

*Public Reason and Moral Compromise*¹

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Introduction

One source of controversy surrounding John Rawls's later work — a source of both criticism and praise — has been the impression that he abandoned the philosophical project of figuring out what is truly just, in favour of the political project of working out a feasible consensus for people from a particular political tradition.² One aspect of this controversy is the question of whether Rawls could advance his theory as being worthy of endorsement on the basis of good reasons without also claiming it to be true. In preferring to claim reasonableness rather than truth,

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2 For criticism based on this kind of interpretation, see, for example, Jean Hampton, 'Should Political Philosophy Be Done Without Metaphysics?' *Ethics* 99 (1989) 791-814, and Joseph Raz, 'Facing Diversity: The Case of Epistemic Abstinence' *Philosophy & Public Affairs* 19 (1990) 3-46. For praise based on a similar interpretation, see Richard Rorty, 'The Priority of Democracy to Philosophy,' reprinted in *Objectivity, Relativism and Truth: Philosophical Papers I* (Cambridge: Cambridge University Press 1990), 175-96.

Rawls's main concern seems to have been to distinguish the 'whole truth'³ as represented by a particular comprehensive religious or philosophical doctrine, from the truth about politics given that reasonable people will inevitably disagree about the whole truth. This paper focuses on a second aspect of this controversy: whether a conception of justice that is true or reasonable only given the reasonable pluralism of comprehensive doctrines is still a conception of *justice*, and not simply a compromise between the contending doctrines. Even if the content of one's conception of justice is formulated independently of the existing range of doctrines, rather than through a process of give-and-take, is not the commitment to adhere to a conception of justice that is political in Rawls's special sense itself a compromise? Rawls denied that political liberalism involved *political* compromise, in the ordinary sense of an agreement dictated by the balance of forces and dependent on strategic considerations. He insisted that political liberalism was a moral conception, and the underlying ideal of public reason a moral ideal, even if not a comprehensive moral doctrine.⁴ One possibility that has not been explored, however, is that we should construe public reason and related concepts as embodying a form of *moral* compromise, in the double sense discussed by Martin Benjamin — a principled compromise on issues of moral principle.⁵ Although he did not explicitly consider this possibility, there are indications that Rawls would have rejected the description of public reason as moral compromise. The purpose of this paper, then, is to investigate this non-Rawlsian way of working out one of Rawls's main ideas.

On a first pass, the principle of public reason requires that when we make decisions about public institutions, we not do so on the basis of reasonably contestable views about spiritual, metaphysical, or philosophical questions. As individuals, as members of associations, or as members of religious communities we will continue to live according to

3 J. Rawls, *Political Liberalism* (New York: Columbia University Press 1996), 225, cited hereafter also as *PL*.

4 *PL*, 11, 147. I follow Charles Larmore in thinking that public reason is the fundamental idea in Rawls's thought, one that underlies the ideas of a political conception of justice and an overlapping consensus. Public reason governs the relation in which we stand to one another as citizens, and so encompasses all the different elements that make up the ideal of a constitutional democracy — a paraphrase of C. Larmore, 'Public Reason,' *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press 2003), 368.

5 M. Benjamin, *Splitting the Difference: Compromise and Integrity in Ethics and Politics* (Lawrence: Kansas University Press 1990).

our own views about such questions. But when designing our common institutions, we should agree to consider these matters of deep reasonable controversy irrelevant, not just out of a desire to avoid conflict, but out of respect for each other as free and equal citizens. What is distinctive about public reason, therefore, is that it involves the principled avoidance, bracketing, or tabling of certain disagreements, via the agreement not to use the views in question when making some or all collective decisions.⁶

So described, there is a symmetry involved in the exclusion of non-public reasons that resembles the mutual concessions from the dictionary definition of compromise. Protestants and Catholics agree not to base public decisions on either the Protestant or the Catholic conception of God's will. Theists accept that public institutions and policies should not presuppose nor affirm that God exists, while atheists accept that public institutions and policies should not presuppose nor affirm that God does not exist. Conservatives and liberals agree that public policy should not be based on the beliefs that homosexual conduct is *or is not* sinful. Such agreements can, of course, be merely prudential, based on strategic considerations, and dependent on the balance of forces. Suppose, however, that in one of these cases each side was willing to adhere to the common conception of public reason regardless of numbers or resources. Suppose that each side thought that the other was motivated by mistaken but sincere and not unreasonable moral convictions, and recognized that the other side was willing to live by fair terms of cooperation. Suppose, finally, that despite being committed to getting along on the basis of a shared conception of public reason, each side thought that it would have been better if the other side did not hold the religious, spiritual, or metaphysical views it mistakenly holds. Suppose, in other words, that each side thought it lamentable that the free exercise human reason generates what each takes to be (in different, opposing ways) deeply mistaken views. If each side accepted the principle of public reason in this spirit, public reason would seem to be a kind of compromise — principled rather than merely strategic, but a compromise nonetheless. Were it not for the unfortunate fact that reasonable people inevitably disagree about certain kinds of questions, we would invoke

6 Public reason has been described as a principle of restraint (J. Raz, *The Morality of Freedom* [Oxford: Oxford University Press 1986], 136), epistemic abstinence (J. Raz, 'Facing Diversity: The Case of Epistemic Abstinence,' *Philosophy and Public Affairs* 19 [1990], 4), preclusion (A. Gutmann and D. Thompson 'Moral Conflict and Political Consensus,' *Ethics* 101 [1995], 64), or disagreement-avoidance (J. Raz, 'Disagreement in Politics' *American Journal of Jurisprudence* 43 [1998] 30).

our own views about the answers to these questions in making public decisions; not to do so is a compromise with those who unfortunately but not unreasonably disagree.

What, if anything, is wrong with this way of conceiving of public reason? How else are we to accept the limits of public reason, if our acceptance is supposed to be principled but not simply based on what we variously take to be the whole moral truth?

