

The Continuing Challenge of Hobbes to Public Reason Liberalism

(Or why liberals should stop obsessing over shared reasons and think about what is important)

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1. CONTEMPORARY PUBLIC REASON LIBERALISM AND THE SHARED REASONS DOCTRINE

The dominant contemporary account of liberalism is aptly called “public reason liberalism.” Public reason liberalism, most notably in the work of John Rawls, takes as its starting point the reasonable diversity of conceptions of good life and the valuable, as well as differences in metaphysical beliefs about the ultimate nature of reality, and the place of humans in the scheme of things. At the heart of public reason liberalism is the conviction that, if all are to be treated as free and equal persons, the justification of the political order cannot presuppose the truth of one such reasonable doctrine over its competitors. To treat another as a free and equal person requires that he is not subjected to terms of political association that are only justifiable in terms that, as a reasonable moral person, he cannot endorse. Now there are two (not necessarily incompatible) ways for public reason liberalism to meet this requirement. Public reason may be understood as what is *endorsed by the reason of all*. The reason of all endorses the liberal political order if each, reasoning on the basis of her reasonable conceptions of value, metaphysics and so on, has her own reasons to affirm the liberal order. In this case, while the liberal order does not depend on the truth of one such reasonable doctrine over its competitors, it can draw on the truth claims of a variety of reasonable doctrines in justifying itself. Public reason, however, also can be understood as the *shared reason of all*. Here the public reason liberal seeks to prescind from reasonable disputes about metaphysical, religious and ethical truth, and ground the liberal order on a set of reasons that all citizens share.¹ Again, the justification of the political order does not require endorsing one controversial doctrine over others, but now the aim is to refrain from *any* appeal to controversial doctrines. Whereas the first view holds that a political order that appeals to a variety of controversial doctrines treats all as free and equal so long as each

finds her own justifying reasons in doctrines she holds to be true or justified, the second (i.e., the shared reasons view) insists that only reasons that everyone finds uncontroversial can justify.

Public reason as the shared reasons of all is the dominant strain in public reason liberalism.² Rawls's critical argument from the original position is an effort to base justification primarily on shared reason. The veil of ignorance excludes "knowledge of those contingencies which set men apart."³ All parties are assumed to reason on the same basis: the aim to obtain primary goods. Insofar as they consider themselves from the common perspective as agents devoted to some ends, these goods are desired by all. When abstracted to the common status of agents devoted to their own (unknown) evaluative standards (values, comprehensive conceptions of the good and so on), because "everyone is equally rational and similarly situated, each is convinced by the same arguments."⁴ Rawls contends that the argument from the original position is "freestanding:" it isolates the evaluative considerations that follow from our conception of persons as reasonable and rational, free and equal — a conception that is said to be implicit in our democratic society, and so shared by all.⁵ Justice as fairness thus expresses "shared reason:"⁶ it is a justified political conception because it articulates the requirements of the concepts of the person and society that all reasonable citizens in our democratic societies share. Rawls, though, does not stop there: this argument from what we share does not exhaust justification. Indeed, he says that this freestanding justification is simply a *pro tanto* (so far as it goes) justification.⁷ In what Rawls refers to as "full" justification citizens draw on their full range of conceptions of values, metaphysical beliefs and so on, and find *further reasons* for endorsing the political conception. At this stage, Rawls tells us, the *pro tanto* (freestanding) justification "may be overridden by citizen's comprehensive doctrines once all values are tallied up."⁸ What was simply freestanding or isolated must, if it is to be fully justified, serve as a "module" that fits into each free and equal reasonable moral person's set of evaluative standards.⁹

Although full justification, and its notion of “overlapping consensus,” appeals simply to the reasons of all (and so does not suppose that these further reasons are shared), it is nevertheless supposed that the core case for justice as fairness — the freestanding argument, based on shared reasons — is unaffected by inclusion in a more comprehensive set of reasons. Thus the importance of the idea that it is a “module:” the freestanding argument fits into all these doctrines without altering its character. The shared reasons case for Rawls’s public reason liberalism, we might say, is assumed to be *insulated* from these wider disputes: it stands on its own, though it may well receive additional support from them. Many second- and third-generation Rawlsians put even more stress on shared reasons. Jonathon Quong has recently insisted that Rawlsian public reasons are necessarily shared reasons.¹⁰ Steven Macedo too has constantly stressed the need for public justification to be framed in terms of shared reasons.¹¹ From a somewhat different perspective, Robert Audi too has insisted on the need for common, secular, reasoning in a liberal polity.¹²

What we might call the “shared reasons requirement” is employed in two different contexts in public reason liberalism. The so-called “duty of civility” appeals to shared reasons as a test for acceptable political discourse: when participating in a public, political, forum, one should only advance reasons that other citizens in some way share. In this sense, the shared reasons view is a constraint on what can be said, or publicly advocated. Since it is rightly supposed that religious reasons are not among those we share, this purported duty implies a “principle of restraint” on appealing to religious reasons in political discourse.¹³ Understandably, many of those who take their religious convictions seriously find this an onerous and unjustified requirement.¹⁴ I have elsewhere argued that they are largely correct, and this principle of restraint should largely be dismissed.¹⁵

More fundamentally, though, the shared reasons requirement can be understood as a constraint on what constitutes an adequate public justification of a basic political principle or a law. On this more fundamental interpretation, the public justification of political principles ultimately should be restricted to those considerations that we all share as citizens, qua citizens.

This would appear an attractive but elusive ideal. It is attractive insofar as, should it succeed, we would have a full public justification of our common political order, one based on shared reasons that all free and equal persons affirm.¹⁶ It is elusive insofar as in a world in which we disagree about so much — about how to live, how to bring up our children, and our ultimate place in the universe — universal rational endorsement of the terms of our political association seems a hopeless quest. Suppose, though, that we could (i) isolate a perspective that we share qua citizens; (ii) that from this shared perspective we could agree on certain basic interests; (iii) that this basic shared core uncontroversially justifies a set of political principles; and (iv) our agreement on this shared core could be insulated from our other disagreements, so that despite these disagreements we could continue to endorse the shared core as of great, and typically overriding importance. Thus Rawls's project: (i) and (ii) identify the original position; (iii) is a freestanding argument for justice as fairness that (iv) is not overturned at the stage of full justification, but is consistent with overlapping consensus. The elusive goal of political agreement in the midst of extensive pluralistic disagreement seems, perhaps, achievable. Many are dubious. Jeffrey Stout, for example, questions not simply the practicality, but the desirability, of this insistence on a "common justificatory basis" for political principles.¹⁷ Why should we think that a religious person's deepest convictions have no implications for the political principles that she has reason to endorse? Does the liberal really, seriously, think that this common core (if there is one) can be insulated from deep beliefs outside the common core? Thus we have arrived at the contemporary debate about the plausibility of public reason liberalism, especially as it pertains to the place of religious conviction.

