S. Elections." *The New York Times*. 26 Sept. 2010. Web. 6 Oct. 2012. http://www.nytimes.com/2010/09/27/us/27iht-letter.html.

the views of African Americans, young people, and those unaffiliated with a religion have remained unchanged. On the other hand, support of the availability of abortion services dropped by 10% among "white, non-Hispanic Catholics who attend Mass at least weekly," similar demographics to the Tea Party. A public and vocal group has become more conservative on this issue.

Agreement is necessary to the health of our democracy, but when views are motivated by a devout commitment to a religious doctrine, as the pro-life stance seems to be, how is agreement possible? Though many practicing Catholics disagree with their Church's official stance on abortion—some may be in favor of an exception for rape, incest, or to save the life of the mother, for instance—other Catholics find abortion categorically wrong because their faith tells them all human life must be valued. The Vatican's *Catechism of the Catholic Church* says, "From the first moment of his existence, a human being must be recognized as having the rights of a person—among which is the inviolable right of every innocent being to life."[23] We cannot, then, choose to save the mother's life over the fetus's.

There is little consensus among Protestants for why abortion is wrong, but many turn to the Bible. There are three main reasons that, when taken together, some Protestants consider abortion wrong: 1) humans are made in the image of god, so human life is sacred; 2) children are a blessing from god and must be protected; 3) the Bible shows that god condemns the killing of innocent. The views of both

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[22] One of the first mentions of the Tea Party financing elections and endorsing candidates comes from the May 2009 *Economist*, specifically: *The Economist*. "Anger Management: Some Americans are Getting Mad As Hell." March 2009. Web. 4 Oct. 2012. http://www.economist.com/node/13235069?story_id=13235069.
[23] "Catechism of the Catholic Church, 2270." *Vatican: The Holy See*. Web. 6 Oct. 2012. http://www.vatican.va/archive/ENG0015/__P7Z.HTM.

Catholics and Protestants against abortion, though different, are reliant on the inerrancy of the Bible or a belief in the truth of the Catholic Catechism. But what effect do these views have on creating laws for everyone, including non-Catholics and non-Protestants. Can we move forward in consensus when certain groups are unwilling to consider the views of others?[24]

The pro-choice side thinks women should be able to make decisions about their own reproductive health care, and that impediments to care are thus assaults on liberty and equality. Pro-choice advocates see anti-abortion arguments as based solely in irrational, unreasonable, and often religious doctrines that presuppose the existence of a soul and sin, and assume that termination of a pregnancy is homicide, on the face of it equivalent to the murder of a child or an adult. Even many non-religious arguments are based in the idea that abortion is homicide or murder, which presupposes fetuses have specific rights; though, we might have good reason to be skeptical about this.

Since political conceptions of justice are concerned with the relation between citizens and their government, if the polity decides fetuses are lives worth giving moral standing to, we must ask whether we are prepared, for instance, to charge a pregnant woman at fault for a car crash that results in her fetus's termination with vehicular manslaughter. We must also ask whether we are prepared to criminalize hormonal birth control, which prevents implantation of the zygote into the uterine wall, since that may prevent a "life" after conception. If we are not prepared to take

[24] Some Catholics likely believe these commandments apply in ensuring women have access to all necessary medical care, including contraception and abortion. A public example of this might be Sister Simone Campbell's 2012 "Nuns on the Bus" campaign.

these steps, and if we appeal to the liberty and equality of women and men, each of whom can make their own health care decisions, and to citizens being free and equal, then Rawls thinks a reasonable conclusion is that abortion ought to be an issue of personal choice. On the other side, we must ask whether we are prepared to ignore religious citizens' deeply held convictions that abortion is morally wrong, and that if abortion is legal, we are morally culpable accessories to murder.

Pro-life thinkers can present non-religious reasonable justifications for abortion's illegality.[25] They may argue against abortion's legality on secular utilitarian grounds, for instance, by showing that abortion lowers economic efficiency and utility in society, or that the consequences of legalizing abortion and making it readily available would decrease the aggregate happiness of society because abortions are traumatic experiences. An advocate for women's choice may respond by showing that utilitarianism actually supports abortion rights, since legalizing abortion will make it safer, for instance, increasing overall happiness in society. But, as we will see later, these secular views, since they are based on comprehensive doctrines, are also not permitted in public reason, since we cannot expect all reasonable people to agree with them. Nor can we accept such pro-choice and pro-life arguments without also accepting the utilitarian comprehensive doctrine, which is violative of Rawls's publicity requirement, as we will see later.

[25] We may be inclined to say that in so doing they endorse political liberalism on some level, since they know they will be unable to convince the general public of their opinions based on religious grounds, which they cannot expect reasonable citizens will accept, or on which they acknowledge reasonable people may differ in opinion. They present justifications that they think reasonable people can accept and thereby acknowledge that political liberalism is workable.

Regardless, we cannot begin pro-choice or pro-life arguments from a comprehensive doctrine. Religion, or a secular view like utilitarianism, would not be a public foundation for a system of judgment. Whether the view is pro-choice or pro-life, it must be offered on grounds that reasonable citizens can reasonably be expected to endorse, otherwise policy is not public and implementation of it is unduly coercive and thus illegitimate and unstable. While it is my opinion that a pro-life view would not likely win out because it would require a presupposition that is too significant, there is nothing in a non-religious pro-life view itself that would preclude it from public reason, so long as it offered truly public justifications, and those who offered justifications did so in good faith that they could reasonably expect others to endorse the justification.

Rawls's solution to reasonable pluralism will help us see how two reasonable people with different comprehensive doctrines might be able to agree on the issue of abortion. At the 2012 Vice Presidential Debate, Mr. Biden responded to a question about the influence of his Catholicism on his views on abortion: "My religion defines who I am," the Vice President responded. "And [it] has particularly informed my social doctrine. … With regard to abortion, I accept my church's position on abortion. Life begins at conception in the church's judgment. I accept it in my personal life."[26] President Clinton, in his autobiography, writes, "Everyone knows life begins biologically at conception."[27] Though they both think life begins at conception, they do so for different reasons. Biden's Catholicism and Clinton's Baptist Protestantism

[26] *Washington Post*, "V.P. Biden and Rep. Paul's remarks in Danville, Ky., on Oct. 11." Web. 13 Oct. 2012.
[27] Bill Clinton, *My Life*, p. 229, 2004; qtd from www.ontheissues.org/Bill_Clinton.

are different comprehensive doctrines. But they know that not all reasonable citizens agree with their beliefs. Though this fact does not discount their beliefs, both know that in attempting to create or influence national policy, they must present political conceptions of justice and justifications that they reasonably think all reasonable people might accept.[28] But with opinions on abortion at loggerheads, how would Rawls suggest we reach consensus? Is a shared conception of justice even possible?

To preview Rawls's solution to reasonable pluralism, a reasonable Catholic like Biden or a Baptist like Clinton cannot reasonably think that government should prohibit access to abortion based on biblical commandments or the teaching of a church because they know others will not necessarily agree with their views and that such a policy would be unduly coercive. Biden continued, "But … I just refuse to impose [my religious beliefs] on others."[29] Clinton writes, "Most abortions … are chosen by scared young women and girls who don't know what else to do. It's hard to apply the criminal law to acts that a substantial portion of the citizenry doesn't believe should be labeled crimes…."[30] Both know that a truly democratic America of free and equal, reasonable and rational citizens cannot enact policy entirely based on a comprehensive doctrine.

[28] Even if their rationale were political expediency, the relevant point is that they recognize reasonable pluralism and offer publicly acceptable reasons.
[29] *Washington Post*, "V.P. Biden and Rep. Paul's remarks in Danville, Ky., on Oct. 11."
[30] Bill Clinton, *My Life*, p. 229, 2004; quoted from www.ontheissues.org/Bill_Clinton.

IV. Rawls's Solution to Reasonable Pluralism – Political Liberalism

Rawls's task is to "work out a conception of political justice for a constitutional democratic regime that the plurality of reasonable doctrines might endorse" (*PL* xviii). His solution to the problem of reasonable pluralism – how it is possible for people who do not share the same religion, morality, philosophy to come together in society and to agree on a system of justice – is political liberalism, which functions through overlapping consensus. Rawls concerns himself with elected officials, candidates for public office, and judges, not the "background" culture of civil society ("PRR" 768). But Rawls's framework functions only if citizens act *as if* they were legislators when debating and discussing constitutional essentials. Rawls thinks reasonable people will offer fair terms of cooperation and will abide by these terms, provided they can reasonably expect others to do so. But there will be reasonable disagreement "between people who have realized their two moral powers [a capacity for a conception of the good and for a conception of justice] to a degree sufficient to be free and equal citizens," and this sort of disagreement is an inherent characteristic of democratic society (Rawls, *PL* 55). A solution is possible, however, because people want to live in a society in which they can function and cooperate with other reasonable and equal citizens.

Because each person will seek to justify his or her views to others, the only foundation can be from "shared fundamental ideas implicit in the public political culture in the hope of developing from them a political conception that can gain free and reasoned agreement in judgment" (Rawls, *PL* 100-01). Public political culture

turns these fundamental ideas into "political conceptions of justice," which are not, then, derived directly from comprehensive doctrines. Indeed, to enforce a political conception of justice, one need not endorse a specific comprehensive doctrine. Nevertheless, a comprehensive doctrine may endorse a particular political conception of justice. Because political conceptions of justice are fundamental and not based in any single comprehensive doctrine, reasonable citizens can come together in agreement, regardless of their comprehensive doctrine (Rawls, *PL* xx, 33). For instance, Biden, a Catholic, and Clinton, a Baptist, might agree on a political conception of justice grounding to a policy concerning the beginning of life, that it begins at conception, for example, and may also agree on a policy concerning abortion, even though their comprehensive doctrines are different.

Political liberalism is neutral with regard to different comprehensive doctrines. It does not support one over another or call one true and another false, since it seeks to find common ground on political conceptions of justice, which are endorsed by comprehensive doctrines (Rawls, *PL* 37). Though there will be different political conceptions of justice, Rawls thinks that in a democratic society with just institutions, they will largely share certain fundamentals: equality, individual rights, and basic liberties, etc. How these may appear in public policy, is not an issue political liberalism takes interest in. So long as policy is not anti-democratic or illegitimate—that is, so long as it is sufficiently public and reasonable—political liberalism is indifferent to its content.

Nevertheless, there are numerous reasons why reasonable people might come to different conclusions about religion, morality, and philosophy. We may choose to prioritize ideas differently, disagreeing about the weight of a consideration. Indeed, moral and political concepts are vague and open to different interpretations. We do not share the same experiences as others. We may also have different biases, prejudices, self-interests, etc., which can create discord in society (Rawls, *PL* 56). But, if reasonable people are willing to bear these burdens of judgment, and if they recognize that others are subject to the very same burdens, Rawls thinks we can come to agreement on the crucial constitutional essentials. Citizens recognize that just as they think their views are reasonable and true, so others feel similarly about their views. But will such a system be stable?

Successful overlapping consensus proceeds from shared political conceptions for which citizens give practical reasons to justify their support. Rawls writes, "In a view of the general facts that characterize a democracy's public political culture, and in particular the fact of reasonable pluralism, the political conception can be the focus of an overlapping consensus." In justice as fairness, stability is crucial. It is not a matter, Rawls argues, of ensuring all people share the same conception, but rather justice as fairness cannot be reasonable *unless* it has the support of citizens' public reason (*PL* 141-3).