In the first section of the paper, I situate Rawls's conception of public reason relative to other possible conceptions. In the second section, I explain Rawls's reasons for rejecting the description of public reason as a form of political compromise, and argue that these reasons do not preclude our construing public reason as a form of moral compromise. The third section examines the notion of moral compromise. In the fourth section, I articulate and criticize what I take to have been Rawls's reasons for resisting the characterization of public reason as moral compromise. The central issue is whether we can be reconciled to the fact of reasonable pluralism. Rawls believed that we could, but the reconciliation he described was incomplete, I argue. The fifth section takes up the question of how compromise at the level of reasons relates to compromise at the level of policy. One objection to the claim that public reason involves moral compromise would be that public reason is simply a subterfuge through which comprehensive liberals satisfy all their policy preferences without having to defend them philosophically, i.e. that for liberals, the compromise of public reason requires no compromise at the level of policy. In this section, I argue that public reason does have costs for liberals, as well as for conservatives.

I Conceptions of Public Reason

Whether or not public reason involves moral compromise depends on exactly how one specifies the terms and scope of the principle. For example, if one excluded all specific or concrete conceptions of the good life as non-public, while justifying this exclusion on the grounds of an ambitious ideal of ethical autonomy, critics of political liberalism might claim that public reason involves no compromise at all, but merely an attempt on the part of comprehensive liberals to institutionalize a liberal philosophy of life without admitting that this is what they are doing. I believe that the most compelling account of public reason involves moral compromise. Initially, however, we need to have Rawls's own understanding of public reason on the table in order to understand his reasons for rejecting the characterization of public reason as a form of (moral) compromise.

To this end, it will be useful to distinguish the following dimensions along which the idea of public reason must be further specified:

- (1) *Whose conduct* does the principle govern, i.e. judges, all public officials, or citizens generally? Who if anyone has the authority to enforce the limits of public reason?
- (2) *What kinds of conduct* does the principle govern? Does the principle apply to speech or action? If the former, what forms of communication count as public? If the latter, does it apply to all policy decisions, or only to decisions about the basic structure of society, or only to decisions about constitutional essentials, or only to directly coercive policies?⁷
- (3) *What kinds of reasons* are excluded as non-public? Is it only answers to religious questions that are excluded? Or, does the principle aim to bracket questions about the good life, or about the good as such? Is controversy, or reasonable controversy, the test for exclusion? If the aim is to bracket deep disagreements, what exactly is involved in the criterion of depth?
- (4) What is the *moral point* of excluding non-public reasons? If public reason is supposed to involve the *principled* political avoidance of certain disagreements, what is the underlying principle or value that public reason serves?

Different sets of answers to these questions will yield different versions of public reason. Some versions could be quite implausible, morally or practically. Suppose, for example, that public reason ruled out all mention of religious questions in all communication between citizens outside of the home, with an *Office de la raison publique* being charged with enforcing respect for public reason with fines and jail time. Other

7 These alternatives are not necessarily nested, since it is conceivable to maintain that the principle of public reason holds only for *non*-basic policies. As Steven Wall points out, one might think that it is never a legitimate reason for public policy that the policy in question promotes belief in or living in accordance with the correct ideal of human flourishing, but nonetheless claim that in determining the content of our basic rights and liberties, appeals to the full moral truth are appropriate: S. Wall, *Liberalism, Perfectionism, and Restraint* (Cambridge: Cambridge University Press 1998), 75. We should never use the state to promote a particular way of life simply for its own sake, but when we define what is going to count as murder, one might argue, we ought to base our decision on the truth about whether fetuses are persons, even if this topic is the subject of inevitable reasonable disagreement.

specifications may not in fact be principles of public reason at all. If all but only conventionally religious doctrines are excluded, while atheist and secular philosophies of life are accepted as legitimate, for example, there is no bracketing of disagreement but merely the denial of theistic doctrines.

Rawls's view was roughly the following. (1) Public reason is a norm that applies to citizens generally, not just legislators and judges.⁸ Public reason is a moral norm meant to animate civic conduct and public institutions, not a legal norm that one particular institution is charged with enforcing.⁹ (2) The principle applies in the first instance to action, meaning public decision-making, and to speech only indirectly, to the extent that speech is part of a public decision-making process or directly advocates specific public decisions.¹⁰ The principle applies only to a class of fundamental political decisions, covering constitutional essentials and the basic structure of social institutions.¹¹ (3) The reasons excluded are answers to religious, spiritual, and metaphysical questions, primarily, but answers to some ethical questions and even some empirical questions may also be excluded. (4) The underlying motive for excluding

8 The ideal of public reason holds 'for citizens when they engage in political advocacy in the public forum' and 'for how citizens are to vote in elections when constitutional essentials and matters of basic justice are at stake' (*PL*, 215).

9 As Stephen Macedo puts it, 'no one is suggesting that the contours of liberal public reason should be used to define the limits of constitutional rights to free speech. Public reason helps define a moral ideal, not a legal requirement' (S. Macedo, 'In Defense of Liberal Public Reason: Are Slavery and Abortion Hard Cases?' *American Journal of Jurisprudence* 42 [1997], 20-2).

10 'Public reason is the reason of equal citizens who, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution' (*PL*, 214). Much of the discussion of public reason in the context of debates over deliberative democracy wrongly assumes that the principle restricts what citizens can say to each other 'in public'. As Macedo and Larmore argue, if it is the coercive character of political authority that makes public reason essential to a constitutional democracy, then public reason ought to be understood as applying to the reasoning by which citizens take part in political decisions (Larmore, 'Public Reason,' 383; Macedo, 'In Defense of Liberal Public Reason,' 21). Public reason does not apply to just any discussion that takes place in public; there is nothing wrong with debating the existence of god or the ethics of sexual orientation in the opinion pages of a newspaper. What is supposed to be wrong is to make a decision about public policy that can be justified only if one assumes that god does (or does not) exist, or only if one assumes that homosexual conduct is (or is not) sinful.

11 There is little doubt that Rawls adopted this view, but there has been much debate as to why and whether he was right to do so; see, for example, J. Quong, 'The Scope of Public Reason,' *Political Studies* 52 (2004) 233-50.

non-public reasons is to secure the legitimacy of the exercise of political power, based on the principle of respect for persons, and thereby to allow for a kind of democratic community, despite ongoing religious and philosophical disagreement.

Points 4 and 5 require some elaboration, both because these are the dimensions that are crucial for understanding whether public reason involves moral compromise, and because it is less clear exactly what Rawls's views were, in these dimensions.