All this seems *very* contemporary, and very much about the Rawlsian project and its trials and tribulations: the freestanding argument from the original position, the claim about shared political values, the nature of the "reasonable," shared political values, claims about overlapping consensus, publicity, and so on. Not so, I argue in this essay. Once again contemporary philosophy is deeply impressed by its reinvention of the wheel. The fundamental debate as to whether we can identify shared (inevitably secular) beliefs that form a core public

reason, and which can be insulated from the disagreements of private judgment about religion, has characterized the public reason project since its inception in the work of Hobbes. In section 2 I argue that Hobbes lays down the fundamental challenge to this shared reasons liberal secularism:¹⁸ political beliefs cannot be insulated from our broader disagreements. Section 3 considers Locke's proposals. I shall argue that Locke's liberal reply to Hobbes presents a well-developed version of the insulation thesis (that shared political convictions can be insulated from religious disagreements), as well as a doctrine of what I shall call "bounded disagreement" — that although we disagree even about political principles, this disagreement is not unlimited. Section 4 argues that from Locke onwards public reason liberals have paid far too much attention to the insulation thesis, when the real work in a liberal theory is done by the bounded disagreement doctrine. Without bounded disagreement, the insulation thesis will not avoid the Hobbesian challenge; with bounded disagreement, the insulation theory turns back Hobbes' authoritarianism without appeal to the insulation thesis.

2 HOBBS ON THE AUTHORITY OF PUBLIC REASON

2.1 The Fifth Monarchy Men

Although it omits much of a complex story, the familiar, somewhat stylized, history of liberalism as arising out of the religious conflicts of the sixteenth and seventeenth centuries identifies the heart of the liberal project: securing a free political order in the face of diversity of private judgment.¹⁹ Although it is often claimed that liberalism arose out of Luther's doctrine of the priesthood of all believers — and of course there is some truth in this — we must not forget that early Protestants were as committed as Roman Catholics to uniformity of religious belief and practice. If each was to interpret the Bible himself, there was still the expectation that these readings would largely agree. The priesthood of all believers was no excuse for idiosyncratic interpretations of Scripture. And it was certainly no excuse for religious toleration. The religious conflicts in England — out of which the Whig Party, and ultimately Anglo-American liberalism grew — began as disputes over what the state religion would be. Henry VIII sought a sort of

nationalized version of the Catholic Church, but was pushed towards a more Protestant state church, and under his son, Edward VI, this trend towards a Protestant national church accelerated. “Bloody Mary” sought to remake England into a Roman Catholic state; Elizabeth reversed course once again. Oliver Cromwell sought to create a Puritan Commonwealth — even Anglicans were subject to penalties for celebrating Christmas. After the restoration, both Puritans (now, appropriately labeled “dissenters”) and Catholics were subject to penalties, and acts of conformity (to the Church of England) were required.

The period during, and immediately after, the English Civil War was one of freedom of conscience and speech. The supposition that *of course* citizens would, and must, agree on religious matters was challenged on a wide variety of fronts. Freedom of conscience resulted in a plethora of radical religious doctrines that sometimes led to radical political views. Sects such as the Quakers, the Shakers, the Ranters, and the Muggletonians arose. Among the most interesting of these sects were The Fifth Monarchy Men, who interpreted Daniel’s dream (Dan. 7) as indicating that there would be five great legitimate monarchies: the last of which would be that of Christ. They believed that the fourth monarchy, the Roman Empire, had been overturned by the Church of Rome, and so were awaiting the fifth monarchy: the reign of Christ. Consequently, on the basis of their reading of the Bible they denied the legitimacy of all states between the Roman Empire and the Reign of Christ (which, unfortunately for them, included the Commonwealth). The Fifth Monarchy Men brought home two great lessons. First, once freedom of thought was allowed the proliferation of interpretations of the Bible would be endless: the hope that the priesthood of all believers would lead to consensus was an illusion. Second, the same freedom of thought that led people to conflicting religious beliefs could lead them to conflicting political convictions.

Famously, Milton defended freedom of thought and speech in *Areopagitica* (1643), but the Puritan, and later the Anglican state, were appalled by these flights of personal interpretation and claims to freedom of conscience. The brief experiment with freedom of conscience seemed to quickly lead to chaos of belief and undermining the social order. The distinctively modern

problem of public order under conditions of deep and enduring pluralism of normative beliefs had arisen.

2.2 *Private judgment and public reason*

A close reading of *Leviathan* reveals that Hobbes's main aim was to solve this problem. Despite the common interpretation of Hobbes as only concerned with the clash of self-interest, his analyses of the roots of disagreement and conflict are much more subtle and wide-ranging. *Leviathan* focuses on problems of rationality and disagreement that arise when individuals rely on their private judgment of what reason requires. The exercise of our rationality is fallible: "no one man's reason, nor the reason of any one number of men, makes the certainty."²⁰ Rational people aim at what Hobbes calls "right reason" — true rationality, which reveals the truth. However, because everyone's exercise of rationality is fallible, we often disagree about what is right reason; the private use of reason leads to disagreement and, thought Hobbes, conflict. Although in such controversies each person claims that the use of his own private reason is "right reason," these claims only exacerbate the conflict: "when men that think themselves wiser than all others clamour and demand right reason for judge, yet seek no more but that things should be determined by no other men's reason but their own, it is...intolerable in the society of men." Indeed, Hobbes insists that those who claim that their reason is obviously correct reason betray "their want of right reason by the claim they lay to it."²¹ Someone who insists that *his* reason is right reason, and so *his* reason should determine the resolution of disputes, is not only a danger to society, but because he sees "every passion" of his as an expression of "right reason," he is *irrational*: he demonstrates the lack of right reason by virtue of the claim he lays to it. On Hobbes's view, then, a stable and prosperous social life is only possible among individuals who acknowledge that their private judgment of the demands of reason cannot hold sway in their controversies with others; our very interest in a secure and peaceful social life instructs us to abandon reliance on our private judgment. Hobbes thus sides

with those who are convinced that all appeals to the sanctity of individual conscience based on private judgment threaten the social order.

Hobbes is convinced that public, substantive rules of conduct, cannot themselves solve the problem of conflict arising from diverse private judgment.²² In the abstract, of course, we can see that the “laws of nature” are necessary for peaceful co-existence. All rational individuals will endorse the same general rules of social conduct (e.g., seek the peace, keep covenants, be equitable when judging disputes). Thus at first glance it would seem that Hobbes advocates the liberal secular insulation thesis: we can disagree about “comprehensive conceptions of the good” (say religion) so long as we agree on “the right” — core principles about how to organize our social life. The example of the Fifth Monarchy Men should make us cautious about this apparently easy solution. Hobbes, though, advances a more systematic worry. “All laws, written and unwritten,” he argues, “have need of interpretation. The unwritten law of nature, though it be easy to such as without partiality and passion make use of their natural reason, and therefore leaves the violators thereof without excuse; yet considering there be very few, perhaps none, that in some cases are not blinded by self-love, or some other passion, it is now become of all laws the most obscure, and has consequently the greatest need of able interpreters.”²³ When we employ our “private reason” there is, says Hobbes, great dispute about the laws — both the laws of nature and civil laws, and so we require the sovereign, the determiner of public reason, to provide a common interpretation of what the law requires.²⁴

