

Public Reason Liberalism

Gerald Gaus

1 PUBLIC REASON LIBERALISM: PAST, PRESENT, AND FUTURE

The idea of public reason is almost always associated — sometimes exclusively — with John Rawls’ political liberalism. Many, no doubt, believe that if there is such a creature as “public reason liberalism” it is a Rawlsian creation. This is an error. The social contract theories of Hobbes, Locke, Rousseau and Kant all are based on conviction that the main aim of political philosophy is to identify an agreed-upon public judgment or public reason that allows us to overcome the disunity and conflict that would characterize a condition in which each followed her own private judgment or reasoning about morality and justice. Captivated by their own concerns, however, political philosophers have, with very few exceptions, read the fundamental place of public reason out of the contract tradition.¹ Hobbes is typically viewed simply as a theorist of self-interest and a proto-game theorist, Locke as a natural rights proto-libertarian, Rousseau as essentially a radical democrat.² In section 2 of this essay, focusing on Hobbes and Locke, I take some modest steps to reverse this misreading, pointing out how social contract theory was fundamentally and explicitly concerned with identifying a source of public reason.³ Liberalism and public reason, I argue, arose together, as interrelated responses to the modern problem of creating a stable social order in societies deeply divided by religious and moral disagreements. The problem with which social contract theorists such as Hobbes and Locke were grappling is distinctively modern: in matters of religion and convictions about the ultimate value of life, morality and justice, the free exercise of human reason leads to disagreement. Their question — which is also the question of public reason liberalism — is whether a society faced with “intractable struggles” and “irreconcilable” conflicts of “absolute depth” can share a common social and political existence on terms that are acceptable to all.⁴

¹ An important exception is the wonderful appendix of Lawrence Solum’s “Constructing an Ideal of Public Reason,” *San Diego Law Review*, vol. 30 (Fall 1993): 729-62. See also Mark E. Button, *Contract, Culture and Citizenship: Transformative Liberalism from Hobbes to Rawls* (University Park, PA: Penn State University Press, 2008).

² And Kant? His complex political philosophy is most often ignored in the English-speaking world, though with the publication of Arthur Ripstein’s *Force and Freedom: Kant’s Legal and Political Philosophy* (Cambridge, MA: Harvard University Press, 2009), this may change.

³ For a much fuller account, see *The History of Public Reason in Political Philosophy*, edited by Piers Turner and Gerald Gaus (New York: Routledge, forthcoming).

⁴ John Rawls, *Political Liberalism*, paperback edn. (New York: Columbia University Press, 1996), pp. xxviii, 4.

Seen in this light Rawls' doctrine of public reason is — as he originally claimed of his theory of justice — a development of social contract theory.⁵ In section 3 I analyze the development of Rawls' thought in terms of the various conceptions of public reason on which different versions of his theory were built. I argue that while his account in *A Theory of Justice* relied on two traditional claims of liberal public reason that we find in the social contract tradition — what I call the shared reasons and insulation claims — his later versions manifest doubts about both. The final Rawlsian account is distinctive insofar as it seeks to provide a case for liberal public reason while taking seriously challenges to these two traditional claims.

Section 4 then considers what we are to make of the Rawlsian legacy. At the end of his career Rawls made a number of innovations in public reason liberalism, but these were not, I believe, well worked out. In this section I present what I see as the way forward, embracing some of Rawls' most radical ideas and pressing even further along those lines. A truly diversity-based public reason offers a conception of public reason as an “overlapping consensus” in which the different reasons (and reasoning) of citizens converge on liberal principles, rules, and institutions. On this view both the shared reasons and insulation claims are either dropped, or so weakened as to play but a secondary role in the account of public reason. The critical dispute in contemporary public reason liberalism is, I believe, between those who believe that the future of public reason liberalism is to develop a deeper understanding of what diverse citizens share and how this sharing can be insulated from their disagreements, and those who are convinced that a diversity of perspectives, reasoning and values is itself the basis of a free and stable social and political order.

2 THE PROBLEM OF CONFLICTING PRIVATE JUDGMENT AND THE CELESTIAL SOLUTION

2.1 Hobbes' Recognition of the Problem and his Illiberal Solution

Although in the orthodox, game-theoretical interpretation of Hobbes, his concern is simply the problem of conflict among essentially self-interested individuals, more careful interpretation has recently come to stress the root of conflict in differences in judgment.⁶ In a crucial passage in Chapter V of *Leviathan*, in his initial discussion of reason, Hobbes writes:

reason itself is always right reason, as well as arithmetic is a certain and infallible art, but no one man's reason, nor the reason of any one number of men, makes the certainty... And therefore, as when there is a controversy in an account, the parties must by their own accord, set up, for right reason, the reason of some arbitrator, or judge, to whose sentence they will both stand, or their controversy must either come to blows, or be undecided, for want of a right reason constituted by nature, so is it also in all debates of what kind soever. And when men that think themselves wiser than all others, clamour and demand right reason for judge,

⁵ John Rawls, *A Theory of Justice*, revised edition (Cambridge, MA: Harvard University Press, 1999), p. 10.

⁶ I develop this point more fully in “Hobbesian Contractarianism, Orthodox and Revisionist,” in *The Bloomsbury Companion to Hobbes*, edited by S.A. Lloyd (New York: Bloomsbury, forthcoming).

yet seek no more, but that things should be determined, by no other men's reason but their own, it is as intolerable in the society of men.... For they do nothing else, that will have every of their passions, as it comes to bear sway in them, to be taken for right reason, and that in their own controversies, bewraying their want of right reason, by the claim they lay to it.⁷

Because, "all laws, written, and unwritten, have need of interpretation,"⁸ when, as in the state of nature, we each rely on private judgment, we disagree about almost everything, including our application of the laws of nature.⁹ Those who insist on employing their own reason to determine the requirements of the law of nature, asserting that their reason is right reason, prevent a peaceful social life, for they are essentially insisting that we remain in the state of nature.

Thus, as R. E. Ewin argues, for Hobbes a cooperative and peaceful social life requires "a public mark of right reason."¹⁰ Each alienates his own right to private judgment, on the condition that others do so, by settling on a sovereign, whose voice is the voice of public reason: "we are not every one," says Hobbes, "to make our own private reason, or conscience, but the public reason, that is, the reason of God's supreme lieutenant, judge."¹¹ 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 the voice of public reason.¹² Thus the social contract:

a commonwealth is said to be instituted, when a multitude of men do agree, and covenant, every one, with every one, that to whatsoever man, or assembly of men, shall be given by the major part, the right to present the person of them all (that is to say, to be their representative) every one, as well he that voted for it, as he that voted against it, shall authorize all the actions and judgments, of that man, or assembly of men, in the same manner, as if they were his own, to the end, to live peaceably amongst themselves, and be protected against other men.¹³

The idea of accepting and authorizing the judgment of the sovereign occurs repeatedly in *Leviathan*. 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."¹⁴ Hobbes identifies public reason with judgment of the sovereign, and so the sovereign provides a public determination of the truth, for example, of a claim that a mir-

⁷ Hobbes, *Leviathan*, edited by Edwin Curley (Indianapolis: Hackett, 1994), chap. 5, ¶3 (p. 23). Gauthier focuses on this passage in his fascinating essay on "Public Reason," *Social Philosophy & Policy*, vol. 12 (1995): 19–42. I discuss his interpretation in my *Contemporary Theories of Liberalism* (London: Sage, 2003), chap. 3.