Re 5: Political liberals typically point to two facts as conditions that impose a special requirement of public justifiability on political decisions: that membership in a political society cannot be fully voluntary (because membership is not chosen, initially, and is later hard to change, for most people), and that the collectivity claims the authority to make decisions about social conduct and impose them if need be with the use of force.¹² These two facts make the exercise of political power always to some extent coercive, which raises the question of its legitimacy. It is not enough that we think our political actions justified according to our own (i.e. the majority's) view of the whole moral truth, political liberals claim. Our exercise of political power is proper, they insist, only when the reasons for our decisions could reasonably be accepted by all citizens as a justification for those actions, despite the fact that reasonable citizens will espouse a diversity of reasonable but conflicting comprehensive religious and philosophical views.

Rawls did not fully explain why the validity of coercive principles should depend on reasonable agreement, but Charles Larmore has answered this question more explicitly, in a manner that I think captures the spirit of Rawls's view. When an involuntary association claiming the legitimate use of force acts according to a reasonably contestable comprehensive religious or philosophical doctrine, its members fail to respect their fellow citizens as persons, which is to say as beings capable of recognizing and responding to justificatory reasons. Designing political institutions and policies on non-public grounds involves coercion the justification of which at least some reasonable citizens could not accept, which amounts to trying to secure conformity to a rule of conduct solely by threat of force, rather than also appealing to the person's reason.¹³ Only when we seek our political principles 'in a minimal morality which

12 *PL*, 135-6, 216-17; see also Thomas Nagel, 'Moral Conflict and Political Legitimacy,' *Philosophy and Public Affairs* 16 (1987), 223, and Charles Larmore 'The Moral Basis of Political Liberalism,' *The Journal of Philosophy* 46 (1999), 606.

13 Larmore, 'The Moral Basis of Political Liberalism,' 600-5

reasonable people can share despite their expectably divergent religious and ethical convictions' can the political world 'enjoy the sort of transparency in which citizens recognize their political principles as the expression of their own will.'¹⁴

The emphasis Larmore (and, arguably, Rawls) place on respect for persons as beings capable of responding to reasons may raise doubts about whether the morality on which public reason is based is sufficiently minimal. For the conception of rational agency at play clearly involves more than just instrumental calculation. Even animals behave in a goal-directed fashion, reasoning about options and consequences. And when we try to bring about compliance solely by threat of force, Larmore notes, those forced to comply cannot be moved by our threats except by seeing that they have reason to fear what we may do. However, in seeking compliance by threat alone, we will not be engaging their reason in the same way we engage our own — we who would comply even without threat of force.¹⁵ We will be engaging their capacity to recognize our threat to their self-interest, when we should be offering them reasons that *justify* the rule we seek to enforce — reasons whose force does not depend on rewards for compliance or punishment for non-compliance. Because the notion of personhood at play here involves a fairly rich notion of rationality, the suspicion may arise as to whether political liberalism depends on a reasonably contestable ideal of ethical autonomy, a suspicion that would also provide reason for doubting that public reason involves moral compromise. Following Larmore, however, Rawls explicitly distinguishes liberalism as a philosophy of life, based on a Kantian conception of autonomy or a Millian conception of individuality, from liberalism as a political doctrine.¹⁶ As an ideal, autonomy involves not only being able to appreciate and act for reasons, but having subjected one's preferences to critical scrutiny, so as to ensure that they are truly one's own preferences, rather than merely being goals one has accepted mechanically, as a result of having internalized the expectations and opinions of others.¹⁷ To realize one's full potential as a human being, one must allegedly decide for oneself

14 *Ibid.*, 600

15 *Ibid.*, 607-8

16 *PL*, 37, 78; Larmore 'Political Liberalism,' 343. Rawls's reasons for denying that public reason involves compromise can therefore not be the same as his critics' reasons for denying that public reason involves compromise.

17 See, for example, George Sher, *Beyond Neutrality: Perfectionism and Politics* (Cambridge: Cambridge University Press 1997), 47.

what is to count as a reason based on critical reflection and detachment from inherited tradition.¹⁸ Even if one thought that human reasons had to be grounded in religious tradition, however, one might recognize the moral significance of the capacity to recognize and be motivated by justificatory reasons. One can believe that the exercise of political power must be reasonably-justifiable, therefore, without believing that the state ought to promote individuality or rational self-mastery.

Not every form of disagreement-avoidance involves the ideal of public reason. The most obvious reason for excluding particular considerations from the grounds of political choice is that the considerations in question are false¹⁹ (or that we have no way of knowing if they are true²⁰). In this case, reasons are ruled out, but without the bracketing of truth-claims that is distinctive of public reason. A second 'non-PR' reason for excluding considerations from public decision-making is that allowing them into our collective deliberations would provoke dangerous social conflict.²¹ The truth-status of the reasons involved is irrelevant, in this case, but public reason would simply be the basis for a *modus vivendi*. Third, even if it causes no social strife, admitting particular considerations into our collective deliberations might be self-defeating. According to indirectly-consequentialist defences of state neutrality, allowing decision-makers to appeal to some genuine value X may not promote, and may even reduce

18 Larmore, 'Political Liberalism,' 349

19 Thus, for example, one might argue that the claim that homosexual conduct is sinful ought not to be counted in the factors influencing our decision about same-sex marriage because God approves of homosexual relationships. In the 2003 Parliamentary hearings on same-sex marriage, Choice Okoro testified to this effect on behalf of the United Church of Canada. 'Human sexual orientations, whether heterosexual or homosexual, are a gift from God and part of the marvelous diversity of creation' (Standing Committee on Justice and Human Rights, 20 February 2003 hearings, available at <<http://www.parl.gc.ca/committee/CommitteePublication.aspx?SourceId=24531>>).

20 See, for example, Bruce Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press 1980), 9. In Ackerman's view, scepticism is just one of a number of possible justifications for neutrality. See also Dworkin, *A Matter of Principle*, 205, where Dworkin distinguishes liberalism based on neutrality, which finds its 'most natural defense' in moral scepticism, from liberalism based on equality.