At the heart of Hobbes’s social contract theory is the claim that agreement on substantive rules of conduct cannot itself solve the problem of diversity of private judgment. Given the limits of human reason and tendencies to bias, the interpretation of the basic moral rules is always rationally disputable: at the level of rationality and moral impartiality exercised by even the most admirable real people, their interpretation is indeterminate.²⁵ So the principles of social conduct are given a public determinative character by identifying a person (or a collective operating under a procedure, such as a legislature), and then taking its decision as the voice of public reason. The crux of the Hobbesian case for the primacy of an arbitrator as determining

public reason (over substantive rules or principles) is the greater scope for disagreement and dispute about rules than about decisions of the arbitrator.²⁶

Hobbes thus proposes that disagreements in private reason (including disputes about the demands of the laws of nature) are to be resolved by the sovereign, who is to serve as an arbitrator. This procedural solution to disagreement in private judgment has much to recommend it: even if we cannot agree on the merits of substantive doctrines or opinions, we may be able to resolve disputes through appeal to a judge or umpire, who provides a public decision about what to do. The indeterminacy of our practical reason can be resolved by following the practical reason of the judge. This “umpiring” or procedural solution seems uncontroversial enough when applied to political disputes; however, given Hobbes’s analysis it also applies to all moral disputes as well. Remember, Hobbes starts out with disputes about the laws of nature — basic rules of ethical social conduct.²⁷ His solution is to politicize all disputes about interpretations of these rules of social conduct by submitting them to the sovereign. If we closely follow Hobbes, it looks as if the political procedure will be determinative of all moral disputes about interpersonal conduct — having justified a judge or an umpire, we appear to have reason to appeal to it when we disagree about the dictates of the basic rules of ethical social conduct. Politics seems to swallow up morality. If the insulation thesis totally fails — if our disputes about the rules and principles regulating social life cannot be insulated from our religious and other disagreements — how else can we resolve our conflicts?

Those who would seek to extend “Hobbesian social contract” theory to develop a Hobbesian “moral theory” fundamentally misunderstand Hobbes’s solution to the problem of public order and diversity of private judgment. A typical view is that the core Hobbesian problem is how egoistic people can live with one another; and the real threat to social order is presented by Hobbes’ “foole” who says in his heart that there is no justice, and so sees no reason not to cheat on moral rules. On this view, the real problem Hobbes seeks to address is the rationality of defection on moral rules that structure mutually beneficial conduct. A Hobbesian moral theory is thus seen as one that identifies mutually beneficial rules and shows

the rationality of conformity to them even in cases in which one would do better by cheating. Now to be sure, Hobbes is certainly worried by the fool's radical stance, but there is a long interpretive road from this to the common claim that these few paragraphs get to the heart of *Leviathan*. The fool passage paraphrases the Psalms, where the fool says that there is no God — a radical position indeed.²⁸ This suggests that Hobbes is not addressing the standard problem but a radical challenge to his core claim that the laws of nature provide each with reasons to act. What is really crucial and revolutionary about Hobbes's argument is that those who are *not* fools — those who accept that the laws of nature are indeed rational maxims which we all should follow — will *still* be unable to solve the problem of order given diversity of private judgment. Because all laws, written as well as unwritten, must be interpreted, and so each interpreter must employ his own private judgment, even if there are no fools, and we all accept that the laws of nature give us reason to act, we will not secure peaceful order. We must not forget that the problem of diversity and order which was the background of Hobbes' work was not posed by "fools" who denied in the hearts there was a God, but by those such as the Puritans and the Fifth Monarchy Men those who accepted the word of God as law: it was their interpretations of the law of God, Hobbes thought, that led to the English Civil War. Similarly, the core problem of the moral order is not posed by fools who deny in their hearts there is justice, but by those who insist that their own interpretations of the demands of justice are the dictates of right reason.

2.3 The unlimited authority of public reason

Because he sees *all* private judgment as potentially a threat to the social order, Hobbes puts no limit on the authority of the sovereign to determine disputes. Hobbes endorses the judgment of Cromwell and later the Tory Restoration parliaments: the experiment in free private judgment was an appalling threat to social order. Private judgment must be subservient to the public reason of the sovereign. Underlying this conservative response to rising diversity of belief is the important insight that there is no neat way to insulate the political from the religious: as the

Fifth Monarchy Men showed, disputes about the former can always lead to disputes about the latter. Faced with the tendency of all beliefs to become political, Hobbes puts the teaching of all doctrines under the authority of the sovereign. "For the actions of men proceed from their opinions; and in the well-governing of opinions, consisteth the well-governing of men's actions, in order to their peace, and concord."²⁹

Indeed, Hobbes suggests that we alienate to the sovereign some authority over our beliefs, or at least the conditions under which they are expressed and formed. Whether Hobbes had a consistent doctrine about the extent of the sovereign's authority over belief is, I think, unclear. On the one hand, he certainly insisted that belief itself could not be commanded: "A private man has always the liberty (because thought is free) to believe or not believe."³⁰ And, he insists, human governors can take no notice of the "inward thought and belief of men....they are not voluntary, nor the effect of the laws,....and consequently fall not under obligation."³¹ Yet he also states that in creating the sovereign, subjects "submit their wills, every one to his will, *and* their judgments, to his judgment."³² The idea of accepting and authorizing the judgment of the sovereign occurs repeatedly.³³ It is important that for Hobbes that while the *will* concerns deliberation about action, *judgment* is "the last opinion in the search of the truth."³⁴ Hobbes identifies public reason with reason of the sovereign, and so the sovereign provides a public determination of the truth, for example, of a claim that a miracle has occurred.³⁵ When disagreeing whether a miracle occurred, Hobbes tells us that "we are not every one to make our own *private reason* or conscience, but the public reason (that is the reason of God's supreme lieutenant), judge." Certainly Hobbes thinks that "when it comes to confession of that faith, *the private reason must submit to the public.*"³⁶ Perhaps the best view is, that while we cannot be directly commanded to believe, (i) there are public truths from which we are obligated not to dissent; (ii) we can be obligated to publicly affirm these truths; and (iii) the sovereign has authority to shape the environment in which opinions are formed.³⁷ Hobbes certainly endorses a sweeping authority of public reason over private judgment, in matters civil and religious.

Hobbes thus insists that *whatever* the sovereign proclaims is public reason *is* public reason. No limits can be placed on the sovereign's authority: "he is judge of what is necessary for peace; and judge of doctrines: he is sole legislator; and supreme judge of controversies."³⁸ Hobbes denies, then, that sovereign's authority can effectively be limited within some range of reasonable disputes; we cannot say that for all disputes within some range *R*, the sovereign is definitive, but outside of this range he has no authority. For Hobbes, identifying any such range *R* will engender new disputes: some will employ their private reason to say that the sovereign has acted outside his authorization, and so set up his own private judgment in opposition to the sovereign. This is precisely the problem Hobbes sought to avoid: each is insisting that "things should be determined by no other men's reason but their own." If you set yourself up in opposition to the sovereign, and insist that you shall be guided by your private reason, there will arise disputes, controversies, and at last war. Thus, any time that you dispute the sovereign's claim that he is acting within the range of legitimate disputes, this *ipso facto* is the type of dispute in which the clash of reason endangers society. Hobbes is convinced that such disputes are not only dangerous, but likely. Disagreement resulting from the use of private reason is endemic: there is no matter about which we can be confident that people will not disagree.