⁸ Hobbes, *Leviathan*, chap. 26, ¶21 (p. 180).

⁹ *Ibid.*

¹⁰ R.E. Ewin, *Virtue and Rights: the Moral Philosophy of Thomas Hobbes* (Boulder, CO: Westview, 1991), p. 67.

¹¹ Hobbes, *Leviathan*, chap. 37, ¶13 (p. 300). This remark occurs in Hobbes' discussion of belief in miracles.

¹² See Gauthier, "Public Reason."

¹³ Hobbes, *Leviathan*, chap. 18, ¶1 (p. 110). Italics in original.

¹⁴ *Ibid.*, chap. 7, ¶2 (p. 35).

acle has occurred.¹⁵ Certainly Hobbes thinks that “when it comes to confession of that faith, the private reason must submit to the public.”¹⁶ His position seems to be, though the sovereign cannot directly command us to believe a proposition since belief is not under the control of the will, ¹⁷ (i) the sovereign has authority to declare 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.¹⁸

Because he sees all private judgment as potentially a threat to the social order, Hobbes puts no limit whatsoever on the authority of the sovereign to determine disputes. Hobbes endorses the judgment of Cromwell and later the Tory Restoration parliaments: the brief experiment in free private judgment during the first years of the Commonwealth was an appalling threat to social order.¹⁹ 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: disputes about the former can always lead to disputes about the latter.²⁰ 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.”²¹

Hobbes thus insists that whatever the sovereign proclaims to be 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.”²² This “umpiring” or procedural solution to disagree-

¹⁵Ibid, chap. 37, ¶13 (p. 299), and in note 21 on this page to the Latin edition.

¹⁶ Ibid., chap. 37, ¶13 (p. 300). Emphasis added.

¹⁷ Ibid., chap. 32, ¶5 (p. 246); chap. 37, ¶13 (p. 300).

¹⁸ I have greatly benefited from discussions with Shane Courtland on this matter.

¹⁹ Milton’s defense of freedom of thought and speech in *Areopagitica* (1643) represented the sort of dangerous thinking to which Hobbes is reacting.

²⁰ 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 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.

²¹ Hobbes, *Leviathan*, p. 113 (chap. 18, ¶9).

²² Ibid., p. 128 (chap. 20, ¶3).

ment applies to all moral disputes. Remember, Hobbes starts out with disputes about the laws of nature — basic rules of ethical social conduct. 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 swallows up morality. Thus Hobbes is scathing about the doctrine “That every private man is judge of good and evil actions.” Admittedly, this “is true in the condition of mere nature, where there are no civil laws; and also under civil government, in such cases as are not determined by the law. But otherwise, it is manifest, that the measure of good and evil actions, is the civil law; and the judge the legislator, who is always representative of the commonwealth.”²³ This is not to say that the sovereign’s judgment determines the truth about the laws of nature and whether they have been violated: Hobbes is clear that the sovereign can err in interpreting the laws of nature.²⁴ It is to say, though, that according to the contract we no longer have the right to judge him to be wrong, or to act contrary to his judgment, for his is the public reason. In contrast, the sovereign *does* construct the truths of justice; justice is determined by the civil law, and there is no civil law without the sovereign making it so.²⁵

2.2 Locke and the Emergence of Liberal Public Reason

Locke concurs with some fundamental points of the Hobbesian analysis. He concurs that diversity of private judgment about religion is a fundamental social fact that must be reconciled with the demands of social order; he also accepts the crux of Hobbes’ analysis of the causes of disputes about the laws of nature and how they are to be resolved. In a passage that recalls Hobbes’ 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.”²⁶ Peace and justice, Locke concludes, can only be secured when “all private judgment of every particular Member being excluded, the

²³ Ibid., chap. 29, ¶6 (p. 212). I argue for a more absolutist interpretation of Hobbes — which sharply distinguishes him from Locke, in “Hobbes’ Challenge to Public Reason Liberalism” in *Hobbes Today*, edited by S.A Lloyd (Cambridge: Cambridge University Press, 2013): 155-77.

²⁴ See e.g., Hobbes, *Leviathan*, chap. 21, ¶ 7 (p. 139).

²⁵ Ibid, chap. 21, ¶7 (p. 138). See Ewin, *Virtue and Rights*, p. 20. There is a deep complication raised by Hobbes’ puzzling claim that the civil law and the law of nature contain each other. Ibid., chap. 26, ¶8 (p. 174).

²⁶ Locke, *Second Treatise of Government in Two Treatises of Government*, Peter Laslett, ed. (Cambridge: Cambridge University Press, 1960), §124. Compare Hobbes, *Leviathan*, p. 180 (chap. 26, ¶20).

community comes to be Umpire by settled standing Rules, indifferent, and the same to all Parties."²⁷ It is the task of government to serve as Umpire — the voice of public reason. Once again, the solution is essentially procedural and, once again, the political order becomes the interpreter of the moral order regulating interpersonal actions.

Locke, however, insists that though we disagree deeply about religion we share a common conception of civil interests.²⁸ "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."²⁹ In contrast to Hobbes, Locke is clear that a 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."³⁰ Thus Locke advocates the core liberal principle 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."³¹ 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."³²

Locke thus moves towards a truly liberal account of public reason based on three claims:

The Moral Disagreement Claim: when individuals reason about the requirements of morality and justice (the law of nature), they disagree, so peaceful and cooperative social and political life requires that, within limits, they abandon their private

²⁷ Locke, *Second Treatise of Government*, §87. Emphasis added

²⁸ I argue for this interpretation more fully in "Hobbes' Challenge to Public Reason Liberalism."

²⁹ Locke, "A Letter Concerning Toleration," in the *Works of John Locke in Nine Volumes*, 12th edn. (London: Rivington, 1824), vol. 5, p. 10.

³⁰ *Ibid.*, pp. 9-10.

³¹ *Ibid.*, p. 19.

³² *Ibid.*, p. 43.

judgment about morality and justice, submitting to the public reason of impartial law.³³

The Shared Reasons Claim: the basis of civil society is our shared reasons to advance on our civil interests; the resolution of our moral disagreements is a fundamental shared civil and political interest.