21 For example, Hollis and Bellamy liken the self-imposed constraints of public reason to the policy of neighbours who keep the peace by not talking politics, so that 'baby-sitting gets done and cats are fed when their owners go on holiday' (R. Bellamy and M. Hollis, 'Consensus, Neutrality and Compromise,' *Pluralism and Liberal Neutrality* [Illford: Frank Cass 1999], 61).

the realization of X , under certain conditions.²² Religion provides the original example of this kind of argument. Even though Protestantism (say) is the true religion, the truth of Protestantism is irrelevant to decisions about state policy because god wants only authentic expressions of our worship and devotion, and coercion will only create hypocrites. Contemporary defences of neutrality with respect to conceptions of the good life make similar assumptions about the relationship between political means and ethical ends, given the correct (or elements of the correct) account of the human good. The answer to the question of which life is best varies widely, depending on individual circumstance, which the government cannot know in great detail. And for one's life to be truly good, one must endorse the life one is living for internal reasons, as an intrinsically good life, not merely for strategic reasons, because of threats or bribes on the part of others. Given these assumptions about the place of autonomy and individuality in a good life, and given the blunt coerciveness of political tools, it would allegedly be futile or self-defeating to try to promote particular conceptions of the good life directly. We can best promote valuable lives, so the argument goes, by not collectively trying to promote any particular positive ideal of the good life, i.e. by excluding such ideals from the grounds of public decisions.²³ Reasons are excluded without being declared false or improbable, on this view, but for instrumental reasons, based on what is taken to be the correct comprehensive doctrine. What is distinctive about the notion of public reason, in

22 Proponents of liberal neutrality commonly characterize this neutrality as justificatory rather than consequential, in order to insist that neutrality involves only a presumption against differential treatment, not a guarantee of equal outcomes. See, for example, Will Kymlicka, 'Liberal Individualism and Liberal Neutrality' *Ethics* 99 (1989), 883-4. Freedom of conscience and association will have nonneutral consequences, Kymlicka argues, since some groups will be more successful than others in attracting adherents, which shows that Rawls could not have endorsed 'consequential neutrality' (883). This emphasis on reasons rather than outcomes gives liberal neutrality the form of a doctrine of public reason. The justification for justificatory neutrality may be consequentialist, however, since it is possible to advocate neutrality in the dimension of reasons for policy on the grounds that following such a rule has good consequences. My description of such a view follows Thomas Hurka's account of Kymlicka's position ('Indirect Perfectionism: Kymlicka on Liberal Neutrality,' *The Journal of Political Philosophy* 3 36-57).

23 Hurka, George Sher, and others have argued that such consequentialist considerations only justify a quite limited form of state neutrality — see, for example, Sher, *Beyond Neutrality* (1997), 45-72. The point here is simply to distinguish the idea of public reason from the quite different idea that the diversity of good lives and the need to live one's life 'from the inside' limits government's ability to promote the true good directly.

contrast, is that the point of excluding the reasons deemed non-public is to respect and accommodate intractable but reasonable disagreement. Appealing to non-public reasons when making political decisions would not be legitimate, on the Rawlsian view, even if allowing such appeals were an effective means of promoting a particular set of distinctively liberal spiritual or ethical values.

Re 4: Religious doctrines are the core example of a non-public view, but the leading proponents of political liberalism also count other, not strictly religious views as non-public.²⁴ This extension of state neutrality from the domain of religion to conceptions of the good life more generally has always been controversial. Intuitively, the reasons for not establishing religion are not the same and do not have the same strength as the reasons for not subsidizing art and culture. In *A Theory of Justice*, however, the contractual logic that led to the principle of equal religious freedom also led to Rawls's strict antiperfectionism.²⁵

Rawls argued that the parties to the original position could not take the chance of winding up members of a religious minority in an intolerant society, even at some significant cost in terms of expected utility.

24 To describe the reasonable pluralism that gives rise to the problems political liberalism addresses, Macedo talks of 'ultimate religious and philosophical ideals' and 'religious beliefs and philosophical ideals of life' (Macedo, 'In Defense of Liberal Public Reason,' 3, 10). Nagel talks about disagreements 'so deep and so acute' that no decision-procedure admitting the rival views in question as inputs could command the reasonable acceptance of the losers. Conspicuous among these disagreements are religious differences, Nagel says, 'but other convictions about the ultimate meaning of life or the sources of its value should be included as well' (T. Nagel, *Equality and Partiality* [New York: Oxford University Press 1991], 154-5; and see also 167). Larmore talks about 'deep questions concerning how we should live,' such as the question about the correct path to salvation, but also 'the meaning of life and certain deep aspects of morality' or just 'ultimate questions of value' (C. Larmore, *The Morals of Modernity* [Cambridge: Cambridge University Press 1996], 168-9).

25 Rawls accepted that public funds for the arts and sciences could be provided through what he called 'the exchange branch,' but only under very restrictive conditions (J. Rawls, *A Theory of Justice* [Cambridge, MA: Harvard University Press 1971], 282-3, 332; cited hereafter also as *TJ*). The exchange branch was a mechanism that would provide goods otherwise undersupplied by the market (goods whose benefits accrue to all while the costs of producing them accrue only to those who contribute). For any good that was truly public in this sense, there ought to be some distribution of the extra taxes necessary to provide the good that could gain unanimous approval. Since no one would be taxed unless all consented, there would be no objection to defining the public good in perfectionist terms. However, the principles of justice did not permit subsidizing universities, opera or theatre, simply on the grounds that the majority believed these institutions to be intrinsically valuable.

Although the parties' risk aversion has been highly contested in other respects, it makes sense in the case of religious interests. Individuals recognizing religious or moral obligations regard them as binding absolutely. To gamble, for the sake of greater expected utility, that one was unlikely to end up a persecuted religious minority 'would show that one did not take one's religious or moral convictions seriously...'²⁶ Similarly, to acknowledge any principle of perfection would be 'to accept a principle that might lead to a lesser religious or other liberty, if not to a loss of freedom altogether to advance many of one's spiritual ends.'²⁷ The rationale for risk aversion is much less obvious in the case of a general ethical perfectionism, however, than it is in the case of specifically religious interests. Even if the parties would not risk having to worship a god that turned out not to be their own, they might risk having to pay more in taxes for arts and theatre while not wishing to attend, if they thought that there was some potential benefit to be obtained to be obtained from permitting such mild perfectionism — they might not want to give a veto over such subsidies to each and every citizen, as Rawls suggested they should.²⁸

In *Political Liberalism*, Rawls's antiperfectionism was much less on display, but another problematic feature of his understanding of the scope of public reason surfaced. Rawls claimed that purely empirical views ought to be excluded as non-public, if these views were too controversial. Rawls said, for example, that citizens should not appeal to 'comprehensive religious and philosophical doctrines — to what we as individuals or members of associations see as the whole truth — *nor to elaborate theories of general equilibrium, say, if these are in dispute.*'²⁹ It

26 *TJ*, 207

27 *TJ*, 327

28 See note 24 for an explanation of Rawls's account of how public funds might be devoted to arts and culture, subject to the requirement that some distribution of the necessary taxes receive unanimous consent.