2.4 *The claims of Hobbesian public reason*

Hobbes's analysis of the problem of social order given the diversity of private judgments leads him to four key claims:

- (1) *The ubiquity of disagreement.* Our private reasoning leads to disagreement in all matters. We not only disagree about religion, but about the demands of natural equity (the laws of nature), and the requirements of the civil law. There are really two claims here: (i) for any type of doctrine, principle, law, or rule, there will be divergent interpretations of private

reason, and (ii) these disagreements are not bounded within some range on which all people agree.

(2) *Non-insulation*. There is no way to insulate disputes in one area from other aspects of social and political life. Religious differences lead to political disputes. In contemporary terms, disputes about the “good” flow into disagreements about the “right” and law. There is also no effective way to erect boundaries between these different areas.

(3) *Proceduralism*. Because of (1) and (2) no set of impartial substantive rules can effectively order social life. We must appeal to a judge or umpire to determine right reason.

(4) *Unlimited procedural authority*. Given (1), (2) and (3), only if each submits her private judgment to the public judgment on all matters (on which the sovereign decides to issue a public judgment) can public order be secured.

Hobbes’s analysis is distinctively modern, recognizing how the exercise of private judgment leads people to disagree. But given these four claims, his ultimate position is anti-modern: diversity of private judgment in all matters is a potential threat to the social order, and so all must submit to the reasoning of the sovereign in all matters on which he speaks. For Hobbes the lesson of the English Civil War was the pervasive threat that private reason poses to social order. Those who seek to defend a free social order — one in which free thought and diversity of belief are central — will have to challenge some or all of Hobbes’ four claims.

3 LOCKE’S BOUNDED THEORY OF PUBLIC REASON

3.1 *Hobbesian themes*

In the canon Locke is Hobbes’s protagonist. Whereas Hobbes provides a modern defense of absolutist claims, Locke is the voice of the emerging Whig view that citizens possess rights against the sovereign, and that Parliament expresses the will of the people. And for Jean Hampton, whereas Hobbes would make the sovereign our master, Locke depicts government as our agent — an agent that can be dismissed when it no longer performs its task.³⁹ This tendency

to perceive Hobbes and Locke simply as protagonists obscures important, deep, agreements. Most fundamentally, Locke agrees that diversity of private judgment about religion is a fundamental social fact that must be reconciled with the demands of social order. Moreover, he accepts the crux of Hobbes's analysis of the causes of disputes about the laws of nature and how they are to be resolved. In a passage that recalls Hobbes's complaint that, while the laws of nature are clear to all, we nevertheless disagree because we are "blinded by self-love," Locke holds that "though the Law of Nature be plain and intelligible to all rational Creatures; yet men being biassed by their Interest, as well as ignorant for want of studying it, are not apt to allow of it as a Law binding to them in the application of it to their particular Cases."⁴⁰ Peace and justice, Locke concludes, can only be secured by "all private judgment of every particular Member being excluded, the community comes to be Umpire by settled standing Rules, indifferent, and the same to all Parties."⁴¹ It is the task of government to serve as the Umpire. Once again, the solution is essentially procedural and, once again, the political order becomes the interpreter of the moral order regulating interpersonal actions.

As with Hobbes, the core problem of political philosophy is justifying the authority of the Umpire over the private judgment of citizens. Locke begins by supposing that "the *Natural Liberty* of Man is to be free from any superior Power on Earth, and not to be under the Will or Legislative Authority of Man, but to have only the Law of Nature for his Rule."⁴² To be sure, he accepts that we are bound by the laws of nature, but in the state of nature each employs his own private judgment in deciding what these laws require. The clash of our private judgments leads us to see the need for a public determination of the law: justifying such authority is the central aim of the social contract.

3.2 *Locke's insulation thesis*

The canon is correct, of course, that Locke denounces the absolute authority of the sovereign as the voice of public reason. Locke's account of government as the voice of public reason rejects Hobbes's absolutism because he is convinced that the demarcation problem is tractable. Employing our private reason, we can come to agree on the range of government authority in

which public reason displaces private reason. "The commonwealth seems to me," says Locke, "to be a society of men constituted only for the procuring, preserving, and advancing their own civil interests. Civil interest I call life, liberty, health, and indolency of body; and the possession of outward things, such as money, lands, houses, furniture, and the like."⁴³ Locke is much more confident than is Hobbes that public reason's determination of disputes about civil interests can be insulated from disputes about religious belief. A clear demarcation between religious and civil disputes is both possible and necessary. "I esteem it above all things," Locke continues, "necessary to distinguish exactly the business of civil government from that of religion, and to settle the just bounds that lie between the one and the other. If this be not done, there can be no end put to the controversies that will be always arising between those that have, or at least pretend to have, on the one side, a concernment for the interest of men's souls, and, on the other side, a care of the commonwealth."⁴⁴ Thus Locke argues that private judgment should rule in religious matters. In controversies between churches about whose doctrine is true "both sides [are] equal; nor is there any judge... upon earth, by whose sentence it can be determined."⁴⁵ For the magistrate to seek to regulate such matters would be simply an exercise of private, not public, reason: "as the private judgment of any particular person, if erroneous, does not exempt him from the obligation of law, so the private judgment, as I may call it, of the magistrate, does not give him any new right of imposing laws upon his subjects, which neither was in the constitution of the government granted him, nor ever was in the power of the people to grant."⁴⁶

Locke, then, challenges Hobbes's second claim there that is no way to insulate disputes in one area from other areas of social and political life. Thus the core idea of shared reasons liberal secularism: we set aside as "private" those matters on which we disagree, but as rational people we share many judgments about the public rules regulating social life that are independent of these "private disputes." Although the Fifth Monarchy Men were an extreme case, we should not forget the lesson such sects taught Hobbes: erecting a clear and distinct line between private disagreement and political agreement is impossible. Even Locke does not think that political

agreement can always be insulated from private disputes. By the time he was writing the radical sects had receded, but the Roman Church is seen by Locke as posing the same danger: its religious doctrines have dangerous political implications. The Popes claimed that excommunicated monarchs were not owed obedience, and “they thereby arrogate unto themselves the power of deposing kings.”⁴⁷ Locke’s case for toleration thus does not extend to Roman Catholics: it only applies to religious views that do not have implications which challenge public reason’s authority over core civil interests.⁴⁸ That is, *only if the private doctrine itself endorses the insulation thesis is it to be tolerated*. Note how close this is to the deeply contentious Rawlsian doctrine that “reasonable” political doctrines endorse the results of the freestanding argument. As long as churches remain voluntary organizations for saving the souls of their members — and it is not part of their doctrine that this requires them to act on their private judgment against the results of the “freestanding” core arguments about civil interests — churches are to be allowed to follow their private judgments.