Public reason is the way a society or a group will "formulate its plans, put its ends in an order of priority and [make] its decisions accordingly" (Rawls, *PL* 212). It is thus essential to a functioning deliberative democracy. Public reason is 'public' in

multiple ways: it is "the reason of free and equal citizens," whose "subject is the public good" and fundamental questions of political justice and constitutional essentials, "and its nature and content [are] expressed in public … by a family of reasonable conceptions of political justice reasonably thought to satisfy the criterion of reciprocity" (Rawls, "PRR" 767). Citizens will accept reciprocity because they recognize that the importance of the legitimacy of the political process is greater than their particular interests, so long as they do not feel like the only ones asked to make sacrifices. They will also accept the criterion of reciprocity because they understand that as free and equal citizens in a democracy, they must play by the rules in order for their views to gain any traction, and they want their views to win out in deliberation. Therefore, they will present the most publicly acceptable justification possible.

I noted previously that equality of citizens is necessary for matters of public importance to be decided democratically, since otherwise a monarch or oligarchy, rather than citizens, may decide these matters. Equality is also crucial to exchanging public justifications of political conceptions of justice, to engaging in conversation about issues of public importance. It is a requirement of deliberation and conversation about political issues, and might more generally function as a norm of deliberation and conversation about any topic. Anthony Laden writes that because conversation involves "speaking with rather than merely at or to others, and so is distinct from one-way forms of address…. [C]onversations require certain levels of equality" (Laden 110). We are interested in what others have to say in a

meaningful way, not simply as a "check on the clarity of my presentation," but rather we are interested in exchanging ideas with one another and even in altering our positions (Laden 119).

This is possible if private citizens think of themselves as if they were legislators when engaging in public reason and "ask themselves what statutes, supported by what reasons satisfying the criterion of reciprocity, they would think it most reasonable to enact" to create stable policy (Rawls, "PRR" 769). Along with stability from public justification, political liberalism is stable for two other reasons: (1) society is closed; we enter it by birth and leave it only by death, and (2), its free and equal constituents exercise political power as a collective body. These two reasons, Rawls argues, mean that citizens will feel "bound to honor the structure of their constitutional democratic regime and abide by the statutes and laws acted under it" ("PRR" 770). But, even if we accept that citizens are free, equal, reasonable, rational, and live in a closed society, we must ask whether setting aside comprehensive doctrines is enough to ensure that public reason can guide us to meaningful and justifiable decisions and conclusions on policy.[31]

Rawls is optimistic, and argues for his view based on the idea of reciprocity. Citizens view each other as free and equal and recognize that much depends on the understanding that others can be reasonably expected to participate in the chosen system. Thus, citizens will participate because they are reasonable—"they offer one another fair terms of cooperation according to what they consider the most

[31] In the following section, I will discuss whether citizens reasonably can be expected to set aside their comprehensive doctrines, and whether, if they can, a subsequent evaluation of an offered principle would be an evaluation in a meaningful way, since it would not be judged against what the citizens value, *e.g.*, their religion.

reasonable conception of political justice," and they will abide by these terms even when their own interests may not align (Rawls, "PRR" 770). Otherwise, they violate the reciprocity criterion for two reasons: (1) they would not be giving a justification they reasonably think others could endorse; and (2) if their justification for their view were solely based on a comprehensive doctrine, they might not be open to considering arguments against the view on other grounds. They should, instead, set aside their comprehensive doctrines and attempt to convince others on public grounds. This is a crucial part of Rawlsian "deliberative democracy." As citizens debate and deliberate, they exchange views and defend their political opinions. For public reason, this deliberation must occur in a framework sincerely regarded as the "most reasonable political conception of justice." Rawls thinks that an effect of this deliberative democracy is that citizens recognize their opinions are subject to modification in deliberation ("PRR" 772-3).

However, if citizens are unconditionally opposed to democratic procedure, and especially to considering another's views, or even to engage in discussion on reasonable issues, and think their comprehensive doctrines are inarguably true, Rawls thinks they are toxic to democracy. Though their views can be offered in the public square, they fail to meet the requirements of public reason. These citizens should not be prevented from speaking, but what they say should be judged as not relevant to the creation of publicly endorsable policy. Rawls writes, "The zeal to embody the whole truth in politics is incompatible with an idea of public reason that belongs with democratic citizenship" ("PRR" 767). Indeed, the toxicity of some views

is not only anti-democratic, but also violative of the principle of equality of citizens and the norms of conversation (Laden 120-24). I will return to this issue below.

I will also return to the issue of whether religious people will accept reasonable political conceptions and proposed systems of justice merely as a *modus vivendi*, *e.g.*, as a compromise for peaceful coexistence. But for true acceptance of a democratic constitutional arrangement, something much stronger than a *modus vivendi* is required. Citizens must actually accept the principles themselves as just. Otherwise it is not the principles that are endorsed but rather the compromise, and true consensus on public political conceptions of justice is not reached.

The religious and nonreligious must accept that the only solution to the problems of pluralism is for free and equal citizens to endorse a reasonable constitutional democracy that has potential to be fair to all citizens. This is possible because public reasoning "aims" for public justification. The religious may endorse a constitutional democracy because they think it is divinely ordained, while the nonreligious will accept it on different grounds. Both sides will appeal to evidence, facts, and reason when trying to convince one another because arguments are addressed to the public (Rawls, "PRR" 780-3). This solution is workable because even the most religious accept constraints on their religion from the rest of society. For instance, churches do not seek to punish apostasy and blasphemy, though they may object to these offenses, because that would be unreasonable and unduly coercive in pluralistic society. Though I have used religious groups as an example, Rawls's argument is applicable to many sorts of associations and groups.

Those who place their comprehensive doctrines above the Constitution, or think that the Constitution should be amended to explicitly endorse their view, would be permitted to do so if their motivation for such valuation is that they think they can give a more publicly justifiable rationale, but it would not be acceptable if they seek to use governmental power—the authority of all citizens acting together—to force one comprehensive doctrine on others. For instance, "if we argue that the religious liberty of some citizens is to be denied, we must give them … reasons we might reasonably expect that they, as free and equal citizens, might reasonably also accept" (Rawls, "PRR" 771). Those who reject that justification must be truly publicly reasonable, and who insist that constitutional essentials and fundamental principles ought to be decided exclusively by their own comprehensive doctrine, will reject the idea of public reason and are, to a large degree, antithetical to democracy.[32]

Rawls's political liberalism, public reason, and deliberative democracy give legitimacy because they provide a greater connection between citizens and their government, and citizens act as if they were legislators. If our political system and citizenry earnestly engaged in the sort of discussion and deliberation Rawls has in mind, the system would be more legitimate and its public policy would be more stable. Though we will discuss this more in the following section, one might object that purely procedural justice may not be substantively just. While this might be the case—a perfectly just procedure could result in anti-democratic laws, for

[32] It is true that a majority could feasibly change the Constitution to make it conform with nonpublic reasons, or reasons not everyone can be reasonably expected to endorse. Unfortunately, this is unavoidable. Preventing such a potential consequence would likely ruin public reason itself.

instance—we can avoid this controversy by arguing that if policy is only procedurally just but is not also substantively just, it is not truly just. We could also argue that if a policy is substantively just but was reached not through just procedure but by some other means, it is more just than in the previous case but less just than a policy that is both procedurally and substantively just. Rawls writes that justice is always substantive and never purely procedural and that both constitutionalists and majoritarians may agree that whether democracy is truly just depends on whether its outcomes are substantively just (*PL* 421-433). The distinction thus is not as problematic as it may first have seemed.

To see how Rawls's solution might look, let us consider how a public reason debate might play out in the Supreme Court case of *Roe v. Wade*. Though the jurisprudential specifics of Justice Blackmun's decision for the Court are not important for us here, the decision and debate among justices before the 7-2 majority was settled, is an example of public reason at work. In deliberation and the writing of opinions, Supreme Court justices attempt to form coalitions with each other to reach a majority. But they do not endorse decisions for their value as compromises or as *modi vivendi*; rather, justices are tasked with a narrow charge of applying existing law to the facts of a case, and they accept or reject the decision on its own juridical merit, not simply because it is a compromise. Because *Roe* was decided in line with public reason requirements it is legitimate and stable in the way Rawls discusses.

In deliberation, justices recognize that they cannot present to each other—nor can they decide cases on—comprehensive doctrines or personal opinions about issues. That would be just as unduly coercive as imposing a single comprehensive doctrine on the public and would be violative of the duties of civility and reciprocity. Rather, cases must be decided based on the constitutionality of a particular issue. Justices likely discuss the religious concerns and controversies and the social climate but ultimately decisions are justified on public, constitutional grounds, not on a comprehensive doctrine.[33] It is in this way that *Roe v. Wade* is as an example of how a discussion about abortion might play out in public reason.

Blackmun begins by acknowledging the "sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that the subject inspires" (*Roe v. Wade* 117). He then discusses the myriad factors that could reasonably influence opinions on the abortion issue. In fact, the beginning of Blackmun's decision reads much like what we might expect Rawls could have written in *Political Liberalism* were he more acutely concerned with abortion.

The Court is tasked with resolving "the issue [presented to it] by constitutional measurement, free of emotion and of predilection" (*Roe v. Wade* 117). In his decision, Blackmun cites Justice Holmes's dissent in *Lochner v. New York*, 198 U.S. 45, 76 (1905), in which Holmes writes, " '[The Constitution] is made for

[33] Anthony Laden makes the distinction between *negotiation* and *deliberation*. On his view, the former is a "means to search for compromise," while the latter is "an exchange of reasons among people who regard themselves as partners working out a shared solution to a shared problem…" Deliberation is a "form of engagement with others." Laden, Anthony, *Reasoning: A Social Practice*, Oxford, UK: OUP, 2012, pp. 190-97. In engaging in public reason, citizens are not negotiating; they are deliberating.

people of fundamentally differing views, and the accident of our finding certain opinions novel and even shocking ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States' " (*Roe v. Wade* 118). In Rawls's terminology, we might rephrase this quotation from Justice Holmes's dissent as a case for setting aside our comprehensive doctrines and making decisions based not on personal opinions—or against those of others'—but rather on publicly justifiable reasons.[34]

The Supreme Court ruled in *Roe* that a Texas anti-abortion law unconstitutionally violated the right of privacy, which though not explicitly enumerated in the Constitution, has been held to be protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. Blackmun wrote that state laws, like the Texas abortion prohibition, "that except from criminality only a life-saving procedure on the mother's behalf without regard to the stage of her pregnancy … [are] violative of the Due Process Clause … which protects against state action the right to privacy, including a woman's qualified right to terminate her pregnancy" (*Roe v. Wade* 165). Nevertheless, the state must weigh two competing interests: the woman's health and the potentiality of life. I will discuss these two competing interests more in depth in § V.

After lengthy deliberation between the justices, the Court resolved these two competing interests by involving "medical knowledge and techniques" and making

[34] Though Rawls calls the Supreme Court an "exemplar of public reason" (*PL* 231-240), and though if it always acted within its charge it would be such a procedural exemplar, we should be cautious about such a remark, since one can hardly say that *Dred Scott* or *Korematsu* were decided on publicly endorsable grounds in a well-ordered society of free and equal citizens.

determinations by factoring in historical and scientific scholarship, which other citizens could reasonably be expected to endorse. The resolution took the form of the now well-known "balancing test," which tied abortion's permissibility with the "viability" of the fetus to survive *ex utero*, *i.e.*, it remained constitutionally permissible to make laws against abortions performed after *ex utero* viability.

Broadened, the kind of deliberation that Supreme Court justices engage in, free from comprehensive doctrines, among citizens and legislators about constitutional essentials and public policy could inspire renewed trust and a greater connection between citizens and their government. Citizens engaging in productive dialogue could reach consensus about issues in the same way justices deliberate. These popular decisions would be much more endorsable, and the worries about political values winning over personal moral ones in creating public policy would largely vanish. Citizens could then share their conclusions with legislators and thereby feel better represented in their government.