29 *PL*, 224-5; emphasis added. Rawls's case against perfectionism was made easier by the fact that he defined perfectionism as a teleological principle, meaning a principle holding that institutions should be designed in whatever manner is necessary to maximize some valued end — in this case, virtue or human excellence. Such a principle might require us to sacrifice the perfection of some (those not easily perfectible), for the sake of the greater perfection of others (those for whom investments in perfection are more cost effective). This objection targets the property of maximizing an aggregate good, however, not the property of defining the good in terms of human excellence or perfection. It is possible to be an egalitarian perfectionist — someone who believes that the good of each person merits equal concern,

seems odd, however, to think that the reasons it is wrong to make public decisions on the basis of controversial religious doctrines also make it wrong to make public decisions on the basis of controversial economic theories. What is distinctive about religious views is that they are (a) fundamental to moral personality (intimately bound up with conceptions of moral obligation and integrity), and (b) inevitably the subject of reasonable controversy, in a democratic society (not only contested by reasonable people at present). The fact of current reasonable controversy by itself (about the dynamics of supply and demand, say) does not create the moral problem to which public reason is meant to be a solution. It also seems important that the view in question speak in a fairly direct way to a basic spiritual or philosophical question having to do with fundamental values, as suggested by Rawls' initial presentation of the idea of political liberalism.³⁰ The moral concerns about legislation based on a particular conception of salvation do not obviously extend to legislation based on complicated economic theories, any more than to legislation based on the view that novels and plays are better than monster trucks and first-person shooter video games.³¹

In my view, it makes sense to define the scope of excluded, non-public reasons more narrowly than did Rawls. The fact that Rawls' view was more strictly anti-perfectionist than mine does not explain, however, why he denied that public reason involved (moral) compromise. If Rawls had rejected *state* perfectionism for *philosophically* perfectionist reasons, then it would have been clear that his conception of public reason involved no compromise. His exclusion of non-public reasons would in that case have rested on a robust ethical ideal whose own content explained the need to limit appeals to this ideal in public decision-making. But Rawls' view was that perfectionism would be illegitimate even if it were effective on its own terms, not that it could not be effective. The question of why Rawls denied that public reason involves moral com-

but that this good is to be defined in terms of virtue. A strictly aggregative notion of perfectionism is implausible because it seems aesthetic rather than moral. An egalitarian perfectionism, in contrast, would not permit that individuals be sacrificed for social or human beauty.

30 *PL*, 3-4

31 Joseph Chan points out that arguments for neutrality between conceptions of the good life gain in plausibility if such conceptions are treated on a par with religious doctrines (J. Chan, 'Legitimacy, Unanimity, and Perfectionism,' *Philosophy and Public Affairs*, 10). But Chan argues that, unlike views about the existence of God and the nature of the soul, many perfectionist judgments about what makes a good life are not inevitably reasonably contestable.

promise is therefore still open, and my criticisms of Rawls's reasons for denying that public reason involves compromise will not depend on my non-Rawlsian view that some perfectionist considerations should count as legitimate public reasons.³²

II Rawls: Public Reason Not a Form of Political Compromise

In *Political Liberalism*, Rawls discussed the appropriateness of the term compromise in two respects: as a description of the method by which we develop a political conception of justice; and as a description of the manner in which citizens accept this conception. His basic position seems to have been that compromise is the wrong method because it leads to the acceptance of a political conception of justice *as* a compromise. His main and explicit concern was to reject the description of public reason as a *political* compromise, in the ordinary sense of the term 'political.' Rawls insisted that we do not draw up a political conception of justice by striking a compromise between currently existing reason-

32 Another way to make room for some perfectionism within the context of a commitment to the principle of public reason would be to point out that since public reason applies only to fundamental political decisions, perfectionist ideals are legitimate in other areas of policy and public life. In Rawls's view, for example, 'the limits imposed by public reason do not apply to all political questions but only to those involving what we may call 'constitutional essentials' and 'questions of basic justice' (*PL*, 214). Larmore suggests that in virtue of this restriction in scope, Quebec's present system of special support and protection for the French language might be consistent with the principle of public reason (Larmore, 'Public Reason,' 381). As Larmore admits and others have pointed out, however, Rawls did not clearly explain the rationale for this restriction of scope (see, for example, Chan, 'Legitimacy, Unanimity and Perfectionism,' 7-8, note 7). One possibility is that we restrict the scope of public reason to fundamental political decisions as a compromise with perfectionists or as a concession to practicality, but that the principle would ideally, govern all political decision-making. Compromising public reason would not make public reason a compromise, however. Another possibility is that the fundamental value or values that underlie the principle of public reason themselves dictate the restriction in scope to fundamentals. The case for excluding perfectionist reasons from public decision-making certainly seems stronger when the decision involves use of criminal law to prohibit conduct, when it is entrenched by supermajoritarian amendment procedures, and when it has deep and pervasive effects on people's opportunities and aspirations, than it does when the policy in question is enacted by ordinary law and establishes some small local subsidy (though this set of considerations does not support a clear distinction between fundamental and non-fundamental questions). My argument that public reason should be understood as a form of moral compromise is intended to be independent of this issue of the scope of the principle's application.

able comprehensive doctrines.³³ A political conception of justice, he said, is not one that strikes a 'balance of forces' between existing doctrines.³⁴ In developing a scheme of primary goods, for example, we do not proceed by averaging the goods needed by adherents of the various doctrines so as to yield an index 'near to those doctrines' centre of gravity.³⁵ Doing so would make the resulting conception of justice 'political in the wrong way,'³⁶ by making its form and content dependent on 'the existing balance of political power between comprehensive doctrines.'³⁷ In this case, weaker doctrinal groups would be 'driven' to accept the conception of justice as a 'political compromise,'³⁸ giving in to force rather than to reason.