The Insulation Claim: private judgment about religious matters can remain free and private. These deep and enduring conflicts do not infect, and in so doing unravel, our concurrence on the Moral Disagreement and Shared Reasons Claims.

As we saw, the Moral Disagreement Claim is also held by Hobbes; it is the heart of all public reason political philosophy. As such, all public reason accounts are fundamentally at odds with the picture of social life as one composed of fully autonomous moral agents, each independently acting solely on the basis of her own substantive judgment about the demands of justice. Such a condition defines the state of nature, where, as Kant put it, each claims “the right to do what seems just and good to him, entirely independently of the opinion of others.”³⁴ Public law, then, allows us to avoid reliance on our own controversial private judgment about morality, rights and our civil interests, acting instead on impartial considerations that all can endorse. As Rousseau put it, the law as pronounced by the sovereign is the “celestial voice” of “public reason.”³⁵ But in contrast to Hobbes (and to some extent Rousseau),³⁶ for Locke public reason does not concern itself with religious matters; according the Insulation Claim, those disagreements can continue unabated so long as religious belief does not infect a citizen’s views about basic civil interests and the authority of the public adjudication of moral disputes. Locke’s case for toleration thus does not extend to Roman Catholics, for their conception of religious authority leads them to a conception of civil interests and public authority incompatible with that of other citizens (since the Pope claimed that excommunicated monarchs were not owed political obedience). “Liberal toleration” thus only applies to religious views that do not have implications that challenge public reason’s authority over shared civil in-

³³ 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.” (Locke, *Second Treatise*, §21. First emphasis added; others original.) I elsewhere consider the importance of Locke’s claim that, because our disagreement is limited, the jurisdiction of the umpire is limited to resolutions with a certain range, whereas for Hobbes there are no limits on the sovereign’s competency; see “Hobbes’ Challenge to Public Reason Liberalism” and, more generally, *Justificatory Liberalism* (New York: Oxford University Press, 1996), Part II.

³⁴ *The Metaphysical Elements of Justice*, 2nd edition, edited and translated by John Ladd (Indianapolis: Hackett, 1999), p.116 [§43]. Emphasis added.

³⁵ Jean-Jacques Rousseau, *Discourse on Political Economy* in *The Social Contract and Discourses*, translated with an Introduction by G. D. H. Cole (London: J. M. Dent, 1973): 115–54 at p. 124.

³⁶ See Book IV, chap. 8 of *The Social Contract* in *ibid.*

terests. That is, only if the private doctrine itself endorses the Insulation Claim is it to be tolerated. This, though, appears an inadequate reply to Hobbes' challenge — it is far too close to saying that the insulation claim holds for those who endorse it. No doubt; but the question is whether it generally applies in a diverse society.³⁷

3 RAWLSIAN PUBLIC REASON

3.1 *Moral, not Simply Political, Liberal Constitutionalism*

As we saw, both Hobbes and Locke embrace the Moral Disagreement Claim: our private judgments about morality systematically diverge, and so we require a procedure — law announced by the sovereign or government — to provide a public impartial mark of right reason. A worrisome consequence of this account of public reason is that politics becomes the ultimate arbiter of all moral disputes. In his first published paper — “Outline of a Decision Procedure for Ethics” — Rawls also sought a procedural resolution to the problems of conflicting claims. Like the social contract tradition, the point of departure is a clash of conflicting claims: each advances claims that are self-authenticating in the sense that “(a) Every claim shall be considered, on first sight, as meriting satisfaction. (b) No claim shall be denied possible satisfaction without a reason.”³⁸ The procedure is meant to show not simply what claims we see as reasonable, but what is a reasonable social ordering of conflicting claims.³⁹ The problem, then, is once again to provide an impartial, public ordering of claims based on divergent individual perspectives. And once again the solution is procedural: Rawls develops an account of impartial, competent, moral umpires, who develop public principles and rules to order the claims. Rawls' great departure from the social contract tradition is that this is not a political procedure, and these are not actual political umpires: our modeling of how the umpires would decide allows us to develop a theory of social ethics or social justice. Hobbes' and Locke's Moral Disagreement Claim thus becomes:

Rawls' Moral Disagreement Claim: when individuals reason about their claims on each other, they disagree, so a cooperative and just social life requires that they abandon their private judgment about their claims and submit to the public reason of impartial justice.

It is crucial to realize that Rawls is not talking about mere conflict of interests, but what we see as our claims on others — what he would later call our “self-originating” or “self-authenticating” claims.⁴⁰ It is because Rawls is ultimately concerned

³⁷ One could read much of Locke's writing on toleration as seeking to show that it does; I cannot pursue this matter here.

³⁸ John Rawls, “Outline of a Decision Procedure for Ethics” in *John Rawls: Collected Papers*, edited by Samuel Freeman (Cambridge, MA: Harvard University Press, 1999): 1-19 at p. 14.

³⁹ Rawls “Justice as Fairness” in *John Rawls: Collected Papers* pp. 47-72 at p. 59.

⁴⁰ Rawls refers to the claims as “self-originating” in “Kantian Constructivism in Moral Theory” in *John*

with a social ordering of claims based on divergent individual reasoning that his theory of justice has such close ties to social contract public reason theories.

This may seem confusing: the social contract's distinction between private judgment about justice and public legal rules of justice makes perfect sense, but it may not be pellucid what is the analogous distinction in Rawls' theory. Many read Rawls' early and middle works as advancing a contractarian procedure that constructs the truths about morality; if so, he could not possibly be describing a conflict between private and public moral judgment. On these readings he is simply performing the traditional role of the moralist, telling us what our private judgments should be. It was not until the mid 1970s that Rawls explicitly recognized that this was not his project — that he was engaging in a distinctive form of moral inquiry, which was entirely consistent with each individual having her own view, based on her personal reasoning, about moral truth. In order to clarify this Rawls needed to distinguish a distinct form of moral inquiry focused on social morality, or the social moral framework, from traditional moral philosophy understood as investigations into moral truth. In his important essays on "The Independence of Moral Theory" and "Kantian Constructivism in Moral Theory"⁴¹ Rawls depicts a mode of moral inquiry that he calls "moral theory," which is not concerned with uncovering the "moral truth" but, rather, is a

...search for reasonable grounds for reaching agreement rooted in our conception of ourselves and our relation to society.... The task is to articulate a public conception of justice that all can live with.... What justifies a conception of justice is not its being true to an order antecedent to and given to us, but its congruence with our deepest understanding of ourselves and our aspirations, and our realization that, given our history and the traditions embedded in our public life, it is the most reasonable doctrine for us. We can find no better basic charter for our social world.⁴²

Moral theory thus understood is a search for what Rawls calls a "moral constitution."⁴³ Rawls never claims that this moral constitution supplants moral philosophy and religion understood as the search for moral truth; rather it supplements them in the sense that it seeks to arrive at a shared moral framework all can live with in a social world where these understandings of moral truth clash.⁴⁴ The way in which Rawlsian moral theory is an analogue of social contract political philosophy now becomes manifest — it is a search for a "constitution" (moral, not political) that allows public adjudication of diverse individual claims based on differing moral and valuational perspectives.