V. Objections to Rawls

Now that I have shown what Rawls's solution to the problem of incompatible reasonable pluralism is, I will vindicate him from some of the most pernicious objections, thereby showing that political liberalism is workable. This will then allow me to apply Rawls's solution to our own government in the following section.

In *Political Liberalism* and "The Idea of Public Reason Revisited," Rawls answers some of the numerous objections against his solution to the problem of

reasonable pluralism. I will briefly sketch these preliminary objections and his responses to them. These issues must be addressed before considering more potentially fatal objections, which I will discuss immediately afterwards. These latter objections center on the issue of what rationality consists in and are briefly: (1) that Rawls's strict requirements remove our ability to evaluate different principles of justice and reasons for holding those principles, and that rationality ought to be toward what we take to be most motivating, and (2) that Rawls engages in "philosophical sleight of hand" in disguising political liberalism, which is really just another comprehensive doctrine, and privileging it above other comprehensive doctrines, and that rationality has a content, which can be given *a priori* deliberation. There is also a structural similarity between the first two objections, which claim that Rawls sets too much in advance, specifically that he loads too much into his reasonableness criterion, and that political liberalism is actually a comprehensive doctrine that has a hand in specific policies and the political results of particular deliberations.

After I show that Rawls is able to defend against these particular objections, and that they might not go far enough, I will consider the possibility of a more pernicious underlying problem, (3) that Rawls does not adequately address how political liberalism might work in a democratic society, and that rationality is a mechanism, but one that can be expanded to become more plausible and applicable to other sorts of discussion. Much has been written in response to Rawls, and these objections represent three distinct currents of objections against political liberalism

as a solution to the problem of reasonable pluralism. These objections gain significant currency when we consider them in regards to our abortion example because it is not difficult to imagine real political actors holding some of these views. Libertarians, for example, may find themselves sympathetic to the first objection. Conservative Catholics may identify with the second. And those looking for practical application of political liberalism may worry about the third.

I have chosen to examine three specific objections to political liberalism because they each argue against Rawls on the basis of citizens having different conceptions of rationality and different notions of what it means to engage in rational discussion. Yet each objection approaches the issue of rationality in political liberalism and public reason in a different way. While the first two objections take rational deliberation to be directed toward what we as rational self-interest maximizers take to be most motivating, the third objection argues that political liberalism is itself a comprehensive doctrine and that Rawls nefariously tries to privilege a particular notion of rationality against others. The final objection addresses rationality and public reason in politics and actual political discussion.

§ 1. Rawls's Requirements Destroy our Evaluative and Motivational Capacities

To address this first objection, I will enunciate its two principal threads and will respond to them as they arise: Under Rawlsian public reason constraints, (A) we cannot evaluate political conceptions of justice, and if we could procedurally evaluate a conception, (B) we would have no motivation to endorse it, and the

conception would therefore be unstable. I will then consider the two underlying concerns (C) that Rawls is trying to narrow the constraint of intelligibility and (D) that Rawls does not appeal to rationality in the right way. Parts of these concerns resemble Gerald Gaus's more general objections in *The Order of Public Reason*.

The first in this series of objections centers on the concern that Rawls is unsuccessful at solving the problem of pluralism because he eliminates our ability to make evaluations of principles of justice and public reasons, and therefore removes our ability to assess moral claims. It is thus counterproductive, these objectors argue, to the aim of political liberalism, *i.e.*, of reconciling different ideas of the good. This objection is dependent on the idea that people cannot be rational without their comprehensive doctrines at hand. I will show that it does not stand principally because the notion of rationality necessitated by the objection is not actually what we take rationality to be in considering public discussion.

A. The first strand is that by keeping people ignorant Rawls eliminates our ability to make evaluations on principles of justice and constitutional essentials. In an argument developed by Gerald Gaus, Rawls leaves us with no way of weighing options on their own or between one another (*OPR* 40), since doing so requires consultation with comprehensive doctrines, which Rawls requires that we set aside. If we declare "irrelevant so much of what a person understands as basic to her evaluative outlook, she can see these rules as rationally endorsed only in an extremely attenuated sense" (*OPR* 42). A Catholic, for instance, would make judgments on the permissibility of abortion in accordance with her religion, since

that is what guides her moral and political views. Gaus does not think she will be able to evaluate political conceptions of justice without her Catholicism.

We might respond to the objection by arguing that the parties of the original position *do* have sufficient knowledge to analyze and evaluate principles of justice. They know many general facts about people and societies. Rawls says they have knowledge of basic laws, as well as principles of economics, psychology, political science, and even natural sciences, biology, and evolution. Along with their knowledge of psychology, they have knowledge of human behavior and development, and their economic knowledge gives them an understanding of markets, supply and demand, price theory, etc. Simply because they are not privy to their individual conceptions of the good, it is not the case that they cannot make rational determinations about political conceptions. But such a response will not settle the debate: Gaus says they do not have sufficient knowledge while Rawls says they do. The two are at a standstill, and the question of who is correct seems to require an empirical answer that we do not have.

But what does it mean to say citizens are unable to make evaluations? Suppose I hold a Catholic view that human life with a certain conception of rights begins at conception, and object to abortion as a form of murder. The Gausian objection seems to say that given that I believe that abortion is morally wrong, I cannot take seriously that non-Catholics have valid reasons to reach a different conclusion. Put differently, if you are not Catholic and you have no compelling grounds to accept that abortion is wrong, then your reasoning has no evaluative

meaning for me because I believe, in consultation with everything I most value, that abortion is morally prohibited. But the objection seems to even go further. It seems to say that given my moral views, I have no reason to accept that the political conception even ought to be publicly justifiable, because my moral views do not require me to take a position that I think you might accept. So, to say as Gaus does that without consulting comprehensive doctrines citizens are *unable* to evaluate a political conception of justice on the grounds of its being acceptable to others, seems to mean that the only basis citizens have for evaluating the political conception is its conformity with their personal moral view. As such, the very public criterion of justification that Rawls values is irrelevant to these citizens.

From Rawls's perspective there is a potential conflict between my moral beliefs and my commitment to cooperating with other people on fair terms. But Gaus seems to say that there is no tension because the only factor that matters to me is the moral truth that I think I already know. There is no room, or no importance, to just cooperation on mutually acceptable terms. It is not clear whether Gaus's argument makes the second claim that I have no reason to value publicity or reasonableness. But taking this extra step would cohere with his overall libertarian persuasion, in which case the claim against valuing publicity might not even be that significant. Gaus might argue, for instance, against valuing publicity because he thinks there are not going to be many constitutional essentials since the government's only duty to its citizens is to defense. On this view, the scope of that value of publicity is so narrow that it is not important.

Nevertheless, if public policy does have a larger role, to regulate distribution of wealth and resources, for instance, then a lack of interest in publicity would be antithetical to democracy. If policy does not have to be publicly endorsable, there is no way to ensure it is just or legitimate. If an objector continues to hold these views, then it is clear he is not concerned with mitigating the effects of pluralism in a democracy while still respecting citizens' comprehensive doctrines, and the objection is irrelevant.

B. The objection continues that supposing we could procedurally evaluate political conceptions of justice, we have reason to doubt whether citizens would have sufficient reason and motivation to abide by rules of morality and principles of justice if those rules and principles were determined without consulting what people really value. In other words, simply because we may arrive at a set of "justified" moral principles from a procedure that required us to give up our comprehensive doctrines, on what basis should we accept those principles? The concern is that there may be no necessary reason for why political values will gain priority when the veil is lifted. This strand of the objection is potentially threatening because it raises the problem of stability.

But, contrary to what the objector seems to argue, stability does not require that all citizens endorse a single conception. Rather stability concerns the reasonableness and legitimacy of a political conception of justice. Such a conception is not reasonable, Rawls argues, "unless in a suitable way it can win its support by addressing citizens' reason" (*PL* 143). If a conception of justice is legitimate if and

only if reasonable, rational, free, and equal citizens endorse it on publicly acceptable grounds, then the issue is not whether all citizens will endorse the conception according to their comprehensive doctrines, but rather whether the conception is publicly justifiable; that is, whether rational citizens *would* endorse it for public reasons.

If principles of justice can be formulated in terms of political values, then an overlapping consensus could show how a society could stably uphold or abide by a political conception. The concern that there will be no reason political values would win over personal moral ones in creating an idea of justice can be alleviated when we consider the significant knowledge that citizens do have. Indeed, it is not as though the knowledge on which citizens make decisions behind the veil of ignorance disappears once the veil is lifted. If the determinations and evaluations they made under the veil of ignorance accorded to this uncontroversial knowledge, they would still be acceptable to this knowledge once the veil is lifted. A re-acquaintance with Catholicism, for instance, would not nullify the other knowledge the representatives had behind the veil of ignorance, so it is not clear there would be such a problem of stability. Nor is it necessarily the case that citizens would value publicly-held knowledge so much less than their comprehensive doctrines that the knowledge would be ignored. Finally, though citizens might object to the policy on their comprehensive doctrines, if they endorsed it under the veil of ignorance, it would still accord with a political conception of justice that they had reason to accept. The

reasons citizens had to accept a political conception of justice under the veil of ignorance still apply once the veil is removed.

This strand of the objection becomes even weaker upon consideration of what it means to be a citizen. It is to treat others as free and equal and to acknowledge, discuss, and endorse political views. We present our own views and argue for them publicly because we want them to be accepted by as many people as possible, even those who hold different views, and we want to have a hand in policy creation because we are to some extent interested in pursuing what we recognize as most valuable according to our comprehensive conception of the good. We have goals of being "equally entitled authors and addressees of norms of justice that apply to them morally [which] cannot be rejected" (Forst 81). Indeed, when we consider the criterion of reciprocity and democratic citizens' inclination to play a major role in policy creation and implementation, along with the significance of the constitutional essentials they are deliberating, citizens affirm the outcome of public reason, not as *modus vivendi*, but rather for its own merit (PL 218).[35] Political values, then, will ascend over the individual moral values of a comprehensive doctrine because citizens recognize the necessity of publicly acceptable justifications for laws that everyone must live under and want to participate in democracy. This is not too steep a demand to place on citizens, given that these requirements only exist in

[35] Rawls discusses the American criminal justice system as evidence that his resolution of the paradox works. Rules of evidence preclude hearsay, for instance, and citizens are not forced to impeach or testify against themselves. These are instances "where we recognize a duty not to decide in view of the whole truth so as to honor a right or duty, or to advance an ideal good, or both." They show "how it is often perfectly reasonable to forswear the whole truth and this parallels how the alleged paradox of public reason is resolved" (*PL* 218-19).

public reason and deliberative democracy about constitutional essentials that will impact everyone. [36]

C. Underlying these two strands, is the view that Rawls is trying to narrow the constraints of intelligibility and reasonableness. The objector worries that Rawls is so strict in determining what counts as intelligible that public reason will be incapable of offering a political conception of justice. Similar to the concern at the end of (A), that you may base your adherence to a rule on a particular reason that I find unacceptable, if the standards and reasons you offer in public reason are so unique to you that I cannot accept them, public justification and thus overcoming pluralism seems impossible.

The objector argues that the constraint of intelligibility ought to be widened as much as possible to be the most inclusive. "Perhaps, we should include those value systems that are barely intelligible, or strike us as barely human. … We wish to extend the range of admissible evaluative standards as far as possible" (*OPR* 283). Such an objector may argue that if we want people to have sufficient reason to accept and internalize a rule or a principle of justice, then we have to allow as many justifications as possible to be offered in hopes that at least one will be appealing to citizens. While we may not include something others would decry as outlandish, we ought to include as many intelligible justifications as possible.

[36] This is not to say that moral, religious, and philosophical doctrines cannot thrive in individuals and their communities in the public square. They just will not directly inform public policy. Nor does Rawls seek to limit freedom of speech in any way. The accusation that he has done so is probably due to a misunderstanding of Rawls's separation of public *reason* from the public *square*, where free speech ought not be abridged.