We can distinguish two versions of the insulation thesis. On what might be called the bracketing interpretation, in identifying the principles of public reason we must bracket or ignore “private” aspects of doctrines such as religious convictions. Doctrines, we might say, can be divided into two parts: those that concern civil interests and those that concern private or religious matters. Doctrines are admissible in a diverse liberal order if they acknowledge that only the former is relevant to evaluating the principles of public order.⁴⁹ Alternatively, an insulation thesis may seek to show that public principles are *robust* in relation to the disputes stemming from private judgment about religion or, more generally, conceptions of the good. Public principles are insulated from these disagreements, on this latter view, not because admissible doctrines ignore private views when evaluating public principles, but because once doctrines have been evaluated on the basis of civil interests, the results will not be overturned by considerations of other aspects of one’s overall doctrine. This is the version of the insulation thesis advanced by Rawls’s doctrine of overlapping consensus (§1 above), and perhaps also by Locke.⁵⁰ But as we see with Locke’s doctrine concerning the Roman Catholic Church, and

Rawls's remarks concerning Fundamentalists,⁵¹ in the end doctrines that insist that their private reason is determinative in the public sphere are not part of this "reasonable overlapping consensus" on the insulated public principles.

3.3 *Bounded disagreement*

The insulation thesis is not, in any case, sufficient to turn back Hobbes's defense of the absolute authority of the sovereign's reason. Even if we can insulate the rules of the social order from private disputes, we must come to grips with Hobbes's first claim: viz. that our private reasoning leads to disagreement in all matters — we not only disagree about religion, but about the demands of natural law and the requirements of the civil law. The effect of self-bias in private judgment, Hobbes insisted, is pervasive. Locke partly follows Hobbes here. Locke definitely does *not* say that, while we disagree about religious matters, we entirely agree in our interpretations of the law of nature. Dispute arises in the state of nature just because, biased by self-interest, we disagree in our interpretation and application of natural law. Thus Locke develops Hobbes's insight that the core instability of life without government is not that fools are tempted to cheat on rules, but that those who are devoted to the law will nevertheless disagree and so come to blows. "To avoid this State of War (wherein there is no appeal but to Heaven, and wherein every the least difference is apt to end, where there is no Authority to decide between the Contenders) is one great reason of Mens putting themselves into Society, and quitting the State of Nature: for where there is an Authority, a Power on Earth, from which relief can be had by *appeal*, there the continuance of the State of War is excluded, and the controversy is decided by that Power."⁵²

Locke avoids Hobbes's absolutism by weakening the *ubiquity of disagreement* claim. Although rational people disagree about the laws of nature as well as religion, Locke holds that the tendency to disagreement about the laws of nature is *bounded*. Because individuals in the state of nature disagree about the interpretation of the law of nature, they consent to an authority to umpire their disputes. However, Locke's theory of revolution supposes that, while

the range of disagreement among rational persons is wide, it is not unlimited. Citizens will converge in their judgments that the government is a tyranny when a political authority systematically renders decisions that are outside the range of interpretations of the laws of nature held by most citizens. Of course in any given case someone might think that the government has exceeded its justified authority by giving decisions that she is convinced cannot not plausibly be construed as a good-faith attempt to umpire disputes about the laws of nature. In such cases, though, the “Body of the People do not think themselves concerned in it, as for a raving mad Man, or heady Male-content, to overturn a well-settled State, the People being as little apt to follow the one, as the other.”⁵³ However, if the majority becomes convinced “in their consciences, that their laws, and with them their estates, liberties, and lives are in danger, and perhaps their religion too,” “if a long train of Abuses, Prevarications and Artifices, all tending the same way, make the design visible to the People, and they cannot but feel what they lie under, and see whither they are going; ‘tis not to be wonder’d, that they should then rouze themselves, and endeavour to put the rule into such hands which may secure to them the ends for which Government was at first erected.”⁵⁴ In these cases the people “*universally have a perswasion, grounded upon manifest evidence, that designs are carrying on against their Liberties, and the general course and tendency of things cannot but give them strong suspicions of the evil intention of their Governors.*”⁵⁵

For Locke there is some range of reasonable interpretative dispute that is defined by the convergence of judgments of the great body of people about the plausible interpretations of natural law. So long as the government remains within this range it will be seen by the great majority of citizens as performing its proper role of umpiring disputes generated by disagreements in private judgments about the law of nature. When in the view of the citizens the decisions of government are systematically outside of the range of reasonable judgments — it makes decisions that our private judgments converge upon in deeming unreasonable — the people will conclude that it violates their conscience and is tyrannical.

The Lockean doctrine of bounded dispute is, I believe, the core of an adequate liberal account of public reason, and the best liberal reply to Hobbes. Contemporary liberals — including political liberals such as Rawls — put far too much weight on the insulation thesis, and not nearly enough effort into analyzing the implications of living according to a common rule under conditions of bounded disagreement. Let us see how that is so.

4. LIVING WITH BOUNDED DISAGREEMENT

4.1 An insulated core based on shared reasons

To better see the core problem of the shared reasons/insulation thesis, let us grant its main suppositions. Suppose that we have identified some set of reasons that we all share, and the reasons are insulated from disagreements based on private judgment outside the core. Now the question is this: if we grant these strong assumptions, do we achieve the Holy Grail of public reason liberalism — a shared conception of justice? Not unless we also reject Hobbes's claim of the ubiquity of conflict, viz., for any type of doctrine, principle, law, or rule, there will be divergent interpretations through the use of private reason (§2.4). But it is, I think, impossible to plausibly deny this aspect of Hobbes's challenge. We *do* disagree about justice and the right, as we do about the nature of, and existence of, God. And we have seen, Locke agrees with Hobbes (§3.1): although the laws of nature should be clear, given our biases and ignorance we disagree about them. Rawls too came to concur, acknowledging that reasonable persons will not agree on a "particular liberal conception of justice down to the last details of the principles defining its content."⁵⁶ Instead, Rawls insists that reasonable citizens will share a general idea of a liberal view of justice. "By this I mean three things: first, it specifies certain basic rights, liberties, and opportunities (of the kind familiar from constitutional democratic regimes); second, it assigns a special priority to these rights, liberties and opportunities, especially with respect to claims of the general good and of perfectionist values; and third, it affirms measures assuring all citizens adequate all-purpose means to make effective use of their basic liberties and opportunities."⁵⁷ Because, Rawls says, "each of these elements can be seen in different ways, so there are many

liberalisms.”⁵⁸ Consequently, he tells us that “the view I have called ‘justice as fairness’ is but one example of a liberal political conception; its specific content is not definitive of such a view.”⁵⁹

The problem is that, even if we share a set of shared reasons we nevertheless will disagree on the ordering of these reasons or, to be more precise, the relative weights we give to these reasons in any specific instance. To agree on a shared set of reasons that are relevant to a justificatory problem will only lead to consensus on a solution to the problem under very special circumstances. If, say, we are considering three conceptions of justice $\{j_1, j_2, j_3\}$, on the grounds of three relevant reasons $\{r_1, r_2, r_3\}$, and r_1 is a reason for j_1 , and r_2 and r_3 are reasons against j_2 and j_3 , then all will concur on j_1 . But, as I said, this is a rather special case. If we suppose, instead, that r_1 is a reason for j_1 , r_2 is a reason for j_2 , and r_3 is a reason for j_3 , and if the relevant deliberators give different weight to the reasons in this context, then a shared set of reasons will still generate a number of different views about the best conception of justice. Without (i) a shared set of weights and (ii) a common information set such that everyone agrees what reasons map on to what conception (we might agree on a common set of weights but disagree on the way these relate to the conceptions of justice on offer), a shared set of reasons may do little to induce agreement on a common standard of justice. In the end, Hobbes was right about the ubiquity of disagreement, even in the shared core.