Rawls: Collected Papers, pp. 313-58 at p. 334, and as "self-authenticating" in *Justice as Fairness: A Restatement*, Erin Kelly, ed. (Cambridge, MA: Belknap Press of Harvard University Press, 2001), p. 23.

⁴¹ Chapters 15 and 16 in *John Rawls: Collected Papers*.

⁴² Rawls, "Kantian Constructivism in Moral Theory," pp. 306-7. Emphasis added.

⁴³ *Ibid.*, p. 326.

⁴⁴ Although it can override them — when one's claims based on one's own perspective is inconsistent with an agreed upon way to socially order conflicting claims.

3.2 *A Theory of Justice: A Double Shared Strategy*

A Theory of Justice defends public principles of liberal justice by extensive appeal to the shared reasons claim. The key to the enterprise is the “thin theory of the good,” which allows us to identify “primary goods.” As is well known, the parties in the original position choose the two principles of justice under a “veil of ignorance” — a range of information that is specific to their own and their society’s identity is excluded from the choice situation. Requiring the parties to choose under such conditions helps insure that their choice will be reasonable and not moved by bias;⁴⁵ the problem is that without information about what they consider good and their particular plans of life, they do not have a definite basis for choice. Rawls thus supposes that the parties have knowledge of some universal features of good lives, so they know what to aim at.⁴⁶ The primary point of part III of *Theory* is to present the “thin theory of the good” — structural and substantive features of all rational and good plans of life. However, for the first stage of the argument from the original position all that is required is, as it were, a part of the thin theory: that which specifies certain primary goods — things that rational individuals “whatever else they want, desire as prerequisites for carrying out their plans of life.”⁴⁷ These are liberties, opportunity, wealth and income and the social bases of self-respect — analogs of Lockean civil interests.⁴⁸ This part of the derivation aims to show that the parties to the original position, because they share common interests, will select the two principles of justice.

Now it is often supposed that this is the entire argument from the original position, and once the parties have made their choice of the two principles their work is done and they can, as it were, fold up shop. Not so. “Persons in the original position,” Rawls tells us, must consider whether a well-ordered society founded on justice as fairness will be more stable than alternative conceptions considered in the original position.⁴⁹ “Other things equal, persons in the original position will adopt the most stable scheme of principles.”⁵⁰ There has been extensive debate as to whether Rawls’ concern with stability was an error, or is somehow inappropriate in a theory of justice.⁵¹ However, once we appreciate that Rawls’ aim is to provide a public moral constitution that solves the modern problem of achieving a cooperative social life under conditions moral disagreement, we see that the concern with stability is absolutely necessary (and so we have some confirmation that the public reason

⁴⁵ Rawls, *A Theory of Justice*, p. 392.

⁴⁶ *Ibid.*, pp. 348-50.

⁴⁷ *Ibid.*, p. 348.

⁴⁸ *Ibid.*, p. 54.

⁴⁹ *Ibid.*, p. 398. Emphasis added.

⁵⁰ *Ibid.*

⁵¹ For a relentless criticism, see Brian Barry, “John Rawls and the Search for Stability,” *Ethics*, vol. 105 (July, 1995): 874-915. See also, G.A. Cohen’s *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), pp. 327-330.

reading of the core Rawlsian project is on target; it makes central what Rawls saw as central). Recall the Hobbesian challenge to public reason liberalism: disagreements based on private judgment will infect, and so undermine, any agreement we might have about civil interests, and so the liberal solution to the problem of disagreement fails. Once a liberal public reason account is based on an appeal to shared civil reasons, it must respond to the Hobbesian critique.

Locke's liberalism replies by asserting the insulation claim: religious disagreements will not undermine the justification based on shared civil interests because the latter will not infect the former. Locke comes close to defining acceptable (what Rawls would call "reasonable") religious doctrines in terms of whether they endorse the insulation claim: Roman Catholicism is excluded because its religious claims are not insulated from the civil. Rawls presents a novel, and much deeper, defense of the insulation claim: we might think of it as a double shared strategy. We not only share a concern with primary goods and a devotion to a just cooperative order (the analog of Locke's civil interests), but we also share large parts of our personal conceptions of the good life. To get a bit clearer about Rawls' strategy, let us characterize a person's overall concerns into three sets: *A*, shared public values concerning justice; *B*, shared elements of the good; *C*, unshared goods and religious beliefs. Rawls' ultimate claim in *Theory* is that set *B* strongly endorses the conclusions based on set *A*, insuring that any disagreements based on set *C* cannot lead a person to abandon the conclusions based on *A*. Rawls thus remedies Locke's failure to provide a systematic defense of the insulation claim: our sharing of set *B* serves as a sort of firewall, insulating the argument based on the shared set in *A* from the deep disagreements in *C*.

Theory advances two claims:⁵² (i) that given our sense of justice, we will become devoted to the principles of justice (based on set *A*) and so not be tempted act on diverging private judgment⁵³ and, importantly, (ii) when individuals reason from the "self-interested" view, or the point of view of their own good narrowly defined (sets *B* and *C* above), they will affirm their sense of justice, and so the conclusions of (i). When considering their good narrowly defined (leaving out the good of acting justly), Rawls accepts that individuals may be tempted to injustice. This confronts a well-ordered society with what Rawls called the "hazards of the generalized prisoner's dilemma" — each sees the collective rationality of acting on the principles but is tempted to defect in her own case when recommended by her self-interested point of view.⁵⁴ To overcome this hazard, as Paul Weithman has recently argued, Rawls sought to show in *Theory* that in a well-ordered society justice as fairness constitutes

⁵² Rawls, *A Theory of Justice*, p. 397. I consider these matters in much more depth in "The Turn to a Political Liberalism," in *The Blackwell Companion to Rawls*, edited by David Reidy and Jon Mandle (New York: Wiley-Blackwell, forthcoming).

⁵³ Rawls, *A Theory of Justice*, §§71-75.

⁵⁴ *Ibid.*, pp. 505, 435. This, of course, is precisely the Hobbesian problem.

a sort of Nash equilibrium: “Each member of the W[ell] O[ordered] S[ociety] judges, from within the thin theory of the good [i.e., set *B* above], that her balance of reasons tilts in favor of maintaining her desire to act from the principles of justice as a highest-order regulative desire in her rational plans, when the plans of others are similarly regulated.”⁵⁵ Acting justly would then be the best reply to others acting justly.⁵⁶ Thus, we might say, that the congruence of the practical reasoning based on sets *A* and *B*, insures that any discordant reasoning from set *C* will not overturn our devotion to the principles of justice.