Otherwise, the requirement is too strong, would be impossible to achieve, and would effectively do away with public reasoning. Gaus writes, "Under conditions of real cognitive limitations we sometimes face intractable disputes among competent reasoners about the status of evaluative standards, such as religious considerations" (*OPR* 286). Instead of seeing the point of disagreement and trying to move past it by appealing to points of commonality, Gaus insists citizens hold onto their comprehensive doctrines.

Rawls, on the other hand, argues the opposite. He thinks a more restrictive set of admissible standards yields the most significant set of justified principles because we are including only principles and reasons that are truly public. Gaus claims that Rawls suggests endorsing a reason only if all members of the public endorse it as a good reason. Because this would not happen, Gaus thinks Rawls's solution is impossible. But this reading of Rawls is not entirely accurate. Rawls suggests that a reason is justifiable if all members of the public *would* endorse it, if they can reasonably be expected to agree to it. The conditional is important because we are not considering all actual members of the public as they are now, with their prejudices and intolerance, endorsing the rule. If that were the case, then public reason might equate to majority-rule.

On Rawls's account, in engaging in public reason deliberation with fellow citizens, we cannot talk past one another, otherwise we are not engaging in real deliberation but are instead lecturing, commanding, or asserting. In order to "converse, we have to make ourselves intelligible to each other." That is not to say

we must reach total agreement in judgments, but, per Wittgenstein, we must reach agreement in forms of life (Laden 119; Wittgenstein § 241), and the intelligibility requirement must be significant enough to allow for such agreement. Were we to admit outlandish ideas in public reason, as Gaus would have us do, we could have no hope of consensus, or even workable deliberation.

Indeed, the strictness of public reason is key to the legitimacy of public policy. As Erin Kelly writes, "Publicity is an aspect of the moral demand that political arrangements be justified to their subjects…. So understood, publicity is a condition of the legitimacy of political authority and of the justice of political institutions" ("Publicity" 4238). Without truly public justifications, we risk a legitimacy crisis of public policy that is not morally permissible, since it is not procedurally just, and may not even be substantively just. This could be disastrous to a government. Indeed, Kelly continues, "When institutions lack legitimacy, there are good moral grounds to challenge the permissibility of the coercive exercise of political power" ("Publicity" 4239).

The reasons we give each other to accept our views must be mutually accountable and cannot require others to accept our comprehensive doctrines. This is not to say reasons cannot be traditional in the way that some reasonable anti-abortion justifications are. But, in order to be offered in public reason, they cannot be so closely connected to or based on a comprehensive doctrine that we are required to accept the doctrine in order to accept the reason.[37]

[37] Erin Kelly in "Public Reason as a Collective Capability" gives a relevant example. Consider the decisions of Judges Reinhart and Walker in the California Proposition 8 case. Judge Walker considered traditional views

Some citizens, in being asked to abide by the publicity and reasonableness requirement, might feel suppressed. But Rawls keeps public reason strong—as "not simply valid reasoning, but argument addressed to others" on the basis of evidence and facts accessible to the public ("PRR" 786)—while still allowing citizens to declare their comprehensive doctrines and not feel silenced. He manages this with *the proviso*, which allows us to declare our comprehensive doctrines and show others why we endorse a political conception of justice ("PRR" 786). Comprehensive doctrines can be offered in public reason provided that "in due course proper political reasons, and not reasons given solely by comprehensive doctrines, are presented … to support whatever the comprehensive doctrines introduced are said to support" (Rawls, "PRR" 784). Provided *the proviso* is met, the doctrines permitted need not be even "logically correct, or open to rational appraisal, or evidentially supportable" (Rawls, "PRR" 784). Rawls does not, therefore, silence people. In fact, he encourages freedom of speech in the public square and also in public reason.

The freedom given by *the proviso* renders the objection that Rawls's requirement is too strict to allow workable consensus unconvincing. This should appease Gaus and objectors like him because Rawls is able to broaden what is permissible in public reason while maintaining a strict reasonableness criterion,

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against same-sex marriage—based on religion, family values, concern for the moral well being of society, civil consequences of same-sex marriage's legality, etc.—but rejected them as reasons acceptable to the court because he found that the reasons were dependent on accepting a religious doctrine. The requisite presupposition is so strong that it guarantees the conclusion, and the argument is circular. Anti-same-sex marriage arguments are based on nonpublic reason, but since public reason concerns citizens' relationship with the state, a state prohibition of same-sex marriage—or abortion—must be based on reasons people can be reasonably expected to endorse that are not dependent on accepting a particular comprehensive doctrine. Judge Reinhart ruled that reasons against same-sex marriage were based on religious animus toward a particular group and that we cannot expect others to reasonably endorse that animus, so Prop. 8 cannot stand. We could imagine a similar ruling in a case concerning abortion's legality.

since citizens must still give justification in terms of reasonable political conceptions of justice.

D. The underlying concern has to do with what it means to appeal to rationality. The objector thinks people engage in rational deliberation through consulting their comprehensive doctrines, since rational action is always to pursue what is recognized as most valuable according to one's comprehensive conception of valuing the good, and perhaps they do not even differentiate their faith from their reason. Though she may recognize that there are reasonable people who disagree with her, a Catholic does not necessarily think 'abortion is murder' is a matter of faith. She may think that she is thus obeying the notion of rationality of the Gausian objector. The objector says that we cannot, then, *demand* that those evaluative capacities be put aside because requiring citizens to do so would be asking too much of them (*OPR* 263). Gaus's argument is that our personal rationality is shaped by our comprehensive doctrines, and the two are indistinguishable for many people. The underlying concern is that Rawls's appeal to rationality as a mode of reasoning on publicly endorsable grounds is contrary to our personal rationality aimed at what is most valuable according our comprehensive idea of the good, and therefore, that Rawls's notion of rationality is nontraditional and dubious.

But even if citizens refuse to set aside their comprehensive doctrines or provide the eventual justifications as required by *the proviso*, not all is lost. Citizens may still be responsive to one another's reasons because they will continue to hold

one another "to [a reasonableness] standard and participation in public discussion suggests a mutual recognition that coercing others without adequate reason would be wrong" (Kelly, "Public Reason" 307). Even these uncompromising citizens will likely continue to call on others to present reasonable justifications for their views. The aspiration to public justification may not be reached, but it is still a goal citizens will take seriously, even if only for their own sake (Kelly, "Public Reason" 307-8). Because this concern is raised in a similar expression below (*§ 2*), I will address the issue in broader detail in the next section.

Rawls characterizes this whole objection a misunderstanding of how overlapping consensus relates to political liberalism. The reasonable overlapping consensus in political liberalism shows how those with different comprehensive doctrines can come to agreement on political conceptions of justice, which reinforce reciprocity of citizens and can form the basis of constitutional essentials in a democratic society. If political liberalism and overlapping consensus work as Rawls thinks they could, all reasonable doctrines, regardless of the religion or moral outlook, would affirm the institutions in a society corresponding to the agreed upon political conception, all doctrines would be able to participate in public reason through *the proviso* and in the public square without relevant constraints. Therefore, we do not lack the ability to evaluate and endorse political conceptions of justice. Upon the failure of this objection, we may wonder whether Rawls all but guarantees a liberal position. It may seem that political liberalism guarantees a comprehensively liberal policy—all else would be excluded as unreasonable.

§ 2. Political Liberalism is itself a Comprehensive Doctrine

Rawls remarks often that he is not concerned with the truth or falsity of other comprehensive doctrines, and also does not suppose that political conceptions need to be necessarily true, since he is not trying to present a conception as the basis for the truth of a fundamental first principle of ethics, for example. Nevertheless, there is a related objection (A) that Rawls unfairly requires all public reasons be secular reasons by disguising political liberalism, (B) which is really a comprehensive doctrine. In disguising it, the objector thinks (C) Rawls is trying to settle debate in advance. In this section, I will end by considering the underlying concern raised in the previous discussion of Gaus's objections, but which also applies to this series of objections, regarding (D) what it means to appeal to rationality. In considering this objection, I will at times reference Robert George, a professor of jurisprudence and prominent Christian thinker, who objects to Rawls specifically on abortion in "Public Reason and Political Conflict: Abortion and Homosexuality."

To discuss these objections, it is crucial that we understand what a non-religious pro-life argument requires. George argues that all nonreligious opponents of abortion must presuppose that regardless of the procedure by which consensus is reached, including a completely democratic one, any law that "deprives unborn human beings of their right to legal protection against homicide is gravely unjust" (George 2475), and therefore, we must make abortion illegal

A. The objection takes Rawls as arguing that those who disagree about matters of morality can agree on matters of justice and that Rawls attempts to deceive those who do not hold secular liberal views into sacrificing or putting aside non-liberal views when they enter public reason. Anthony Laden makes the point more succinctly: "if public reasons are just one more set of sectarian (here secular) reasons [which George thinks they are], then a reliance on them cannot be a means of inclusive and respectful deliberation" ("Public Reason" 4234).

This strand of the objection takes it that all secular reasons are public reasons, or at least that secular reasons pass the publicity requirement. But this is mistaken. The crucial factor in the identity of public reasons is not that they are secular, but rather that they are public; they are reasons we can reasonably expect all citizens to endorse because they can be publicly justified. Indeed, just as religious reasons will not be sufficiently public, many forms of secular reason will not meet a standard of publicity either (Laden, "Public Reason" 4234). A utilitarian comprehensive doctrine, for instance, might argue against abortion on the grounds that the practice limits aggregate utility or efficiency. But such an argument would not be sufficiently public, even though it is secular, because it presupposes acceptance of the doctrine itself, *i.e.*, the value utility. Though this expression of the utilitarian argument is admittedly crude, the point can still be made. Since we know there are reasonable people who disagree with utilitarianism, we cannot enact policy based on this view alone because it would not be publicly endorsable.

Rawls himself makes this differentiation between secular and public reason in "The Idea of Public Reason Revisited." Secular reason is "reasoning in terms of comprehensive nonreligious doctrines." Though the result of deliberation may be a nonreligious conception of justice, that was not its goal. Public reason must be presented "independently from comprehensive doctrines of any kind (although they may, of course, be supported by a reasonable overlapping consensus of such doctrines)." Crucially, public reason must be capable of being "worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime, such as conceptions of citizens as free and equal persons, and of society as a fair system of cooperation" (Rawls, "PRR" 776). And yet, even if we are satisfied that political liberalism is not secular, we might still worry that it is comprehensive.

B. George thinks political liberalism is a comprehensive doctrine because it is moral and normative and because it takes a stand against other comprehensive doctrines in the way each religion thinks it is the true path to salvation and that others are in error. To say that political liberalism is a *comprehensive* doctrine is to say that it is a "political conception [with] component parts, such as the conception of the person as citizen" (Rawls, "PRR" 766f). I will show why political liberalism is not a comprehensive doctrine and then why it is not like past political philosophies in the relevant ways.[38]

[38] Political liberalism only has a conception of the citizen so far as citizens have the right to be treated as free and equal. But these rights are not specific to political liberalism; any project looking to justify democracy or discuss improvements or modifications to democratic society would have to suppose citizens as free and equal, and therefore capable and interested in creating public policy and constitutional essentials.

The objection begins that citizens only satisfy public reason when they act legitimately and satisfy the criterion of reciprocity, Rawls argues, but the concern is that these notions of 'satisfying public reason' and 'acting legitimately' gain meaning only upon acceptance of *liberalism*. Therefore, when Rawls claims to exclude non-reasonable doctrines from public reason, he is actually excluding all non-liberal views, the objection continues. "Thus, 'political liberalism,' though representing a 'freestanding' conception of justice, is a moral conception, containing 'its own intrinsic normative and moral idea,'" and it is a "liberal" principle of legitimacy (George 2480-81). Rawls disguises a liberal comprehensive doctrine under the guise of "political liberalism." This is the "philosophical sleight of hand" George thinks Rawls is guilty of (George 2476).