4.2 Modeling bounded disagreement within the insulated core

So even if we accept the shared reasons requirement *and* the insulation thesis, we must accept at least one aspect of Hobbes’s challenge is unmet: there is no matter about which the use of private reason does not lead to disagreement. The best the shared reasons/insulation thesis can hope for is (i) a core of shared reasons that is (ii) insulated from our wider disagreements outside the core but, (iii) even within the core we disagree on the most reasonable liberal theory

of justice. To make our ideas more precise, assume that the deliberators (reasoning only on the shared core) have agreed on a set of very abstract or vague principles, but need to further interpret them if they are to have anything like a shared conception of justice. We can model this in terms of each deliberator proposing what she sees as the most reasonable conception of justice; if each deliberator (1 through n) does this, we will have a set of conceptions of justice $\{j_1 \dots j_n\}$. Now suppose further that each deliberator assigns a score to each conception between 1 and -1. A score of 0, let us say, means that some proposal j_i is one that, given her understanding of the relevant shared reasons, she has no reason to endorse. Surely this can occur. There might be an abstract principle which can be interpreted in some way that, in the opinion of some person, she simply has no reason to endorse. Suppose, for example, as has sometime been advocated, an interpretation of freedom of religion is advanced that does not include a freedom not to be religious. Some deliberator may think this is not really an interpretation of freedom of religion at all, and so she has no reason to endorse such an interpretation. We can go further, and conceive of interpretations that some have strong reason to oppose, such as an interpretation of freedom of religion that allows each to freely practice the religion of her parents, but prohibits the conversion from some religions to others.⁶⁰ A deliberator may well give a negative score to such proposals. On the other hand, there may be many interpretations that a deliberator has reason to endorse (she scores these between 1, which she has most reason to endorse, and 0).

We can define a deliberator's *eligible set* as all proposals she scores as greater than 0; the *socially eligible set* is all proposals that everyone ranks as greater than 0. For all such proposals, each deliberator has some reason to endorse them. As Rawls would say, everyone judges each member of the socially eligible set as a reasonable, if not the most reasonable, conception (each deliberator scores as 1 the proposal she sees as "most reasonable"). Now we face the possibility that there are no interpretations left in the socially eligible set; it might occur that for every proposal at least one person scores it as 0 or below. Surely this could, in principle, happen. Consider an abstract principle that two potential sovereigns might agree on: "Let one of us

command and the other obey!” We can easily imagine no specific interpretation of *that* principle will be acceptable to both. Let us, however, concede to Rawls and others in the liberal tradition that there is a non-empty set of socially eligible interpretations. This is just to reject the second part of Hobbes’s claim about the ubiquity of disagreement — that when we do have a dispute, it is not bounded within some range on which all can agree (§2.4, 1.ii). A plausible public reason liberalism thus *must* follow Locke in accepting the first part of Hobbes’s ubiquity claim while rejecting the second: we disagree about everything but, at least on some matters, this disagreement is bounded. We disagree, but only within some range — and we agree that some proposals are outside the range.

Given this, a plausible public reason liberalism must hold that the best we can hope for is a socially eligible set with more than one element (the set is a non-empty set because disagreement is bounded, it has more than one member because disagreement is ubiquitous). Thus all plausible public reason liberalisms must devise some way to select from the socially eligible set. Public reason does not tell us how to choose, but it does tell us that any member of the set is, from the public point of view, better than conceptions outside the set.⁶¹ Rawls, unfortunately, gives us little idea as to how this selection may occur. A Lockean will hold that we can appoint a constitutional umpire, who is constrained to provide determinations within the socially eligible set. I have argued that the Lockean solution can be complemented by a social process that yields a moral equilibrium on one member of the set.⁶² However, for present purposes the important point is not specifically how a liberal theory of public reason selects from the eligible set, but that it must have some account of how to do so even in the insulated shared core. Some account of how we sort through bounded disagreement and select from the eligible set is necessary for any plausible liberal theory of public reason, given Hobbes’s and Locke’s insight of the ubiquity of disagreement. Neither appeal to shared reasons, nor to the insulation thesis, can avoid this.

4.3 Dropping insulation

Thus far I have been assuming the insulation thesis: the shared reasons are insulated from disagreements of private reason outside the core. But there are disagreements of private reason (the way a person weights the shared reasons) within the insulated core. So long as (i) there is a socially eligible set and (ii) there is some way to select from it that leads to a publicly justified outcome, the disagreement in private reason can be overcome. The question is: given this, do we need the controversial insulation thesis? Suppose we drop it; that is, suppose that people's interpretations of the shared core are not only affected by their private reasoning about the shared values, but can be affected by their reasoning about matters outside the core, such as religious beliefs. We must ask: what will this change? And we now see that the only relevant factor is the impact on the socially eligible set. There is no new choice problem or indeterminacy introduced so long as there remains a socially eligible set. The important question for public reason liberalism — the one on which it should be concentrating — now becomes clear: does a socially eligible set remain once we drop the insulation thesis? Or, to put the question in more traditional terms, are our wider disagreements about conceptions of the good, religion, and so on, sufficiently bounded so that, once we bring them into political justification, there remain some political arrangements that all have reason to endorse? If the insulation thesis is not needed to maintain a non-empty eligible set, surely such a controversial requirement should be dropped.

Abandoning the insulation requirement could, to be sure, reduce the socially eligible set. This is the worry that gnaws at public reason liberals: the socially eligible set will shrink — perhaps to nothing — once these “private” reasons are deemed relevant to the justification of conceptions of justice. When all the values are tallied up, these liberals fear, some free and equal moral persons simply have insufficient reason to accept any common conception of how we are to live together based on principles of freedom and mutual respect. Now we cannot say that this fear *must* be unfounded: certainly in the sixteenth and seventeenth centuries a principle of religious toleration was outside the eligible set of many (the Dissenters turned down James II's offer of toleration as it came as too high a price — the toleration of Catholics!). Surely the

development of value and belief systems which recognized that rules of freedom and respect were worthy of endorsement was an historical achievement, and we should not suppose that all societies possess it, or that we could not lose it.⁶³ On the other hand, it is surprising that public reason liberals seem (at least in their own private meditations) so convinced that the socially eligible set will shrink away if it is not insulated from wider disputes. After all, one would think that, being convinced by the liberal project, they think that, really, all free and equal moral persons do have sufficient reasons to endorse some regime of justice and freedom for all.