Part of this argument seems right. If a political conception of justice is also to be a moral conception, citizens must accept the political conception regardless of the balance of power (i.e., even if their group is dominant, and even if they expect this dominance to continue indefinitely). Only when there is public acknowledgement of this stability with respect to changes in the balance of power can there be the mutual trust and respect that characterizes what Rawls calls civic friendship.³⁹ It would therefore not be appropriate to define primary goods by averaging what citizens currently need or want to pursue their conceptions of the good, since the resulting scheme would be heavily weighted to majority preferences.

However, the attempt to strike a balance between conceptions of the good need not imply that the outcome of the process is dictated by numbers or resources. In principle, one could define a set of primary goods by averaging over doctrines alone, without taking into account power and popularity. The resulting scheme would be not be freestanding, in Rawls's terminology, but it would not involve merely political compromise — it would not involve weaker groups giving in to stronger.

Of course, the whole idea of public reason is to remove answers to certain controversial spiritual and metaphysical questions from the

33 *PL*, 141-2

34 *PL*, 39

35 *PL*, 39

36 *PL*, 40

37 *PL*, 142

38 *PL*, 171

39 *TJ*, 6

range of reasons considered legitimate for the choice of public policies and social institutions. A conception of justice that was the application of a compromise comprehensive doctrine would be not appropriately political, in Rawls's sense, even if support for such a conception were independent of the balance of forces. If public reason involves compromise, therefore, it is not because public reason involves using a moderate comprehensive doctrine as a guide to public action. If public reason involves compromise, it is because accepting the principle of public reason is itself a compromise. Even if the process through which the contents of public reason are worked out does not involve averaging or give-and-take between the existing set of comprehensive doctrines, accepting the principle of public reason might be something we do reluctantly, only because other people unfortunately but not unreasonably hold very different philosophical views. Therefore, Rawls's reasons for rejecting *political* compromise do not rule out a description of public reason as a form of *moral* compromise, at least as far as the manner in which citizens accept or endorse the principle of public reason is concerned.⁴⁰

III Moral Compromise

But what exactly is a moral compromise? Building on the work of others, the following table sketches a useful sense of the term.⁴¹

40 Arnsperger and Picavet suggest that Rawls dismisses compromise 'because he equates compromise with mere *modus vivendi*' (C. Arnsperger and E.B. Picavet, 'More than Modus Vivendi, Less than Overlapping Consensus: Towards a Political Theory of Social Compromise,' *Social Science Information* 43 [2004], 177). While it is true that Rawls's main concern is to avoid the misinterpretation of public reason as a mere *modus vivendi*, I do not think it true that Rawls simply disregarded the possibility of moral compromise. In the fourth section of the paper, I articulate (and criticize) what I take to be Rawls's deeper reasons for rejecting the characterization of public reason as a form of moral compromise.

41 M. Golding, 'The Nature of Compromise: A Preliminary Inquiry,' *Compromise in Ethics, Law, and Politics*, J. Pennock and J. Chapman, eds. (New York: New York University Press 1979), 3-25; A. Kuflik, 'Morality and Compromise,' *Compromise in Ethics, Law, and Politics*, 38-65; T. Benditt, 'Compromising Interests and Principles,' *Compromise in Ethics, Law, and Politics*, 26-37; Benjamin, *Splitting the difference*; D. Leydet, 'Pluralisme et compromis,' *Les raisons du compromis*, 81-106 (Toulouse: Octarès 2004).

Table 1 — Moral Compromise		
	<i>Conflict</i>	<i>Resolution</i>
'Compromise'	1. Conflict between party X advocating policy A and party Y advocating policy C.	2. X and Y accept some B, intermediate between A and C. 3. Neither party accepts B purely for strategic, balance-of-power reasons. 4. Neither party changes its beliefs so as to come to think B superior to A/C; each party's support for B remains conditional on the other party continuing to advocate A/C.
'Moral'	5. X supports A and Y supports C for what each takes to be good moral reasons, that is to say based on what it takes to be true principles, ideals, or beliefs, rather than personal wants, desires, or interests.	6. X and Y accept the resolution B based on what each takes to be the balance of moral reasons.

For there to be compromise, there has to be conflict — in the simplest case between party X, advocating policy A, and party Y, advocating policy C.⁴² There must also be a resolution of the conflict in which at least one of the parties moves away from its ideal preference (A or C) to some intermediate policy B. For this resolution to constitute a compromise in the full sense, it must not be the case that the two sides accept B for purely strategic reasons, given the existing configuration of forces or fear of future changes in this configuration. Instead, there has to be a desire to

42 If we take 'policy' in the broadest sense, the conflict could be over any public decision, including everything from concrete policies or public actions to questions of decision-making procedure to the question of what reasons should count as public. To illustrate the idea of moral compromise, I will focus on concrete policies, such as those surrounding marriage. The question will then be whether the idea of moral compromise so described also applies to the more abstract policy of restricting the set of legitimate reasons for public decisions.

come to terms that are mutually acceptable independent of the relative strength of the parties. Otherwise we would not have compromise but pure bargaining. Conversely, for acceptance of B to constitute a compromise, it must not be the case that the two sides simply change their positions. Each party must think that A or C would still be the best policy, were it not for the fact that the two parties disagree about what to do and need to reach agreement. Otherwise, we would not have compromise but learning or rational synthesis. Compromise is thus intermediate between (a) acceptance of a bargain based on purely strategic considerations, and (b) convergence via deliberation on a common understanding of the truth.⁴³

For a compromise to constitute a *moral* compromise, both the conflict and the resolution have to be moral, for both parties, while still being a compromise. We can say that a conflict is moral if each party advocates its position on the basis of sincere moral beliefs, as a conception of what is good or right as such or for all, rather than simply on the basis of self-interest. For the resolution of such a conflict to be moral, each side must take itself to be morally justified in accepting the intermediate policy. The puzzle, in the case of moral conflict, is how one or both parties could reasonably believe that the preponderance of moral reasons requires them to accept an intermediate policy, without the resulting agreement being either purely strategic or fully rational.