While a great advance on previous defenses of the insulation claim, public reason liberals must have serious reservations about this congruence analysis: it surely underestimates the extent of our disagreements. Liberal justice is said to be stable because we share so much. Although we commenced with the modern problem of a society with deeply pluralistic perspectives, in the end we all share a conception of the good with both structural and substantive components. In the course of his stability analysis argument Rawls makes the following strong claims about shared understandings of the good:

(i) We share an understanding of the good as plans of life with a certain structure.⁵⁷

(ii) We share a conception of our social nature as forming a community in which members “recognize the good of each as an element in the complete activity the whole of which is intended to give pleasure to all.”⁵⁸

(iii) We possess “natural sentiments of unity and fellow feeling.”⁵⁹

(iv) We aim at sincerity in our relations with others.⁶⁰

(v) We are attracted to plans that conform to the Aristotelian Principle — according to which “other things equal, humans enjoy the exercise of their realized capacities (their innate or trained abilities) and this enjoyment increases the more the capacity is realized, or the greater its complexity”⁶¹ — as well as its “companion effect:” “As we witness the exercise of well-trained abilities by others, these

⁵⁵ Paul Weithman, *Why Political Liberalism? On John Rawls' Political Turn* (New York: Oxford University Press, 2010), p. 64.

⁵⁶ This would not assure stability on justice, for it only shows that acting justly is a possible equilibrium. Because of this we confront a sort of assurance game: we need to be assured that others will play the cooperative equilibrium (Weithman, *Why Political Liberalism?* 49). Weithman (pp. 98, 157, 173) argues that a general recognition that “everyone else’s plans will be regulated by their sense of justice” would do the trick. I question this conclusion in “A Tale of Two Sets: Public Reason in Equilibrium.” *Public Affairs Quarterly*, vol. 25 (October 2011): 305-325.

⁵⁷ Rawls, *A Theory of Justice*, pp. 358-72.

⁵⁸ *Ibid.*, p. 459.

⁵⁹ *Ibid.*, p. 439.

⁶⁰ *Ibid.*, pp. 499-500.

⁶¹ *Ibid.*, p. 374.

displays are enjoyed by us and a arouse a desire that we should be able to do the same thing ourselves. We want to be like those persons who can exercise the abilities we find latent in our nature.”⁶²

(vi) Individuals “have a desire to express their nature as free and equal moral persons.”⁶³

3.3 Political, not Moral, Liberal Constitutionalism: The Abandonment of the Double Shared Strategy

As Rawls says, his move to political liberalism was motivated by a search for a more adequate ground for stability in the light of our “intractable struggles” and the fact that we witness “irreconcilable conflict” of “absolute depth” on a variety of moral and religious issues.⁶⁴ One aspect of this response is obvious but not sufficiently appreciated: he abandons his major innovation of resolving the conflict of private judgment though a moral, as well as a political, constitution. The “political” turn is actually a return to the strategy of early public reason liberalism, seeing the political as the sole sphere of public reason, and so once again politics becomes the arbiter of moral disagreement. This contraction in ambition is striking, and in many ways signals his pessimistic conclusion that his three-decade project (from the 1950s through the 1970s) failed.

In terms of our analysis of the last section, we can understand political liberalism as abandoning the double shared strategy. Instead the three sets, *A*, *B*, and *C* (where we share the first two), political liberalism assumes that “citizens’ overall views have two parts” that which is shared and on which the public conception of justice is built, and that which is part of a person’s comprehensive conception of the good.⁶⁵ Because the dropped set *B* can no longer serve as a firewall between the shared set *A* (on which he builds his liberal account) and the deep disagreements in set *C*, it is hard to see a plausible way to insulate the disagreements in *C* from infecting *A*. Rawls’ response is a fundamental breakthrough in public reason liberalism: instead of insulating *A* from *C*, he argues that in our contemporary world a wide array of set *C*s support the conclusions based on the shared set (*A*) in a variety of ways — *A* may be congruent with *C*, not conflict with *C*, or at a minimum not conflict “too sharply with” *C*.⁶⁶ As long as set *C* does not too sharply conflict with *C*, the shared political conclusion based on set *A* will be stable. In this case there would be an “overlapping consensus” on the political principles derived from *A*.

⁶² Ibid., p. 376.

⁶³ Ibid., p. 462.

⁶⁴ Rawls, *Political Liberalism*, pp. 4, xxviii.

⁶⁵ Ibid., p. 38; Weithman, *Why Political Liberalism?*, p. 333.

⁶⁶ Rawls, *Political Liberalism*, pp. 11, 40, 140.

Overlapping consensus may not have been available to Locke as a core claim of his public reason liberalism: it is plausible to suppose that a major change between the seventeenth and twenty-first centuries was what we might call the general liberalization of conceptions of the good in western democracies.⁶⁷ The basic tenets of liberalism, including freedom of speech and thought, representative institutions, wide scope for freedom of action and life styles, privacy and the market order, are very widely embraced and embedded in a wide variety of worldviews.⁶⁸ Yet, while we may suppose that there is such a convergence on these essential features of liberal democracy, it is doubtful that, when looking at the combined implications of the shared set *A* and each person's own set *C*, there is agreement of specific property rights, principles of distributive justice, or laws concerning abortion, health care or, say, gay marriage. And it is no mistake to bring set *C* into justificatory issues: Rawls explicitly tells us that the principles derived from the "pro tanto" argument based on simply set *A* are not "fully justified" until the beliefs and values of a person's set *C* confirm (or not conflict too much with) those principles.⁶⁹ Unless a citizen affirms the principles on the basis of both sets, the principles are not justified to him.

3.4 Civil Public Reasoning: The Return to an Insulation Claim

Towards the end of his career Rawls appeared to become pessimistic that, even restricting our reasoning to simply the shared set *A*, we could arrive at the sort of detailed principles of justice he defended in *Theory*. In the preface to the paperback edition of *Political Liberalism* he stresses that reasonable pluralism and the burdens of judgment apply to the political conception as well:

In addition to conflicting comprehensive doctrines, PL does recognize that in any actual political society a number of differing liberal political conceptions of justice compete with one another in society's political debate.... This leads to another aim of PL: saying how a well-ordered liberal society is to be formulated given not only reasonable pluralism [of comprehensive conceptions] but a family of reasonable liberal conceptions of justice.⁷⁰

Rawls thus observes that the same considerations that show us that we inevitably disagree about the good and religious matters "lead us to recognize that there are different and incompatible liberal political conceptions."⁷¹

Now because the fact of reasonable pluralism infects set *A*, we cannot suppose that reasoning on the basis of shared reasons will lead us all to the same conception of justice (and this includes Rawls' own two principles).⁷² There is no uniquely reas-

⁶⁷ Though one may read Lock's letters on toleration as arguing that there was a widespread overlapping consensus on the claim that religious toleration is consistent with religious truth.