Suppose, though, that the insulation thesis is, after all, required to maintain a non-empty socially eligible set. We now see how ineffectual it is in securing public justification. It only makes a difference when, once we consider the full range of reasons, the socially eligible set shrinks to nothing — all shared conceptions in the socially eligible set are, in Rawls's terms, "overridden by citizens' comprehensive doctrines once all values are tallied up."⁶⁴ But then, as Rawls himself noted, the core fails to be fully justified. Some citizens are subjected to conceptions of justice that, all things considered, they have reason to reject. The conclusion based on shared reasons cannot be insulated from these "private judgments" which may well be at the very core of a person's view of the world. The advocate of the shared reasons/insulation thesis says: "If you did not know most of your values and concerns, you would accept my conclusions." It is reasonable to reply: "But what conclusions will I accept when I know what is important to me?" One cannot decide on what one thinks about the shared core, until one knows what has been excluded from consideration. That is why the simple bracketing strategy begs all the real problems of public justification

Steven Macedo tells us that his objection to non-shared reasons into public justification is that "some of us believe that it is wrong to seek to shape basic liberties on the basis of religious or metaphysical claims."⁶⁵ But we must remember there is no unequivocal shape to our basic liberties that results from the perspective of shared reason: there are many "reasonable" conceptions within the socially eligible set. Different selection procedures will yield different schemes of liberty. Thus the scheme of liberties with which we end up is inevitably path

dependent: it depends on the particular selection mechanisms we employ to choose from a certain socially eligible set. Given this, why would it be wrong for the religious beliefs of citizens to shrink (or, we must allow, expand) the socially eligible set, as long as we eventually manage to settle on some conception that all see as worthy of endorsement, given the reasons each takes as important? The suspicion arises that public reason liberals such as Macedo are devoted to an extensive and controversial political program, and they are rightly convinced that it cannot be endorsed by the reasons of all (there is no socially eligible set in favor of such a program), and so they seek to restrict public reason to a smaller set of reasons that support their program.

4.4 Dropping the necessity of a core

If the insulation thesis is not necessary, neither is, in the end, a core of shared reasons. Abstracting to a core of shared reasons may be important in some contexts: it may help us see that despite our disagreements we also agree on a lot, and that these shared reasons matter a great deal to us. It is important to appreciate what we have in common, as well as that about which we disagree. But in the end, even without a shared core, we may come to converge on common principles for our different reasons. The socially eligible set may well *expand* when we allow a diversity of reasons to enter into public justification. We each may have quite different reasons for, say, supporting environmental norms: some may appeal to human interests, others to our convictions about stewardship of the planet, others to ecological values, and yet others to the sanctity of property rights (environmental harms are, after all, almost always negative externalities). If we restrict ourselves to a common core of shared reasons, we might find there is no socially eligible set at all. Suppose we reason simply on the basis of human interests, as the relevant reasons we all share. Free and equal persons weigh human interests differently, and some may be convinced that the main human interests are in economic development, and so reject environmental norms that might hinder it. But if we add other diverse considerations, we may create a significant eligible set of environmental norms. Again, this cannot be guaranteed.

Once again, the task of the public reason project is to seek to uncover that which we all can endorse. I merely stress that we should not see every disagreement as reducing the socially eligible set, for we can converge on common norms from different directions.

5 CONCLUSION

If we are to treat all as free and equal, the political order that we live under must be endorsed by the reason of all. That, as I see it, is the heart of public reason liberalism. To insist that this means our order must be endorsed by, and only by, the shared reasons of all, is an error. Given the ubiquity of disagreement, even if we restrict ourselves to shared reasons, we still disagree. Even the proponent of the shared reasons view must face the fact of rational disagreement, and devise ways to cope with it. So long as Hobbes was wrong — so long as our disagreement is bounded and there is a socially eligible set — we can cope with our differences and come to converge on a common conception of justice, and a common moral and political order. The justification of this conception cannot be insulated from our wider beliefs and disputes; what a person has sufficient reason to endorse turns on her total set of relevant reasons, not just a subset. As Hobbes effectively stressed, we cannot erect a barrier between the political and the religious, for religious doctrines often have political implications. But this barrier is not necessary if, again, our differences are bounded — if once citizens consider the full range of their values and beliefs there is still a socially eligible set of conceptions of a just and free political order. Our worry is that Hobbes was right here too: that not only is disagreement ubiquitous, but so deep that there is no substantive conception that all have reason to endorse. It is this challenge to which public reason liberalism must rise. Seeking to do so by insulating the shared political from our deep concerns is both implausible and ineffective. It is not to answer Hobbes's challenge, but to ignore it.

Notes

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¹ This is the same distinction as between convergence and consensus justification. See Fred D'Agostino, *Free Public Reason: Making it Up as We Go* (Oxford: Oxford University Press, 1996), p. 30. For a similar statement of the distinction, see Thomas Nagel, "Moral Conflict and Political Legitimacy," *Philosophy and Public Affairs*, vol. 16 (1987), p. 218.

² Something which Kevin Vallier and I criticize in "The Roles of Religious Conviction in a Publicly Justified Polity: The Implications of Convergence, Asymmetry and Political Institutions," *Philosophy & Social Criticism*, vol. 35 (January 2009): 51-76. For a defense of the shared reasons requirement see Jonathan Quong, *Liberalism without Perfection* (Oxford: Oxford University Press, forthcoming), chap. 9.

³ John Rawls, *A Theory of Justice*, revised edn. (Cambridge, MA: Belknap University Press of Harvard University Press, 1999), p. 17.

⁴ *Ibid.*, p. 120.

⁵ Rawls, *Political Liberalism*, paperback edn. (New York: Columbia University Press, 1996) p. 10.

⁶ *Ibid.*, p. 9.

⁷ *Ibid.*, p. 386.

⁸ *Ibid.*

⁹ Rawls employs the idea of a “module” when explaining “overlapping consensus” (ibid., pp. 12-13; 144-5) whereas “freestandingness” applies to the appeal to shared conceptions of the person and lack of metaphysical and other commitments of the argument for the two principles (ibid., pp. 10, 40, 133, 144).

¹⁰ Quong, *Liberalism without Perfection*, chap. 9.

¹¹ Stephen Macedo, “In Defense of Liberal Public Reason: Are Slavery and Abortion Hard Cases?” in *Natural Law and Public Reason*, Robert P. George and Christopher Wolfe, eds. (Washington, DC: Georgetown University Press, 2000): 11-49, at p. 35.

¹² Robert Audi, *Religious Commitment and Secular Reason* (Cambridge: Cambridge University Press, 2000), pp. 86-100; see also Audi’s “Liberal Democracy and the Place of Religious Argument in Politics” in *Religion in the Public Square: The Place of Religious Convictions in Political Debate*. Robert Audi and Nicholas Wolterstorff, eds. (Lanham, MD: Rowman and Littlefield, 1997), pp. 25-33.

¹³ See Christopher J. Eberle, *Religious Conviction in Liberal Politics* (Cambridge: Cambridge University Press, 2002), p. 68.

¹⁴ See, e.g., Kent Greenawalt, *Private Consciences and Public Reasons* (New York: Oxford University Press, 1995), p. 120.

¹⁵ “The Place of Religious Belief in Public Reason Liberalism,” in *Multiculturalism and Moral Conflict*, Maria Dimovia-Cookson and P.M.R. Stirk, eds. (London: Routledge, 2009): 19-37.

¹⁶ On the importance of a public basis of justification, see Samuel Freeman, “Reason and Agreement in Social Contract Views” in his *Justice and the Social Contract* (Oxford: Oxford

University Press, 2007): 17-44.