Consider, for example, the conflict between liberationists, who advocate abolition of marriage, since it is an institution that privileges monogamous two-person relationships over other forms of intimate personal relationships, and traditionalists, who advocate the preservation of marriage as an institution open only to opposite-sex couples. Suppose that after some process of reflection and discussion, these two groups agree to the policy of same-sex but otherwise traditional marriage — same-sex marriage on the condition that the state be allowed to promote *other* aspects of traditional morality, such as monogamy, by non-coercive, non-criminal means.⁴⁴ One possible explanation for this

43 Here, I follow Dominique Leydet's characterization of compromise (Leydet, 'Pluralisme et compromis,' 84-8).

44 Something like traditionalist same-sex marriage has been advocated by leading American proponents of same-sex marriage (A. Sullivan, 'Here Comes the Groom: A Conservative Case for Same-Sex Marriage,' *The New Republic* [Aug. 28, 1989]; J. Rauch, *Gay Marriage: Why It Is Good for Gays, Good for Straights, and Good for America* [New York: Henry Holt 2004]; see also S. Macedo, 'Sexuality and Liberty: Making Room for Nature and Tradition,' *Sex, Preference, and Family*, D. Estlund and M. Nussbaum, eds. [Oxford: Oxford University Press 1997], 86-101).

agreement would be that the two parties came to realize that they were wrong all along to espouse anything else; they both now see that traditionalist same-sex marriage is truly the best policy. If they accepted traditionalist same-sex marriage for this reason, liberationists and traditionalists would not have compromised, they would simply have changed their minds. Their agreement would not be conditional on the balance of power, and each side would take itself to be morally justified in accepting the intermediate policy, but they would no longer disagree, they would no longer advocate their initial policies in any sense, and hence their agreement on the intermediate policy would not constitute a compromise.

Alternately, we might suppose that each side came to agree on the policy out of strategic necessity, each side compromising its principles today for the sake of the greater realization of those same principles tomorrow. The libertarian might agree to same-sex *marriage* only because of the fear that holding out for the abolition of marriage might lead to the preservation of opposite-sex-only marriage. Similarly, the traditionalist might agree to *same-sex* marriage out of fear that not doing so would lead to the abolition of marriage. If this were the basis for the agreement on the intermediate policy of traditionalist same-sex marriage, each party would take itself to be morally justified in accepting the intermediate policy, without changing its initial position on what is the ideal policy, but only because of what it takes to be the balance of forces and the likely evolution of policy should it refuse to compromise. A less hypothetical example would be that of a supporter of same-sex marriage in Vermont who accepted civil unions out of the belief that insisting on same-sex marriage could have triggered a constitutional amendment banning same-sex marriage, and an opponent of same-sex marriage in Vermont who accepted civil unions out of the fear that rejecting civil unions would have lead the court to impose same-sex marriage. The compromise between these two persons would be morally justified in the eyes of each, but the compromise would be entirely strategic on both sides, and conditional on their beliefs about the balance of forces. Is anything else possible? In cases of moral conflict, is there any alternative to moral learning on the one hand, which is not a form of compromise, and purely strategic compromise, on the other hand, which lacks the mutuality, reciprocity, or common understanding involved in what we ordinarily think of as the spirit of compromise?

In many social contexts, the answer is yes. At work, in our families, in the organizations we belong to, we may find ourselves caught between two values. On the one hand, we believe that a certain course of action is right. On the other hand, we are committed to resolving at least some disagreements in a manner that is respectful of the sincere and not unreasonable views of the other members of the group. Martin Benjamin

gives the example of a conflict between nurses and doctors about how aggressively to treat a terminally ill patient, the debate being whether to preserve life as long as possible, or to let the patient die in peace. Benjamin argues that compromising in cases of moral conflict may *preserve* moral integrity, when we find ourselves caught between our first-order policy belief and our second-order commitment to an ongoing cooperative relationship, given recognition that deep reasonable moral disagreement exists.⁴⁵

Benjamin also argues that in many situations requiring a joint decision on policy, there are a number of genuine values at stake, even apart from any commitment to the group or respect for its members. In the process of arguing with other members of the group, I may come to appreciate more vividly the moral complexity of the situation giving rise to the conflict. In the case of the treatment policy for a terminally ill patient, for example, I may come to see both the patient's autonomy and the intrinsic value of life as genuine values, even if I still side with the patient's claim to autonomy. In these circumstances, Benjamin argues, compromise preserves integrity because it respects the complexity of our first-order moral commitments.⁴⁶ If each party were to *fully* internalize the conflict, however, we would have a case of moral learning or rational synthesis rather than compromise. Each of the rival principles or values would be compromised, but the parties would not be compromising with each other, because they would each think that the intermediate policy best resolves the real conflict of values they both perceive. In order for an agreement on an intermediate policy to constitute a moral compromise, therefore, both parties must remain convinced that the best policy (abstracting from the fact of disagreement and the need for a common policy) is not the policy agreed to (which is only best given these circumstances).⁴⁷

45 Benjamin, *Splitting the Difference*, 34

46 *Ibid.*, 34; see also M. Benjamin, 'Compromise and Integrity in Ethics,' *The Practice and Theory of Ethics*, T. Kent and M. Gentry, eds. (Indianapolis: University of Indianapolis Press 1995), 31.

47 This distinction between 'the best policy' and 'the best policy in the circumstances' may seem to introduce an arbitrary asymmetry. For what we call 'the best policy' is only best outside of the conditions in which the compromise policy is best. The reason we call one 'best' and the other only 'best in the circumstances' is that we prefer to be in the circumstances that allow for the 'best' policy, rather than in the circumstances that require the compromise policy, which is only best under these unfortunate conditions.

In the case at hand, the ideal ‘policies’ A and C are conceptions of justice derived from specific comprehensive doctrines, the compromise ‘policy’ B is acceptance of the principle of public reason, and the circumstance in virtue of which we think it best to accept B is the fact of reasonable pluralism (which I will label RP), the expectation that reasonable persons will continue to be divided by conflicting religious, philosophical and moral doctrines, barring the oppressive use of state power. Construing public reason as a form of moral compromise would mean taking public reason to be morally optimal but only given the morally non-optimal fact of RP.