First, political liberalism is not a political conception of justice. Rather, its very purpose is to consider various political conceptions of justice that might be offered in a public discussion of constitutional essentials. So long as the political conception is reasonable and offered in good faith that other reasonable citizens would endorse, political liberalism is uninterested in the conception itself. I discussed in § IV that the goal of political liberalism is, recognizing that there are different conceptions of the good, to find harmonious coexistence of different conceptions and comprehensive doctrines. Political liberalism is concerned, in public reason, with the relationship between citizens and their government. It accepts disagreement about ideas of the good, attempts to move past that, and asks how we can come to agreement about conceptions of justice.

Further evidence that political liberalism is not a comprehensive doctrine can be found in Erin Kelly's contrast of "political liberals" versus "comprehensive liberals." The former, who would support political liberalism—and would do so regardless of their comprehensive doctrine—"maintain that public justification can be grounded in general (or reasonable) agreement only when it avoids affirming the truth of moral, religious, or metaphysical doctrines about which reasonable persons are bound to disagree" (Kelly, "Publicity" 4241). This is what political liberalism calls for. Comprehensive liberals, on the other hand, argue that political conceptions of justice, principles, and reasons must be justified with reference to "more fundamental and expansive ethical principles, principles that apply to nonpolitical as well as to political domains of conduct" (Kelly, "Publicity" 4241).[39]

This response is also effective against the closely related objection that political liberalism is a political philosophy with an agenda like any other. But nearly every political philosophy has been focused on only one idea of the good, and has been interested in that idea of the good being accepted. Plato and Aristotle, Augustine and Aquinas, Bentham and Sidgwick all thought that it was the job of philosophy to convince people to accept a single idea of the good (their single idea). Rawls saw that this would never work because societies are pluralistic. Political liberalism, on the other hand, accepts that there are many different ideas of the good, and allows for diversity. It is a solution for how we might come to agreement on ideas of justice even with disagreement on ideas of the good. It is not concerned,

[39] A comprehensive liberal may, for instance, have a certain conception of particular rights or privileges each citizen deserves in society.

as other political philosophies before it were, with convincing people to see a singular idea of the good. As a result, it does not seek to privilege one comprehensive doctrine over another. George's objection, then, would work against other political philosophies, which are comprehensive in the sense of being interested in a particular idea of the good, but the objection does not hold against political liberalism.[40] The claim that Rawls engages in "philosophical sleight of hand" seems ineffective.

C. The concern that political liberalism is a comprehensive doctrine amounts to an objection that Rawls seeks to pre-emptively settle questions of constitutional essentials in advance. Regarding abortion specifically, George objects that Rawls does not consider "moral or metaphysical views in dispute about the status of embryonic and fetal human beings," nor does he factor in "the justice or injustice of choices either to bring about their deaths or to perform acts with the foreseeable effect of bringing about their deaths" (George 2487-88). George criticizes Rawls for not devoting adequate time to making an argument but instead simply concluding, "any reasonable balance of these three values will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester" (Rawls, *PL* 243, f32). This is true; Rawls does not enumerate all premises of his argument, but the aim of *Political Liberalism* was not to justify abortion. In

[40] George may further be mistaken in arguing that political liberalism is a comprehensive doctrine, because of a confusion of public reason and secular reason. If public reason required that only secular reasons could be given, then George's objection that political liberalism is a comprehensive doctrine would hold because political liberalism would advance an idea of the good just like comprehensive doctrines do, since many secular reasons are concerned with an idea of the good. Because this is not the case, since not all secular reasons are publicly justifiable, the objection that Rawls engages in sleight of hand to disguise political liberalism and to privilege it is misguided.

fact, Rawls takes up the issue somewhat neutrally in a footnote, and asks us to view the question in light of three potentially competing political values: "the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as citizens" (*PL* 243, f32).[41]

The objector continues that Rawls's entire justification is an assertion that the political value of the equality of women overrides other concerns, and that this assertion is baseless. Rawls's argument ignores important questions, specifically regarding truth and falsity of certain views, which George thinks ought to factor into our evaluating different comprehensive doctrines and political conceptions of justice. Rawls's argument for abortion's permissibility does exactly what public reason and overlapping consensus seek to prevent, namely, the "smuggling in of controversial moral and metaphysical beliefs" (George 2488). This is George's charge of "philosophical sleight of hand" in practice.

To begin, Rawls is not interested in settling questions in advance because he is not concerned with whether the pro-choice or pro-life position will be the result of consensus. Though he thinks reasonable people will endorse a pro-choice view, political liberalism would allow a pro-life policy win in public reason and overlapping consensus so long as it were offered in a publicly acceptable way, or so long as public reasons were given in due time. Rawls is not occupied with substantive normative questions like whether abortion is morally permissible and should be legal.

[41] Recall that these were the very same competing interests justices considered in *Roe v. Wade*.

This objection is further mistaken because, as shown above, political liberalism is not just a liberal comprehensive doctrine applied politically. Nor is public reason concerned with specific policy proposals. In order for public reason to pre-empt discussion and guarantee the success of a particular constitutional essential, as the objection charges it does, it would have to make a claim on a specific political question. It would have to say, for instance, that pro-life views are inadmissible and would therefore shut out other views. Public reason would have to comb through comprehensive doctrines and political conceptions of justice to determine which it would accept and which it would deny, presumably ignoring any publicly acceptable justification for a pro-life view, for instance, and thereby ignoring its own publicity requirement. But it is not even clear which political conceptions would lead to which policy proposal. A political conception could value liberty, for instance, but that is imprecise: would it value the liberty of a mother in making a decision about her own body, or the liberty of a fetus continuing pre-natal development? Even still, we might not agree on the principles, yet we could still accept the general features of a conception and the policy built from it (Rawls, *PL* 226). George does not tell us what he thinks would happen in such a case. As Forst writes, "it must be demonstrated in each case whether and which norms or values can satisfy th[ese] demand[s]" (Forst 87). We cannot have a deliberative democracy without independent evaluation of principles and reasons, which would be impossible under George's scheme.

In regards to George's particular concern about abortion, he defines a human being as existing at the very moment of conception. A single-celled zygote, defined as a fertilized egg, is to be granted rights and liberties from the first instance of its existence, right after fertilization, he thinks, because it is genetically unique and has the potential of becoming an adult and, "At no point in embryogenesis [*i.e.*, embryonic development] does the distinct organism that came into being when it was conceived undergo substantial change or a change of natures" (George 2491-93). He writes that arguments to the contrary are "unscholarly" and that any biological marker other than moment of conception that may be given to define the beginning of life is arbitrary, but he fails to argue why they are arbitrary.

Indeed, there are specific stages of prenatal neural development, before which the fetus has no mental functioning or a central nervous system. George does not show why he thinks these markers are arbitrary. There are also specific points of physical development. Diploid zygotes are physically different from blastocysts, which are the 100 cells found five days after conception. Blastocysts then become embryos, which are implanted in the uterine wall. Embryos are significantly different from fetuses, from infants, from children, from adults. The different names we give stages of life accord to the substantial changes in development. That an embryo or fetus "is human and will remain human" is no reason to suppose there are not definitive moments of progress and change.[42]

George also does not provide an argument for why a zygote deserves rights, just because it comes first and may have the potential to develop into an adult,

[42] The existence of such markers was crucial in the Supreme Court's decision in *Roe v. Wade*.

assuming nothing goes wrong. With the advent of umbilical and stem cell therapies, and with a proper handling of controlled methylation, we could imagine a case in which a single non-zygotic cell could become an adult, but we would not try to give that cell legal rights. In other words, a condemnation of abortion cannot rest on genetic uniqueness or potentiality of life. Looking at the specifics of George's argument in favor of the prohibition of abortion, it is clear that it is he who tries to settle questions in advance.

George concludes his expression of the objection by arguing that there is "Nothing in the idea of 'public reason' " itself that "gives [citizens] grounds to suppose that justice … requires them to shift from being 'politically pro-life' to being 'personally opposed to abortion, but politically pro-choice' " (George 2495). But public reason cannot function unless citizens are accepted as free and equal and open to the criterion of reciprocity, and women must be equal in their ability to make their own reproductive health care decisions, just as men can make theirs. It must be public to be reached through reasonable conceptions of justice. If we accept that as a definition of public reason, we will see that at the base of most personal and political pro-life positions is a religious motivation. Politically pro-life people, even if they argue against abortion on George's seemingly nonreligious grounds of continuous development or the rights of the unborn, seek to impose policy on the basis of their comprehensive doctrines, rather than on a publicly endorsed and justified conception of justice.

Rawls writes that the state is concerned with the orderly regulation of the institutions "needed to reproduce political society over time" ("PRR" 779). Because this orderly regulation is based on political principles, not necessarily moral ones, and since political society exists in perpetuity and must maintain itself, government ought not concern itself with particular practices, like abortion, "except insofar as that form or those relations in some way affect the orderly reproduction of society over time" (Rawls, "PRR" 779). Prohibiting abortion as an available reproductive health care service would negatively affect the reproduction of society over time not only because women will get abortions regardless of their legality, and legalizing abortion makes it possible for the procedure to be safer, but also because if women are not able to make their own reproductive health care decisions, there will be two classes of society, with women remaining inferior and slaves to their bodies. The issue of abortion is not about whether abortion is right or wrong, "but primarily whether legislative statutes forbidding [abortion] infringe on the rights of free and equal democratic citizens" (Rawls, "PRR" 780). Seeing that they do, we need a reasonable political conception of justice that can inform a pro-choice policy. But if we found circumstances otherwise, perhaps a pro-life policy would be called for.

D. This objection that Rawls engages in philosophical sleight of hand and the previous one that Rawls eliminates our evaluative and motivating capacities have an underlying concern about what it means to be rational. These two objectors both take a person's rationality to be an appeal to what is valued under her comprehensive doctrine. But this is not what Rawls means when he writes about

rationality as a means of reasoning; nor is it how rationality can be interpreted if we hope to use it in public debate about the creation of constitutional essentials and public policy.

Rainer Forst helps make this point clear. He argues that claims to rationality must be earned on generally and reciprocally valid principles of justice in "discourse among citizens," and therefore, the "foundation underlying all principles of justice … is the basic principle of discursive justification" (Forst 80).[43] Rationality with regards to public discussion is not, then, individuals just being true to their comprehensive values, or bringing about a valuable idea of the good in line with a comprehensive doctrine; it is tied with reasonableness, reciprocity, and "legitimate consensus" (Forst 81). Comprehensive doctrines, no matter how formal and complex, will never acknowledge that there are many ethical ways of life but will instead assert a single one and will treat citizens as particular ends toward the single conception of the good, as opposed to as simply ends in themselves (Forst 116-18). Therefore, rationality cannot be directed toward what is most motivating; that would fail to acknowledge the inherent pluralism in democracy.