¹⁷ Jeffrey Stout, "Religious Reasons in Political Argument," in *The Ethics of Citizenship: Liberal Democracy and Religious Conviction*, J. Caleb Clanton, ed. (Waco, TX: Baylor University Press, 2009): 261-92, at p. 266. Emphasis in original.

¹⁸ Perhaps we should call it a "pre-challenge," since it was formulated before the main statements of liberal secularism.

¹⁹ I consider a number of other influences in *Contemporary Theories of Liberalism: Public Reason as a Post-Enlightenment Project* (London: Sage, 2003), chap. 1.

²⁰ Hobbes, *Leviathan*, edited by Edwin Curley, (Indianapolis, IN: Hackett, 1994), p. 23 (chap. 5, ¶3).

²¹ *Ibid.*, p. 23 (chap. 5, ¶3). See further David Gauthier, "Public Reason" in *Public Reason*, Fred D'Agostino and Gerald F. Gaus, eds. (Brookeville, VT: Ashgate, 1988): 43-66 at pp 50ff. This same point was made earlier, and in more detail, by E.W. Ewin, *Virtues and Rights: The Moral Philosophy of Thomas Hobbes* (Boulder, CO: Westview, 1991), chap. 2.

²² See here the dispute between Gauthier in "Public Reason" and Michael Ridge "Hobbesian Public Reason," *Ethics*, vol. 108: 538-68. For further discussion see Shane Courtland, "Public Reason and the Hobbesian Dilemma," *Hobbes Studies*, vol. 20 (2007): 63-92. See note 26 below.

²³ Hobbes, *Leviathan*, p. 180 (chap. 26, ¶20).

²⁴ *Ibid.*, p. 98 (chap. 15, ¶30), emphasis in original.

²⁵ It is important to stress that this indeterminacy is made in relation to a certain description of the parties; it is a claim about the outcome of our reason at a certain level, not a metaphysical

claim about, in some sense, the actual indeterminacy of reason.

²⁶ Michael Ridge objects that this case defeats itself since the sovereign must rely on rules to communicate his commands. Thus, says Ridge, “in assuming that the sovereign is genuinely capable of communicating with his subjects, he seems to be supposing that some edicts or commands (or, at least, some of his clarifications/interpretations of those edicts or commands) are not particularly subject to competing interpretations.” If, though, this is true, Ridge argues, “it is no longer obvious that we need a sovereign.” That is, if the commands of the sovereign are not open to a regress of interpretation, then there is no reason to suppose that all substantive principles are open to such endless interpretative controversies; and if the commands of the sovereign are open to such endless interpretive disputes, then the sovereign cannot solve the problem either. Hobbes, however, does not insist that all types of statements and commands are open to the same degree of interpretative controversy. Commands that contain reference to specific people doing things are less open to interpretative difference than are statements of general rules and principles. The question is: for any given interpretive controversy over any statement, what are we to do? The core of the Hobbesian case is that employing the specific commands of an interpreter and his agents *reduces* the range of controversy at each stage of disagreement. See Ridge, “Hobbesian Public Reason,” p. 557. I consider Ridge’s objection in more depth in *Contemporary Theories of Liberalism*, chap. 2.

²⁷ Hobbes does describe these as disputes about just conduct. For Hobbes, the concept of justice is conceptually tied to speech acts (contracts); the laws of nature identify not the demands of justice, but that of “ethics” or “equity.” This is clear in his classification of the sciences in *Leviathan*, p. 48 (chap. 9). For an excellent account of the laws of nature and their normative status, see S.A. Lloyd, *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature* (Cambridge: Cambridge University Press, 2009), Part Two.

²⁸ See Edwin Curley's editorial note, *Leviathan*, p. 90, n. 2.

²⁹ Hobbes, *Leviathan*, p. 113 (chap. 18, ¶9).

³⁰ Ibid., p. 300 (chap. 37, ¶13).

³¹ Ibid., p. 318 (chap. 40, ¶2).

³² Ibid., p. 109, (chap. 17, ¶13), emphasis added.

³³ See *ibid.*, chap. 18.

³⁴ Ibid., p. 35 (chap. 7, ¶2).

³⁵ Ibid, p. 299 (chap. 37, ¶13, and in note 21 to the Latin edn.).

³⁶ Ibid., p. 300 (chap. 37, ¶13), emphasis added See also Lawrence B. Solum, "Constructing an Ideal of Public Reason," *San Diego Law Review*, vol. 30: 729-63 at pp. 754-55.

³⁷ I have greatly benefited from discussions with Shane Courtland on this matter.

³⁸ Hobbes, *Leviathan*, p. 128 (chap. 20, ¶3).

³⁹ Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986), pp. 224ff.

⁴⁰ Locke, *Second Treatise of Government in Two Treatises of Government*, Peter Laslett, ed. (Cambridge: Cambridge University Press, 1960), §124.

⁴¹ Ibid., §87.

⁴² Ibid., §22. Emphasis in original.

⁴³ Locke, "A Letter Concerning Toleration," in the *Works of John Locke in Nine Volumes*, 12th edn. (London: Rivington, 1824), vol. 5, p. 10.

⁴⁴ Ibid., pp. 9-10.

⁴⁵ Ibid., p. 19.

⁴⁶ Ibid., p. 43.

⁴⁷ Ibid., p. 46.

⁴⁸ We have to remember that the Glorious Revolution, which Locke was supporting, was to a large extent a Whig revolt against James II's toleration of Roman Catholics, and the prospect of continued Catholic rule. So excluding Catholics was not an exception to their political program, but central to it.

⁴⁹ Rawls's claim that only "reasonable" doctrines are to be tolerated may be interpreted as this type of view. However, Rawls has reservations about this version of insulation thesis.

⁵⁰ Recall that Locke spends much of his *Letter on Toleration* trying to show that Protestant doctrines support the insulation thesis.

⁵¹ Rawls, "The Idea of Public Reason Revisited" in his *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), p. 173.

⁵² Locke, *Second Treatise*, §21. First emphasis added; others original.

⁵³ Ibid., §208.

⁵⁴ Ibid., §§209, 225.

⁵⁵ Ibid., §230. Emphasis added.

⁵⁶ Rawls, *Political Liberalism*, p. 226.

⁵⁷ Ibid., p. 223.

⁵⁸ Ibid.

⁵⁹ Ibid., p. 225.

⁶⁰ As is, roughly, the case in Malaysia, which except in unusual cases prohibits conversion out of Islam.

⁶¹ Roughly, we can say that public reasons give us a maximal set but not an optimal choice. See Amartya Sen, "Maximization and the Act of Choice," in his *Rationality and Freedom* (Cambridge, MA: Harvard University Press, 2002): 159-205.

⁶² See my "The Demands of Impartiality and the Evolution of Morality" in *Partiality and Impartiality*, Brian Feltham and John Cottingham, eds. (Oxford: Oxford University Press, 2010), chap. 2.

⁶³ I have considered the sorts of value systems that are prerequisites of a mutually acceptable scheme of rights in "Recognized Rights as Devices of Public Reason," *Philosophical Perspectives: Ethics*, 2009: 112-36.

⁶⁴ Rawls, *Political Liberalism*, p. 386.

⁶⁵ Macedo, "In Defense of Liberal Public Reason," p. 35.