⁶⁸ I defend a version of this claim in "The Role of Conservatism in Securing and Maintaining Just Moral Constitutions," in *Nomos: Wither Conservatism?* (New York, New York University Press, forthcoming).

⁶⁹ Rawls, *Political Liberalism*, pp. 386ff.

⁷⁰ *Ibid.*, p. xlvi.

⁷¹ *Ibid.*, xlix.

⁷² *Ibid.*, p. 219.

onable way to organize and weigh the shared values of set *A*. Consequently, as the implications of the fact of reasonable pluralism for the political set becomes our main concern, what Rawls calls “the principle of liberal legitimacy” takes center stage. Even if a state does not act on the principles of justice we see as most reasonable, we can still see it as legitimately exercising political power if can be reasonably justified based on shared values. The guidelines for this justification are given by what Rawls calls “the idea of public reason.”⁷³ In justifying the coercive use of political power on matters of basic justice and constitutional essentials, citizens are to appeal only to conceptions of justice involving reasonable weightings of the shared set (*A*), along with methods of inquiry which are themselves part of the public culture (and so in *A*). Rawls is explicit that the content of public reason cannot be restricted to his two principles of justice. “Rather, its content — the principles, ideals, and standards that may be appealed to — are those of a family of reasonable political conceptions of justice....”⁷⁴

One more twist in our tale about the insulation claim: at this point Rawls resurrects it. After jettisoning it in the justification of his own principles of justice (where it is replaced by the idea of an overlapping consensus), in the use of public reason in the public forum a moral duty of civility applies. In the original specification of this duty we are to restrict our arguments to political reasons shared by all citizens, and so not employ considerations based on our comprehensive conceptions (set *C*) in matters of basic justice and constitutional essentials. Rawls later relaxes this, allowing reasons from set *C* to enter into public discourse so long as “in due course” they can be supported with reasons from set *A*.⁷⁵ In essence, Rawls holds that citizens have a moral duty in public discourse about matters of basic justice to endorse the insulation of the divergent reasons in their sets *C* from the shared set *A*. After such long search to show that conclusions based on our shared reasons will not be overturned by disagreements from our unshared reasons, it must be seen as disappointing to “show” this by asserting a moral duty that it be so.⁷⁶

⁷³ *Ibid.*, pp. 225-6, 243.

⁷⁴ *Ibid.*, pp. lii-liii.

⁷⁵ I consider these matters more carefully in “The Place of Religious Belief in Public Reason Liberalism” in *Multiculturalism and Moral Conflict*, edited by Maria Dimovia-Cookson and P.M.R. Stirk (London: Routledge, 2009), pp. 19-37. See *Political Liberalism*, Lecture VI, and “The Idea of Public Reason Revisited” in *John Rawls: Collected Papers*, pp. 573-615.

⁷⁶ Not surprisingly, this duty has been trenchantly criticized by many faith-friendly liberals. This dispute is central to Kevin Vallier’s *Beyond Separation: Uniting Liberal Politics and Public Faith* (New York: Routledge, forthcoming).

4 SORTING OUT RAWLS' LEGACY

4.1 *The Rawlsian Trajectory: The Shrinking Influence of Shared Reasons and the Evaporation of Insulation*

A number of prominent and sophisticated philosophers essentially endorse Rawls' political liberalism, and see it as, overall, well justified and coherent.⁷⁷ It is, however, very hard not to see Rawls' political liberalism as an unfinished project; major changes became prominent only in sketchy presentations rather late in the day, and it is hard to conclude that their implications were fully worked out.⁷⁸ On the basis of the above analysis, we can see that a major unresolved problem is the implication of allowing significant disagreement into set *A* — the freestanding political argument. As late as the 1993 introduction to *Political Liberalism* Rawls claimed that “the political conception is shared by everyone while the reasonable doctrines are not...” (we agree on set *A* and its implications but not on *C*), while in the 1996 preface to the paperback edition Rawls stresses that reasonable pluralism applies to the political conception as well.⁷⁹ Now once we allow serious disagreement within the set of “shared reasons” the core of the shared reasons strategy begins to collapse. The point of Rawls' “two set” strategy was to separate that on which we agree from that to which reasonable pluralism applies, hopefully with the result that a favored conception of liberal justice could be justified by appeal to shared reasons. But once reasonable pluralism applies to both sets, Rawls abandons this hope.

A powerful reason for Rawls' followers continuing to insist on the two set strategy in the justification of political principles is, perhaps, to forestall what we might call The Nightmare: unless we restrict the range of reasons relevant to political justification to a small set, *A* (and so exclude set *C*), perhaps no version of liberalism can be justified (more on this in §§4.4-5). So the suggestion is that we focus the justification of liberal principles only on *A*, a set of shared liberal commitments. Oddly, however, Rawls' insistence that political principles are not “fully justified” until they are confirmed by a citizen's comprehensive conception of the good (set *C*), shows that focusing on set *A* as the initial justification cannot prevent The Nightmare, for in the end set *C* has its say. Indeed, Rawls' strategy increases the likelihood of The Nightmare. Rawls requires that the full justification of liberal principles passes two tests: first a *pro tanto* justification on the basis of set *A* alone, and then a full justification on the basis of set *C*. Suppose that there are some citizens who reject the argument for liberalism based on *A*, but endorse liberal principles (constitutions, etc.) based on their *C*. For Rawls, because they have not affirmed liberalism on both sets it

⁷⁷ Perhaps the most prominent and subtle is Samuel Freeman. See his *Justice and the Social Contract: Essays on Rawlsian Political Philosophy* (New York: Oxford University Press, 2006).

⁷⁸ Burton Dreben thought that the 1996 paperback edition should be considered a second edition of *Political Liberalism*. “On Rawls on Political Liberalism” in *The Cambridge Companion to Rawls*, edited by Samuel Freeman (Cambridge: Cambridge University Press, 2003), pp. 316-346.