Rationality *qua* reasoning is much more similar to the commonsense notion of how people deliberate together, publicly and in conversation with one another, than to how citizens should follow or maximize their comprehensive commitments. When we say, "She was acting rationally" we do not mean "She was acting to

[43] Rainer Forst's text *The Right to Justification* focuses largely on a dispute between Rawls and Jürgen Habermas. Nevertheless, the two "share the view that a conception of justice can be 'autonomously' justified *solely* on the basis of those 'ideas' and 'principles' [Rawls] or 'procedures' [Habermas] of practical or 'communicative' reason … which draws on nothing more than … the principle of justification itself and the corresponding conception of an autonomous person" (Forst 82, my italics). Though the two reach the point on different grounds, they agree on the importance of the kind of rationality I have been arguing for.

further her idea of the good." This notion of rationality might be defined as acting in accordance with logic or reason, with publicly justifiable principles. When we think of rationality in public decision-making, which is an interpersonal and co-deliberative undertaking, we think of making evaluations within the rules and constraints of something like Rawlsian public reason. Indeed, the sort of rationality *qua* reasoning Rawls says we need in deliberation is crucial to the legitimacy of governmental policy. Erin Kelly writes, "When political decisions purport to be collective, their legitimacy depends on whether they are supported by public reasons that appeal to what are recognized as common interests." If we reasoned in the way Gaus and George describe, purportedly rational "political decisions [would be] open to criticism when they merely represent the will of some faction…" (Kelly, "Public Reason" 301). Resultant policy would be illegitimate because it would not be collective. The concern that rationality is not what Rawls says it is but is rather what Gaus and George say it is, seems to have been resolved. The two are talking about different notions of rationality, and only Rawls's rationality *qua* collective reasoning and deliberating with other people can do the work it needs to in deliberative democracy.

Furthermore, if rationality were oriented toward bringing about what is most valued under a comprehensive idea of the good, it could be the case that rationality might differ depending on the content of the comprehensive doctrine. Such an entailment would be corrosive to the rationality *qua* reasoning, *i.e.*, as a means of reasoning, which is crucial to the functioning of a public discourse. True, in being

"rationally self-interested," it might be the case that we seek to further our idea of the good, but in evaluating what will become a constitutional essential, or a policy that the entire citizenry will live under, a different sort of rationality than the one the objector has in mind is called for.

The previous objections, that Rawls's political liberalism would be impossible to implement and would destroy public reason, and that Rawls engages in philosophical "sleight of hand" by privileging political liberalism over other comprehensive doctrines, fail. Nevertheless, there seem to be underlying problems with Rawls's solution to the problem of incompatible yet reasonable pluralism. We might worry that he is loading too much into his reasonableness criterion, for instance. We might worry that Rawls's solution is not as open to different people's views as he says it is. Above all, and even with the previous objections shown not to be damaging, it's unclear how Rawls envisions his theory working in a democratic society, and it might be the case that he is insufficiently attentive to real political disagreement.

§ 3. Rawls Does Not Show Political Liberalism in Democratic Society

Even with the previous two objections failing, it might be the case that Rawls is (A) insufficiently attentive to the fact that political disagreement can often be vitriolic, especially today. Members of Congress often do not present reasonable or publicly acceptable justifications for their views and votes, even though they often

face re-election challenges.[44] But even when they do present reasonable justifications, congress does not reach consensus. It might further be the case that (B) a political conception of justice denigrates democracy and political autonomy in setting the rules and content of debate in advance; Cohen writes, "the requirements of justice narrow the scope of political debate in ways that deprive democracy of much of its significance" ("FDS" 88). In discussing this objection, I will refer to an expression of it found in Joshua Cohen's "For a Democratic Society," which discusses this issue of drawing a clearer distinction between Rawls's theoretical democracy and the argument Rawls uses to get there.

A. From the beginning, we have been concerned with free and equal citizens in a constitutional democracy. But the objector thinks Rawls neglects to outline how his ideas of justice and democracy will relate to a democratic society. Another way of looking at this potential shortcoming is to inquire how we may move from an unjust society to a just one. Though Rawls does not spend time in either *Political Liberalism* or "The Idea of Justice Revisited" discussing implementing ideas of justice, because those works have other focuses, the issue is crucial to discuss if we are to truly look at how we might solve the problem of incompatible yet reasonable pluralism.

In order to discuss this objection, we must first understand what Rawls means by *democracy*. We have already discussed that procedural democracy could

[44] Perhaps they do not feel like they need to justify their votes because they are either "voting their conscience," which equates to voting their comprehensive doctrine, or that they represent such gerrymandered districts that there is no pluralism. If this is the case, they may think the publicity requirement is different. But they are clearly mistaken, since they are representatives to a body tasked with creating law for more people than just the constituents of their supposedly homogenous district.

result simply from the proper public reason and overlapping consensus of free and equal citizens—and we do engage in this sort of discussion when we offer publicly acceptable views for why others should accept our political positions. But democratic society is also interested in substantive questions. A political conception of justice will be substantively just on some level because it includes both standards of justice for a collective decision-making process as well as the outcomes of such a process, and substantive justice is necessary for truly just law. In the abortion example, for instance, we might consider "whether the arrangements protect basic liberties, not simply whether the abridgements of those liberties were enacted through a democratic process" (Cohen, "FDS" 91).

Substantive justice requires a democratic society founded on recognition of principles of equality and the basic liberties of citizens. Equality is not just citizens' equal ability to access societal goods; it is rooted in the capacity for a sense of justice, one of the two moral powers. Equality is not self-regulation or a generic or generalizable moral capacity, but rather it is a sort of common currency that allows for a link between potentially disorderly democratic society on the one hand and orderly overlapping consensus and the original position on the other. Equality is key for substantively just policies.

Given these notions of equality and democracy, we might be able to resolve the objection by recognizing that there are certain considerations that are irrelevant in deliberation about principles of justice and constitutional essentials (Cohen, "FDS" 98; *PL* 236). Just because a particular comprehensive doctrine might be a

citizen's reason for holding a particular view, it is not clear that motivation needs to have a part in public reason or the creation of public policy for all citizens. Rawls attempts to weed out such considerations with the original position and veil of ignorance. He has citizens set aside their comprehensive doctrines so that they may give more publicly acceptable justifications for their reasons because comprehensive doctrines are irrelevant to national policy.

Rather than trying to convince people that they *ought* to set aside their comprehensive doctrines in favor of publicly acceptable justifications, the practicality concern of whether citizens *would* set aside their comprehensive doctrines might be more easily addressed by showing citizens that their classes, background, and culture are arbitrary and irrelevant. Additionally, comprehensive doctrines are moral, and we are looking for political policies and principles of justice (Cohen, "FDS" 98). Gaus argues we cannot make judgments without access to our comprehensive doctrines, but it is unclear why our comprehensive doctrines should be any more necessary to making decisions, under which we all must live, and any less arbitrary, than knowledge of race, sex, gender, sexual orientation, economic privilege, or any other characteristic removed under the veil of ignorance.

In other words, why is it any more controversial to ask us to put aside our religion than it is to ask us to put aside our sexual orientation in making decisions for society as a whole? Both of these are contingent details—in that they could have been otherwise—about our identity that ought not have an impact on public policy. We ought to instead look for the most publicly acceptable and justifiable reason for

a particular policy, the most compelling justification when discussing constitutional essentials for the whole society.[45]

A robust understanding of equality can further help us uncover how political liberalism and deliberative democracy might alleviate some of the underlying concerns with Rawls's solution to the problem of incompatible pluralism. Equal citizens determine principles of justice that then guide the citizenry, and since government power is the collective power of individuals, the citizens as an aggregate retain ultimate authority if they are truly equal. It is crucial that the debate is public and that publicly acceptable reasons are given. If it is not public, people will give irrelevant reasons, which will not be publicly endorsable, the democracy will not be deliberative, and equality will be threatened. Instead, public political debate allows the citizenry to exercise common reason and thus collective power. Equality of citizens is key to the success of political liberalism and for the legitimacy and stability of democratic government.

B. The objection continues that political conceptions of justice are "guided by substantive principles of justice set out in advance" (Cohen, "FDS" 113), which could be problematic because democracy might be deprived of its significance. Returning to our abortion example, those sympathetic to this objection might contend that political liberalism all but entails a pro-choice view. In this expression of the objection that political liberalism decides too much in advance, it appears

[45] We may object that people are not actually equal in today's society, but we ought to recognize that Rawls is not engaging in a sociological or anthropological study of our actual society. Recall that his goal is to present an idealized society that may give us perspective in examining, and determining how we can improve our own. Unfortunately, not all citizens truly are equal in our actual society, but if we accept that they are at least theoretically equal in Rawls's theoretical society, we can better examine his solution to the problem of incompatible pluralism.

that political liberalism first decides on its principles, then uses those principles to set the rules of debate, and then regulates the debate as it is happening. It does this while having a stake in the final outcome. This expression of deciding too much in advance is subtly different from the similar concern of George's; Cohen is worried that political liberalism actually subjugates deliberative democracy in a way that Rawls would have disapproved.

There are two ways we might think of political liberalism claiming too much authority in actual debate and deciding the conclusion in advance. First, it could be the case that because a political conception of justice gives "an independent standard of the desired outcome" (Rawls, *TJ* 174), *i.e.*, a standard independent of the content of the result of deliberative democracy, which was George's grievance, and subordinates those decisions to a court or guardian to decide the content (Cohen, "FDS" 113). Cohen calls this *institutional subordination.* This sort of subordination is particularly problematic because one could imagine a situation in which a political conception of justice, laid out before deliberative democracy had a chance to decide on principles of justice, may lead to an anti-democratic system of justice, one in which a "guardian" determines principles of justice and then sets up how those principles ought to be implemented. At the very least, this sort of arrangement would be antithetical to the freedom and equality of democratic citizens. Even if the guardian implemented political conceptions of justice that were ultimately consistent with what would result from public reason, the result would be

illegitimate and anti-democratic because proper democratic procedure would not have been followed.

In addressing institutional subordination, we should consider democratic proceduralists, who think that if and only if proper procedure is followed in deliberation, then there are no further constraints necessary for democratic and just policy. They would thus presumably be content with policies that could kill further democratic government. If a proceduralist responds to this objection by contending that it is necessary to sustain the fundamentals of further deliberative democracy, then the proceduralist must admit that there are certain norms or requirements that are "fixed prior to actual democratic politics" (Cohen, "FDS" 122). The biconditional, then, does not hold, and the proceduralist's argument is invalid. If otherwise, and the proceduralist does not think it necessary to sustain democracy, then it risks being anti-democratic and self-defeating.

But what does the democratic/ anti-democratic distinction consist in? On some level it must consist in a sort of political autonomy, *i.e.*, "collective self-regulation" in which the fundamental criterion for a just law is that it is from the collective judgment of a people concerned with creating laws that they will then live under. The procedure/substance distinction is not, then, nearly as detrimental as it may first have seemed to be. Public reason in deliberative democracy requires that citizens offer justifications in good faith for their views that they reasonably think other reasonable people might endorse. In acknowledging this, true deliberative democracy could not result in an anti-democratic political conception of justice

because overlapping consensus of reasonable political conceptions of justice from free and equal people would not result in anti-democratic constitutional essentials. For that to be the case, free and equal people would have to willingly impose a system of institutionalized inequality in which they may themselves be inferior. Proper self-regulation, then, requires both substantive and procedural commitments.

C. Alternatively, we might consider political liberalism settling questions in advance as making deliberative democracy unimportant or unnecessary. In this worry, political liberalism would set down an already-fixed conception of justice, and citizens would be left with implementing principles, rather than determining content based on debate. This idea of denigration asserts that political life is only about codifying a political conception of justice the content of which is decided irrespective of citizens and may not even be publicly justifiable as opposed to making judgments and creating political conceptions of justice. In such a society, citizens would not be politically autonomous.

The denigration objection that the content of justice is fixed is misleading in at least two ways. The first concern comes from what the objector means by "already fixed." We may think it means that citizens have a sort of *a priori* knowledge of justice before any deliberation takes place, or perhaps they know the boundaries of reasonable debate. But Rawls discusses "moral learning" about justice as an understanding we come to about the "requirements of justice." We reach this understanding by being equal citizens in society and participating in deliberative

democracy (Rawls, *TJ* 414). So, if "already fixed" is interpreted as *a priori* knowledge, the denigration objection is ineffective.