⁷⁹ Compare Rawls, *Political Liberalism*, pp. xxi, xlviii.

is not justified to them; if only *C* was required more, not less, citizens might endorse liberal principles.⁸⁰

In *A Theory of Justice* the shared reasons requirement for justification made sense: the shared sets *A* (the considerations employed in the argument from the original position) and *B* (the shared thin theory of the good) were meant to overwhelm any residue disagreement from set *C* that might lead to unjust action. But once overlapping consensus replaces this picture and set *B* drops out, set *C* takes on justificatory relevance, while set *A* no longer even has determinate political implications. Now once it is admitted (i) that set *C* is of justificatory relevance and (ii) the political implications of set *A* are rather vague, insisting that considerations from *C* cannot be appealed to in political discourse (the duty of civility) looks under motivated. Why should considerations of justificatory relevance be insulated from political discussion? It is revealing that Rawls' more orthodox followers justify this version of the insulation thesis on the grounds that it induces stability: because stability requires insulation of the sets, we have a duty to insulate. Leaving aside for now its plausibility,⁸¹ this claim reverses the order of justification: rather than (as in *Theory*) showing that liberal principles will be stable because they are insulated from controversial reasons based on comprehensive conceptions, it is now argued that because we seek stability, we must admit a moral duty to insulate public discussion from controversial reasons.

4.2 Retreating to Liberalism as Shared Reasons

Perhaps it would be too strong to say that, at the end, Rawls' public reason liberalism was in disarray; nevertheless fundamental puzzles are unresolved concerning the relative roles of shared reasons and those based on one's own comprehensive conception in justifying, and preserving, a liberal polity. To many of his followers Rawls offered a deeply attractive theory of justice based on the shared reasons modeled in the original position (leave aside for now Rawls' worries that even within the shared reason phase of the argument disagreement may arise); the problem for them is that Rawls was unsuccessful in insulating this argument from broader conflicts. In particular, it is doubtful that the conclusions of the "freestanding argument from the original position" (based on set *A*) remain intact once deliberators consider their comprehensive conceptions of value (set *C*). The radical response by some neo-Rawlsians is to simply deny that set *C* could ever overturn the conclusions of set *A*.

⁸⁰ Requiring only endorsement based on *C* weakly dominates requiring endorsement based on both *A* and *C*; it cannot do worse (it terms of the people to whom liberalism is justified) and can do better. See further my "On the Appropriate Mode of Justifying a Public Moral Constitution."

⁸¹ Paul Weithman (*Why Political Liberalism?* pp. 327ff) has argued, following Rawls, that restricting political debate about basic justice and constitutional essentials to shared reasons induces stability by promoting mutual assurance that we are all just. I have questioned this analysis in "A Tale of Two Sets." For similar doubts see John Thrasher and Kevin Vallier, "The Fragility of Consensus: Public Reason, Diversity, and Stability," *The European Journal of Philosophy*, forthcoming.

Thus as Jonathan Quong sees it, to allow full justification (set C) as a check on the argument from the original position (set A) renders A's conclusions results hostage to "illiberal" values and unjust views.⁸² For Quong the aim of political liberalism is to justify liberal principles to liberals; anyone who would reject arguments based on shared liberal values simply because they clashed with her deep metaphysical or religious commitments would simply show herself not to be a liberal. We thus seem back to our Lockean starting point: liberals just are those who endorse the insulation claim, and liberalism is a doctrine for such people. Just as Locke excluded Roman Catholics from the justificatory public because they rejected the insulation claim, Quong deems "unreasonable" any who would question the conclusions of set A on the grounds of their C.⁸³ But this looks more like a doctrine of liberal reason than of public reason. We now have extensive evidence that when deliberating about politics and social morality, many ordinary reasoners draw on considerations that are outside of set A. Jonathan Haidt's recent research into the moral attitudes of left-leaning liberals and conservatives shows that while conservatives and liberals share a set of moral reasons based on fairness and avoiding harm and oppression (set A), conservative reasoners draw on a wider set of considerations, which include ideas of the sacred and the pure — ideas alien to liberal thought.⁸⁴ Thus to deem as "unreasonable" those who deliberate about political morality on the basis of "nonshared reasons" is to simply define the reasonable as, essentially, left-leaning liberals.⁸⁵

4.3 Liberalism Without Insulation

We are now, I think, in a better position to see the way forward for public reason liberalism. Rawls' later work shows us the deep implausibility at the heart of the shared reasons strategy: it supposed that while our reasoning about religion, morality and metaphysics was deeply pluralistic, our reasoning about our moral and/or political constitution was homogenous. As Rawls came to appreciate, however, the very burdens of judgment that produce disagreement in the former leads to pluralism in the latter. If somehow we could plausibly claim that reasoning in one sphere was basically homogenous while in the other highly heterogeneous, it would be worthwhile seeking to build firewalls (as in *Theory*) to stop the diversity from contaminating that about which we agree. But once we abandon this implausible bifurcation of our normative reasoning, we are left wondering whether the attempt to insulate set A from the disagreement in set C is worth the effort. Moreover, Rawls

⁸² Jonathan Quong, *Liberalism Without Perfection* (Oxford: Oxford University Press, 2011), pp. 167-169.

⁸³ "Such people are not part of an ideal, well-ordered liberal society, and so obtaining their agreement is irrelevant to the project of liberal theory's internal coherence." *Ibid.*, p. 181.

⁸⁴ Jonathan Haidt, *The Righteous Mind: Why Good People are Divided by Politics and Religion* (New York: Pantheon, 2012), esp. Part II.

⁸⁵ I have developed this criticism of Quong in more detail in "Sectarianism Without Perfection? Quong's Political Liberalism," *Philosophy and Public Issues*, vol. 2, No. 2 (Fall 2012): pp. 7-15. Quong replies in the same issue, pp. 51-8.

shows us how we might proceed without insulation: the ideas of an overlapping consensus and full justification presuppose that set C , rather than being a danger to a justified liberal order, may be a resource to be drawn upon. Thus the way forward: abandon the separation of sets A and C_i , where A is the set of all the relevant reasons members of the public share, while C_i concerns all the relevant justificatory reasons that member of the public i holds, but does not share with all others.⁸⁶ A moral or political constitution (or rule within such a constitution) is thus publicly justified if for all i who are members of the public, $\{A, C_i\}$ endorses it. We might call this public reason in the distributive sense; the reasoning is distributed over the entire public, each endorsing the constitution (or rule) on the basis of her own $\{A, C_i\}$ set.⁸⁷

4.4 Waking Up from the Nightmare

Rawls' followers reject this option because, I believe, they think it leads to The Nightmare. As Quong puts it, those with "unjust" and "illiberal" views would be able to veto liberal principles, either leaving us with a publicly justified illiberal constitution, or no justified constitution at all. In order to avoid this Nightmare, Quong and others make committed Rawlsian liberals the voice of public reason, in a way not so dissimilar to Hobbes, who made the sovereign the voice of public reason. If the total reason of everyone counts, then surely we will be able to justify nothing — or at least nothing recognizable as "liberal." The reason of liberals becomes the celestial voice.

Consider the worst Nightmare first: nothing at all will be justified, because someone will exercise her veto for every proposal. Talk of "veto" can lead us astray; we are apt to think of haggling or bargaining, where a person has the right to say "no," and uses this to her strategic advantage. But our concern now is whether, given the reasons of the members of the public, there is any moral or political constitution that all members of the public have reason to endorse. To make the choice problem well-formed, let us model it in terms of pairwise choices: confronted with options x and y , the person's reasons indicate either that x is better than y , y is better than x , or they are equal.⁸⁸ Now once we translate a "veto" into such a choice problem, a veto of constitution y ⁸⁹ must mean that the person would choose to have no constitution at all rather than y . If, for example, she simply had reason to choose con-

⁸⁶ The subscript C_i indicates that for each member of the public, C_i will be different. I am assuming that there may be a shared set A ; if there is not, then all considerations that person i draws upon will be in C_i .

⁸⁷ This is the approach I develop in *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (Cambridge: Cambridge University Press, 2011), especially Part II.

⁸⁸ In the *Order of Public Reason* (pp. 303-10), I show that a considerably weaker condition will suffice; even if a person cannot rank x and y , we still can model a rational social choice situation.

⁸⁹ From here on I shall simply talk of a "constitution," allowing that this could be applied either to what Rawls called a moral constitution or a political constitution. Or, we could focus instead (as I think we should) on specific rules within the constitution. See *The Order of Public Reason*, pp. 490-97. See also my "On the Appropriate Mode of Justifying a Public Moral Constitution."

stitution x over y , this would not be a “veto” of y , but simply a ranking of an alternative constitution as superior.

Once we see what is constituted by a veto, we also see how, surprisingly, Hobbes helps us wake up from The Nightmare: a common system of moral and political rules is a tremendous good to all, for it is the very foundation of a cooperative and fruitful social life. A framework of social and political rules that all deem legitimate, and are willing to internalize (and so feel guilty when they violate them), and are devoted to maintaining is the *sine qua non* of our life together. To veto such a framework is to deem it so unjust or otherwise costly that one would rather forgo the tremendous benefits of a morally ordered social life than endorse and internalize such a constitution as normative. This certainly may happen, but it is not a decision that a serious person lightly makes. To be sure, there is a great deal of posturing in our philosophical discussions that one would veto all constitutions that do not conform to one’s favored philosophical account, but the real question is whether one would really choose a sort of normative anarchy of social life in preference to it. That we all — even moral and political philosophers — teach our children the basic moral rules of our society rather suggests not.

4.5 The Neo-Rawlsian Nightmare

Perhaps, then, the neo-Rawlsian Nightmare is that, unless our normative conclusions are confirmed by set A alone, public reason cannot be guaranteed to yield a truly liberal framework; as Quong suggests, the results of public justification is “held hostage” to those with illiberal views. Now we should distinguish two versions of this liberal Nightmare: that (i) the basic framework might be authoritarian or deeply hostile to individual liberty and (ii) the moral constitution will not conform to certain controversial accounts of liberalism, such as Rawls’ two principles of justice. Now (i) seems implausible. Liberalism broadly construed simply is the historically generated solution to the problem of how people who deeply disagree about almost everything can share a system of social cooperation that all see as normative. The constitutions that really will be vetoed are those that build social order on the requirement that some renounce their most cherished convictions even as the ideals of their own personal lives. While many of us rank most highly social orders that express our ideals in public life, what is truly unacceptable are social and political orders that insist we abandon our deep ideals as the basis of our own existence.

In contrast (ii) is likely: there is no guarantee that comprehensive public reason — that which draws on each member of the public’s total set of relevant evaluative considerations — will endorse any specific controversial “theory of justice.” What, I believe, is most likely is that a set of liberal constitutions will be deemed eligible by the public (each will be ranked by everyone as better than no constitution at all, though we will disagree about which is best). Notice that this is the conclusion at

which Rawls himself arrived (§§3.3-4): a “family” of liberal arrangements are justified, but there is no uniquely publicly justified version.⁹⁰ This family, I suspect, is rather broader than Rawls or many of his followers would like. Perhaps one motivation for insisting on the primary justificatory importance of set *A* alone is to narrow the range of acceptable liberalisms to those that conform to a certain theory of distributive justice. But that is hardly compelling for those who do not already embrace that theory.

Once we accept that public reason can only identify a set or family of eligible constitutions, public reason liberalism is faced with an equilibrium selection problem. Since any eligible constitution is ranked as better than no constitution at all by all members of the public, any eligible constitution can provide the sort of Nash equilibrium Rawls sought. For any constitution in the eligible family, if everyone else is conforming to it, one’s best response is to also conform; this is guaranteed by the fact that, given each member of the public’s entire set of relevant reasons $\{A, C_i\}$ she ranks conformity to such a constitution as better than unilateral defection. The question for contemporary public reason liberals is how one of the many equilibria is to be selected.

5 THE FUTURE OF PUBLIC REASON LIBERALISM?

I have tried to show that the public reason project has been at the core of liberal theory. At least since Locke, it has been built on the insulation claim: we can insulate our deep and intractable disputes about religious convictions and personal ideals from agreement on shared civil interests. The highpoint of this “insulation” view of public reason was *A Theory of Justice*. Rawls’ revolutionary later philosophy was to work toward a version of public reason liberalism that dropped the insulation claim and lessened the role of shared reasoning in public justification. Although some of his most important followers seek to move Rawls back closer to *Theory*, the way forward in the public reason project is to investigate how diverse reasoning can lead to publicly endorsable rules and constitutions.⁹¹ My discussion has only skimmed the surface of the complexities and possibilities. Yet this much is clear: the future of public reason liberalism is not to develop a controversial ideological position that seeks to exclude large parts of our society as “unreasonable,” but to press the bounds of inclusiveness as far as possible — and in doing, showing that the deep strength of

⁹⁰ Rawls, *Political Liberalism*, p. xlviii

⁹¹ Fred D’Agostino has been a pioneer in analyzing diverse public reasoning; see his *Free Public Reason: Making it Up as We Go* (Oxford: Oxford University Press, 1996). Especially important here is the work of younger scholars such as Kevin Vallier, John Thrasher and Ryan Muldoon. See, for example, Vallier, “Consensus and Convergence in Public Reason” in the Convergence Justifications in Public Reason Symposium, *Public Affairs Quarterly*, 25(4): 261-279; Thrasher and Vallier, “The Fragility of Consensus: Public Reason, Diversity, and Stability;” Ryan Muldoon, Chiara Lisiciandra, Mark Colyvan, Carlo Martini, Giacomo Sillari, Jan Sprenger “Disagreement Behind the Veil of Ignorance” available at <http://www.sas.upenn.edu/~rmuldoon/papers/Disagreement-behind-veil-of-ignorance.pdf>

liberalism is its unique ability to not only accommodate, but draw upon, our deep diversity.

*Philosophy
University of Arizona*