If "already fixed" is taken to mean that the content of principles of justice is given in advance of debate, the objection is against democratic political autonomy. But even if the role of citizens is only to upkeep existing or prescribed ideas of justice, that upkeep requires significant work, and in being maintained, they are implemented in a political autonomy and are endorsed.[46] But suppose principles of justice were given in the original position, and then endorsed, and implemented. When we endorse principles, we exercise our autonomy, regardless of where those principles came from (Cohen, "FDS" 126). The autonomy might be weaker since we are not determining the principles ourselves, but autonomy is exercised.

The denigration objection argues that political liberalism and a political conception of justice render political decision making little more than the implementation of principles given in advance of debate. But this is also misguided because applying principles of justice requires making numerous judgments: for example about what sort of constitution could best enforce the principles of justice agreed upon, what would best preserve personal liberties, how it would be possible to avoid infringement on freedoms (Cohen, "FDS" 128). Even if the denigration objection held, political liberalism would not be solely an implementation mechanism.

[46] If the citizens no longer endorsed an idea of justice but it was still handed down, then it would be imposed, and citizens would no longer be free and equal, and the democracy would be become authoritarian.

D. Even though people will debate and deliberate, engage in public reason, and attempt to achieve overlapping consensus, there is a concern, expressed most clearly by Cohen, that in not paying due attention to the severity of political disagreement, Rawls fails to differentiate morality from politics. Cohen writes, morality concerns itself with "what *I* should do in a world in which other people do not see eye to eye with me," while politics in a democracy occupies itself with "what *we* should do when we do not see eye to eye with one another" (Cohen, "FDS" 130). It would be a mistake, then, to search for political unanimity solely because we may expect unanimity of notions of morality about certain issues, and when we accept moral pluralism's inherency in democracy, we must give up any hope of political unanimity.

The ultimate pessimism in Cohen's illustration of this objection may be abrupt and frustrating to a supporter of Rawls's, or to an optimist looking for a more legitimate and stable 21st century American polity. The quick end to Cohen's overall defense of Rawls is not simply disappointing because of its skepticism. Rather, Cohen seems to miss that Rawls does not expect total unanimity of views, and if he acknowledges this, he might not be so overcome by his final worry of the moral/ political divide. Rawls may have looked for that in *Theory of Justice*, but the later Rawls, who accepts pluralism, builds his philosophy on the understanding that unanimity is impossible. The Rawls of *Political Liberalism* and "The Idea of Public Reason Revisited" does not suppose overlapping consensus will be completely overlapping or that all citizens will endorse the same political conception of justice.

Quite the opposite: Reasonable citizens will offer reasons and rationales for conceptions of justice they think other reasonable citizens might reasonably endorse. They will accept fellow citizens' reasons if they think others will too. This is part of what it is to be a citizen in a democracy, and it is an obligation we owe one another.

But perhaps Cohen's apparent pessimism would not be unacceptable to Rawls, who writes that the conception of justice he thinks most reasonable, *i.e.*, justice as fairness, might be discarded in favor of another more reasonable conception, should one come about and be accepted. Rawls might, therefore, contend that while it is not wrong to expect the most reasonable democratic society to be founded on agreement about justice, the agreement is not one that must be permanent or immune to further deliberation. Furthermore, the agreement may not be on a particular political conception of justice, but could be on a family of views about justice. Rawls might even agree with the first part of Cohen's conclusion, since it is not clear what the "most reasonable" democratic society would be—perhaps it is Rawls's idealized society in which public reason and overlapping consensus are ultimately effective.

These objections argue that political liberalism decides too much in advance, or that the content of principles of justice are being "already fixed," thereby limiting or obviating the need of deliberative democracy. We have shown, though, that Rawls is able to answer these objections, from Gaus, George, and Cohen, and that they are not fatal. These final worries, though perhaps deserving of consideration elsewhere, are not against Rawls or his work. They concern, rather, the viability of

implementing a deliberative democracy in our society. Rawls is not much concerned with realizing a society like the one he describes. That is not his goal. Rather, he presents a theoretical society that gives insight and perspective to consider how our own society might be made more just. We need not occupy ourselves, then, with defending Rawls against this concern. But I will show in the next section that even if it is the case that Rawls is not sufficiently attentive to real disagreement or that political liberalism denigrates democracy, political liberalism and public reason can actually be beneficial in our society and in citizens' relation to their government.

Many of these objections attack the stability of Rawls's solution to the problem of incompatible pluralism. In so objecting, they question the legitimacy of political liberalism. Since we have already shown that Rawls answers the stability objection, political discussion of the sort he has in mind seems possible and could, if effected, give greater stability and legitimacy to public policy. Given that this final objection is not against Rawls's solution, but rather attacks our society and how open it is to change, we are able to move to an examination of how the tools Rawls gives us might be used to strengthen American democracy by making it more publicly acceptable. Calls for a more robust public dialogue are not new. But I will argue that Rawls's notions of public reason and deliberative democracy may be the medicine we need to bridge the gap between citizens and their government.

VI. Conclusion

The objections against Rawls and his solution to the problem of reasonable pluralism that I have discussed, *i.e.*, (1) that Rawls's strict requirements for reasonableness destroy the ability to evaluate different principles of justice, which has sweeping consequences for political liberalism, (2) that political liberalism is just another comprehensive doctrine and Rawls engages in "philosophical sleight of hand" by privileging it above other comprehensive doctrines, and (3) that Rawls does not adequately address political liberalism in a democracy, may have appeared fatal to his project of political liberalism. But Rawls gives enough in *Political Liberalism* and "The Idea of Public Reason Revisited" to defend him against these detractors.

Throughout this thesis, I have argued for political liberalism in democratic society, and a significant part of my argument centered on deliberative democracy and the freedom, equality, reasonableness, and rationality of citizens. The power of democracy comes from the robust deliberation and subsequent autonomy of free and equal citizens interested in creating policy for all members of society to live under. True deliberative democracy is interested in democracy as an ideal itself and not only as the result of procedure or of valuing freedom, equality, or fairness. We ought to, then, value the democratic process at least as much as we prize the values it endorses.

Considering the dysfunction and gridlock of contemporary American politics, a dialogue on constitutional essentials and public policy along the lines Rawls

suggests is required to return legitimacy and stability to the political process. Without a strong deliberative democracy in which citizens participate and make their views known, democratic government is not "by the people, for the people." Indeed, there is no "we, the people," without deliberative democracy and a robust public reason because citizens are not truly equal in creating policy. Citizens owe one another mutually acceptable justifications for constitutional essentials and thus for public policy.

But this obligation is not only to one another as individuals; it is also to the collective of citizens as a whole in civility and reciprocity to the society. If citizens follow public reason and overlapping consensus, they can create just laws that can be endorsed on their own merit. Only under such a system will government be truly legitimate. The structure of deliberative democracy, a citizenry engaged in public reason and overlapping consensus, and a strong public dialogue are crucial to the legitimacy of a democratic government.

In today's socio-political climate, many Americans feel removed from their government. They are reluctant to participate in the political process because they think their voice does not matter, and Congress has an approval rating at an all-time low, hovering under 10%, according to a recent Public Policy Polling national poll.[47] This feeling of disenfranchisement has been magnified recently because today having a "voice" in political debate means having money to contribute to campaigns, political action committees, and "super" political action committees. This influx of

[47] Public Policy Polling, "Congress somewhere below cockroaches, traffic jams, and Nickelback in Americans' esteem." 8 Jan. 2013. Web. 21 Mar. 2013. http://www.publicpolicypolling.com/main/2013/01/congress-somewhere-below-cockroaches-traffic-jams-and-nickleback-in-americans-esteem.html.

money, often unregulated "soft" money, in politics has silenced most citizens who do not have the necessary means to influence policy or politicians. This change, partly ushered in by *Citizens United v. FEC*, 558 U.S. 310 (2010), which made prohibitions on corporate and union electioneering spending unconstitutional, has threatened the legitimacy and publicity of our government. Elected officials are no longer accountable to all of their constituents as equal electors and participants in democracy; now they are beholden to their biggest donors, which are often corporations and associations, not individual citizens at all. This has threatened the notion of free and rational citizens engaging in reasonable policy creation as equals.

Increased public reasoning and a strong deliberative democracy is the answer to how we can make the American government more legitimate, stable, and transparent. Political liberalism, overlapping consensus, and public reasoning, are together a successful solution to the problem of seemingly incompatible yet reasonable pluralism in creating constitutional essentials in a democracy and might also point us toward a solution to unreasonable pluralism. So, a more substantive (and more broadly participatory) public dialogue can save our government in allowing even more policy to be publicly endorsable. Indeed, a broader notion of public reason can lead to an increased capacity for social change because "public discussion enables people to influence each other's thinking and values and to hold one another accountable" (Kelly, "Public Reason" 308). There might be a worry about whether this would happen in the context of incompatible yet reasonable pluralism. But it seems likely that free and equal citizens will hold one another

accountable—to the reasonableness criterion and duty of civility—in creating broadly public policy. If we find it uncontroversial that citizens would hold their elected officials accountable for providing reasonable and publicly acceptable rationales for their decisions, it does not seem uncontroversial that citizens would hold one another accountable if democracy were more broadly deliberative and participatory.

In this way deliberative democracy is empowering. Even if we think that democracy is the worst form of government, aside from all the others,[48] as democratic citizens we accept the intuitive importance of a fair system of cooperation. Indeed, Joshua Cohen writes in "Deliberation and Democratic Legitimacy" ("DDL") that citizens share "a commitment to coordinating their activities within institutions that make deliberation possible and according to norms that they arrive at through their deliberation. For them, free deliberation among equals is the basis of legitimacy" (Cohen, "DDL" 3). Deliberative democracy thus forms a connection between a formal or procedural notion of deliberation and an ideal or substantive notion of democratic association.

Though we may worry that some citizens might attempt to coerce others into endorsing a view antithetical to the common good, it is not clear that such deception would actually be possible in public reason. For one, having a preference does not guarantee being able to offer justifications for that preference that would gain any

[48] As Sir Winston Churchill remarked to the House of Commons on November 11, 1947: "No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time."

traction (Cohen, "DDL" 6). This is akin to offering a comprehensive doctrine without providing a justification for the doctrine. *The proviso* allows doctrines to be offered so long as justifications are given "in due time." Perhaps the coercion worry takes the form of a citizen attempting to dupe others into accepting a conception of justice that was geared toward improving a personal conception of the good. Seeing that she did not have suitable justifications, that citizen would likely change the proposal to be more publicly acceptable (Cohen, "DDL" 6). It is not, then, the case that deliberation might be focused against the common good and in favor of a personal advantage. Were it so focused, toward coercing other citizens, it would not be deliberation as such, and coercers would be in violation of the obligations they have to one another, *e.g.*, reciprocity and acknowledging one another as equals.

The kind of public reason I have discussed in this section, and briefly in other sections in which I have called for more robust public reason as the key to a more legitimate and stable government, is not exactly what Rawls has in mind. He does not discuss the practical application of public reason and political liberalism. Though this paper does not lend itself to an in-depth discussion of making Rawls's ideal philosophy practical, we can imagine how the application might look and what good it might do. Though the sort of public reason I am advocating is not as strict as the one Rawls discusses, such a revised notion of public reason could both model politics and be a model for political discussion.

Though Rawls thinks public reason ought to be only for matters of "higher" law, the sorts of law the Supreme Court rules on, *e.g.*, constitutional essentials, as

opposed to "ordinary" law, *e.g.*, issues of taxation and speed limits, which is what the majority of legislation falls under (*PL* 231), we can use a looser idea of public reason for ordinary law, too, and thereby further increase legitimacy of policy and government. A broader notion of public reason could be applied to further collective decision-making of the citizenry. If broadened, the benefits of the publicity requirement in Rawls's theories, *e.g.*, increased transparency, accountability, legitimacy, and stability, would be seen in other political dialogue, and its salutary effects would be felt in all public policy, not just in constitutional essentials.

We might ask why Rawls did not extend public reason in the way I suggest and whether legitimacy and stability might concern constitutional essentials only. Rawls may have been skeptical of whether broadened public reason could retain its publicity, and whether private citizens would be motivated to take care to offer one another reasonable justifications in good faith for matters of "ordinary" law. Though his skepticism may be warranted, it seems that if citizens are willing to work together to create truly public constitutional essentials, they should also be willing to make sure ordinary laws are justifiable, especially since those laws will affect their everyday lives. As to the second concern, it may be prudent to create levels of scrutiny in requiring publicity and reasonableness, as are found in judicial review. Strict scrutiny of the publicity of a political conception of justice and its rationale might be required for constitutional essentials, while something like rational basis review might be suitable for matters of ordinary law.

A more broadly applied public reason, and accompanying publicity requirement, would make governmental power less coercive because government secrecy, "particularly concerning the basic rationale for political institutions" would be lessened (Kelly, "Publicity" 4239). The citizenry would be privy to justifications for policy. We would have a better understanding of why our government enacted a particular policy, and citizens would be more connected to lawmaking. In short, the government's power would be more democratic. Anthony Laden worries here that if we understand public reasons as those that are permissible when engaging in public reasoning, we cannot determine ahead of time what counts as a public reason by "theoretical reflection alone." We will instead have to go out into the world and "publicly, respectfully, and reciprocally engage our fellow citizens" ("Public Reason" 4237). I would argue, however, that this lack of an ability to predetermine what counts as a public reason is not a detraction of my broader view of public reason. Since we cannot determine public reasons in advance, we need to test the reasons in public. This will further encourage debate and dialogue among the citizenry.

To see how a broader conception of public reason might function, I will briefly expand on Rawls's discussion of the Supreme Court as an exemplar of public reason and on Lawrence Lessig's call for constitutional conventions.[49] Rawls discusses the rules of evidence in a court of law—"relating to hearsay evidence in a criminal trial and requiring that the defendant be shown guilty beyond a reasonable doubt" (*PL* 221)—and in scientific communities, and a version in peer-review forums for

[49] Though these conventions would seem to focus more on "higher" law, as defined above, logistical concerns aside, the conventions could rewrite (or at least examine) "ordinary" laws and statutes.

academic articles, as examples of different sorts of reasoning. Were citizens to use rules of evidence, for instance, in public reasoning and deliberation with one another about issues of ordinary as well as higher law, and were the results of deliberations made clear to elected officials, they would more completely endorse policy, and government would thus be more legitimate.

We can take the virtues of public reason that Rawls discusses in relation to the courts, and apply them to the polity at-large. The court, specifically the Supreme Court, is supposed to apply public reason and prevents "law from being eroded by the legislation of transient majorities, or more likely, by organized and well-suited narrow interests skilled at getting their way" (Rawls, *PL* 233). This can help assuage the worry of tyrannical majoritarianism. The Court decides exclusively on public reasons, and is thus not just a defender of public reason but is "its institutional exemplar" because justices must use public reason to justify why they vote as they do and give "constituent" grounds that can "fit … into a coherent constitutional view" (Rawls, *PL* 235). As I mentioned when I discussed *Roe v. Wade*, justices cannot defer to their personal views or comprehensive doctrines unless they can justify their views with public, constitutional reasons. Doing otherwise would be an abuse of their power because they would be attempting to use a democratic institution to coerce citizens into accepting their personal comprehensive doctrines. In other words, a decision is not based exclusively on a comprehensive doctrine; in order to accept the opinion as justified, it is not required to hold a particular comprehensive doctrine.

Indeed, the federal court system, specifically the Supreme Court, is the only decision-making body that publicly justifies each of its decisions. Opinions—both of the Court and in dissent—are released for public scrutiny. We know exactly why and on what grounds each decision is made. Therefore, though justices may compromise with one another or discuss their personal views, each opinion is publicly justifiable on reasonable grounds, and is not respected simply as a *modus vivendi* or as a compromise. If other branches of government had to release public statements justifying their decisions, public policy and the actions of government would be more legitimate because citizens could respond to undesirable decisions, and citizens would have a stronger connection to their government, since legislators would know they would face increased public scrutiny, and members of Congress could be held more accountable.[50]

Just as citizens engaging in public reason can still reasonably disagree, so can judges. We often see decisions on constitutional essentials decided by a 5-4 majority. This does not necessarily mean that the four justices in the dissent were wrong or used public reason improperly. It might mean that they simply had a different, yet still reasonable, interpretation of the Constitution. This, too, could be applied to the polity at large. Citizens with different reasonable views are not necessarily wrong; they simply were not successful at convincing others of their view. Even with expanding public reason to the citizens' deliberation of ordinary law, we do not stifle those who disagree, so long as the justifications for their views,

[50] Some states have "sunshine" laws that require meetings between two or more lawmakers to be recorded and made public. These practices make government more transparent and make legislators more accountable to their constituents. The federal government could endorse such customs.

if they are to be included in public reason and not just in the public square, are broadly reasonable.

If we expand the rules and criteria at play in public reason to political discussion among citizens in all matters of law and policy, perhaps we will come to think that significant constitutional revisions are necessary. We will want those revisions to be done carefully and still under the framework of Rawlsian public reason so as to ensure the revisions make government more legitimate.

In July 2011, at a U.S. Senate Judiciary Committee hearing on *Citizens United*, Lawrence Lessig testified on how we might re-write or re-work parts of the Constitution, specifically concerning campaign finance, with the goal of limiting the influence of corporate contributions that make elected officials beholden to those other than their constituents.[51] Lessig's suggestion is to hold hundreds of small constitutional conventions around the United States. Delegates to the conventions would be sequestered in much the same way juries are in trials and would be tasked with rewriting the Constitution and voting on new versions. We could use a more informal version of this framework in which citizens would discuss state and federal legislation and work together to write new legislation. Citizens would offer one another justifications for their proposals that they think other members of the convention, a proxy for all citizens, could be reasonably expected to endorse.

We might see this broader notion of public reason and publicity result in increased transparency in "freedom of conscience, freedom of speech and of the

[51] Information about Lessig's testimony comes from personal notes that I took in attendance of the hearing on July 24, 2012 entitled "Taking Back Our Democracy: Responding to Citizens United and the Rise of Super PACs." His notion of constitutional conventions may have changed or been clarified since then.

press, freedom of association, freedom of information, and rights to political participation" (Kelly, "Publicity" 4240). Indeed, these freedoms along with the "discursive features" Amartya Sen discusses in *The Idea of Justice—e.g.*, an independent media and a full complement of civil rights, including the opportunity for political participation and dissent—are necessary to a just society because they "provide important opportunities for citizens to exercise freedom and that the exercise of freedom leads to better outcomes. Open public discussion reinforces values that are tolerant of a variety of lifestyle and religious preferences, and it enables people to hold their leaders accountable" (Kelly, "Public Reason" 297). We could argue, then, that these discursive features, which would be amplified in the broader notion of public reason I advocate, would lead to a legitimate, stable, and morally permissible deliberative democracy.

In bringing about these discursive features, we must acknowledge the norms and conventions of conversation, paying special attention to equality, intelligibility and reasonableness, and sincerity. The ability to earnestly acknowledge counterarguments and objections and to change one's position accordingly is a philosophical virtue. In order to do this, (virtuous) philosophers recognize their detractors as capable of offering intelligible and reasonable objections the acceptance of which is not predicated on also accepting a particular comprehensive doctrine. We could imagine a philosopher giving a talk to an audience of other philosophers, one of whom raises his or her hand and presents a valid counterargument. If he or she is engaging in earnest discussion and respecting the

norms of conversation, the lecturer would be forced to accept the counterargument's validity, and could only make a dispute on the grounds that the objector's argument was unsound. If, however, the premises were publicly accepted and endorsable, the lecturer might be inclined to modify her views in light of the counterargument, and her paper would be stronger because of such a conversation. This is the sort of broader notion of public reason that could be extended to the citizenry at-large in making all sorts of decisions under which all must live.

Some might argue that this framework could result in total majoritarianism and would destroy the republican form of government that protects the minority. But Rawls writes that free and equal, reasonable and rational people should be "ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality" (Rawls, *PL* 218). If a faction tried to discriminate against a minority, the faction would likely not be able to justify its discrimination consistently with the freedom and equality of fellow citizens because such discrimination would likely be based on a comprehensive doctrine in its entirety as opposed to a political conception of justice. The majoritarian would also have to justify the view in favor of abridging rights, for example, to the minority itself.

A reading of Habermas may also help us avoid the worry of majoritarianism. Forst writes, "claims to validity can only be grounded in a particular form of practical discourse in which equal participants, without excluding individuals or arguments, agree on whether the general observance of a norm is equally

acceptable for each affected person" (Forst 87).[52] The specifics of such an arrangement are not crucial to define here. What is important, though, is that such a framework would allow for an increased public reason and would make democracy more publicly deliberative and thus more stable, legitimate, and morally permissible.

Ultimately, in instituting this broader notion of public reason, we might have practicality concerns that Rawls does not answer—since he is not centrally concerned with how we ought to institute a system of political liberalism. We might be worried, for one, about whether people will be able to meet the demands public reason places on them because we doubt, for instance, their competencies in intelligence or morality. (These worries are aside from the earlier concerns of whether citizens would be *motivated* to obey public reason.) The worry about these people, however, can be addressed in a similar fashion to how we solved the earlier issue concerning the citizen who attempts to coerce others. I see four ways an unintelligent or morally questionable citizen could act. (1) She might offer a publicly acceptable reason, and the reason is included in deliberation, as if she were a "normal" citizen like any other. (2) She might not offer a public reason, and her attempts do not gain her admittance in deliberative democracy. (3) She might present her comprehensive doctrine and "in due time" (attempt to) present publicly acceptable reasons. (4) She might offer a good-faith reason, but the rest of the

[52] It may appear that Rawls and Habermas disagree about what is to be accepted in the deliberative democracy. Though Rawls pushes for a strict reasonableness requirement, Habermas would have us not exclude individuals and ideas. Nevertheless, they end up at the same point: both Rawls and Habermas support the idea of equally accepted or publicly endorsable ideas giving the content to public reason. The disagreement consists solely in where each puts universalizability and validity.

citizenry objects, and her reason is thrown out of deliberation. Whatever the result, these practical concerns do not seem to affect the broader notion of public reason.

Nor is it quite clear what kind of practicality this worry takes as operative. Public reason may not seem practical because we may be forced to tell significant numbers of people their effort—made in good-faith or otherwise—did not amount to real deliberation, at least not in the way Rawls and I mean. Or public reason might not be practical because it is not going to be an easy solution to institute that all citizens will be keen on; nor will it be a panacea for all of our problems. Still different, we might not think it is practical because it seems unlikely that we will be able to adopt it in our current system in which Congress is so divided and derided. None of these practicality concerns amounts to the claim that public reason is impossible. Nor are we in the business of instituting a quick, easy, and painless solution – for, if there were such a solution, it would certainly have already been adopted. We are interested in changing the broken status quo, solving serious problems, and creating new public policy. To do this, it is crucial that we take our time and find the right solution, not the quick or politically expedient one. We must first show citizens that though public reason is not magic, will not be easy, and will not solve all of our problems, it could make Congress more representative and could temper partisan gridlock. Then we must set up the rules of public reason, and encourage citizens to press each other—and their legislators—to abide by these requirements. We will be left with a practical and viable solution that has a chance to make a more accountable, legitimate, transparent, and stable government.

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