It may still seem unclear how there can be compromise, if each party supports the intermediate policy (i.e. accepts the principle of public reason) on principled moral grounds. When we compromise our other moral views for the sake of respect-for-persons, for example, are we not simply accepting that one moral consideration overrides another? It may be unfortunate that we cannot fully realize all of our values at once, but if we think it *right* that one should trump another, in the circumstances, how can it be said that we are still compromising with the other parties involved?

The answer is that there is something special about the situation that generates the conflict of values, something distinctive about the conditions that unfortunately require accepting what under happier circumstances would not be the optimal policy. Compare the manner in which one might accept that respect-for-persons trumps one’s wish to promote the correct understanding of sexuality (via the education system, for example), to the manner in which one might accept that the autonomy and equality of the woman trumps the life-potential of the fetus. In both cases, let us assume, we consider it unfortunate that we have to choose between the values at stake. But in the first case, the reason we have to choose is that reasonable disagreement about sex, sin, and salvation is inevitable, whereas in the second case the reason we have to choose is that the fetus grows within the woman. The principle of respect for persons overrides other values because reasonable people will, unfortunately, remain deeply divided about these other values. Even if we recognize that it is right that we should refrain from designing policies and institutions on the basis of our views about sex, sin, and salvation, it is right only because other people will unfortunately but not unreasonably persist in their false views — and they of course think the same of us. In accepting the principle of public reason, we therefore seem to be compromising with each other. In the abortion case, in contrast, the conflict of values arises independently of any disagreement. In ranking one value over another, we make the best possible choice given the (unfortunate) facts of nature — we are not compromising with nature!

To be sure, accepting respect for persons is no compromise; even if RP were not the case, we would think it wrong to treat other people as means only. But the only reason public reason follows from the principle of respect for persons is that RP obtains. The fact that public reason rests on the idea of respect for persons shows that our assent is principled rather than merely strategic; the fact that RP is an unfortunate condition would show that our assent is a compromise, though a moral one.

IV Rawls: Public Reason not a Form of Moral Compromise

Although Rawls did not explicitly address the question of whether public reason should be understood as a form of moral compromise, he did suggest reasons for resisting this characterization. Not surprisingly, given the analysis in the previous section, the central issue has to do with the attitude citizens have toward the background conditions in view of which it is necessary to agree on an intermediate policy: reasonable pluralism.

The proper method for developing a political conception of justice, Rawls argued, is to start from general ideals implicit in democratic institutions and political culture — ideals such as the freedom and equality of citizens — so that the resulting conception can be explained and defended without reference to any particular comprehensive doctrine, and can therefore become the object of an overlapping consensus of reasonable comprehensive doctrines. In such a consensus, Rawls said, the acceptance of the political conception of justice ‘is not a compromise between those holding different views, but rests on the totality of reasons specified within the comprehensive doctrine affirmed by each citizen.’⁴⁸ Each comprehensive doctrine’s all-things-considered endorsement of the political conception depends on certain conditions, he admitted, such as the fact of reasonable pluralism. But Rawls maintained that adjusting one’s views of justice in basic institutions to the fact of reasonable pluralism ‘is not ... giving in to brute force or unreason,’ but ‘adjusting to the general conditions of any normal and human social world.’⁴⁹ In the cases Benjamin discusses, each party thinks it unfortunate that others continue to disagree with what it takes to be the best course of action. In

48 *PL*, 170-1

49 *PL*, 170-1

contrast, Rawls insisted that the fact of ongoing reasonable disagreement 'is not an unfortunate condition of human life.'⁵⁰ If reasonable pluralism is not an unfortunate condition, then in supporting a political conception of justice based on the ideal of public reason, we are not compromising with anyone else and settling, because of their opposition, for less than what would be ideal. Instead, we are just doing what is right given the normal and not regrettable facts of human existence, given free institutions. The question, then, is whether we can be reconciled to RP — reconciled, that is, to the fact that, barring the oppressive use of state power, a democratic society will be characterized by plurality of conflicting but reasonable comprehensive doctrines.⁵¹

Reconciliation to diversity in conceptions of the good life need not be problematic, depending on how one specifies the idea of a 'conception of the good life.' If one thinks that there are many different good lives, concretely specified, differences in these life plans may not involve disagreement but complementarity. My commitment to a family life precludes me leading a life of travel, but it doesn't preclude me vicariously enjoying your voyages, just as you can enjoy seeing snapshots of my children. Diversity of chosen modes of life is often mutually beneficial, given that it is not possible to lead all good lives at once. In contrast, diversity in conceptions of what is good as such, for everyone, or sacred, is more likely to involve disagreement without complementarity. My commitment to the intrinsic value of natural ecosystems precludes my enjoying your passion for ATV-riding, waterskiing, and other motorized, environmentally destructive pastimes, and you may not derive any satisfaction from wilderness simply being out there, unused.

Not all disagreement is unfortunate, of course. Even a society united by an ideal of the common good could harbour disagreement about its specification, in particular circumstances, and about the appropriate means for achieving it. Life would be boring, and intellectual progress

50 *PL*, 37, 144

51 The fact of reasonable pluralism is not, to be clear, the hopeful view that only reasonable doctrines will persist in an approximately just society. It is, rather, the apparently more pessimistic view that even fully reasonable people will espouse a wide range of different and conflicting, though reasonable, doctrines, in such a society. Rawls speaks for example, of 'the fact of profound and irreconcilable differences in citizens' reasonable comprehensive religious and philosophical conceptions of the world, and in their views of the moral and aesthetic values to be sought in human life' (J. Rawls, *Justice as Fairness: A Restatement* [Cambridge, MA: Harvard University Press 2001], 3).

impossible, if there were never any disagreement of this kind.⁵² Reasonable pluralism involves disagreement about basic values and principles, however, not just disagreements about the specification or implementation of shared ideals, and the claim is that some disagreements will inevitably persist, even between fully reasonable persons, not just that reasonable people will always disagree about something. How could an atheist Marxist not think it unfortunate that belief in God will persist among otherwise intelligent, well-meaning individuals? How could someone with orthodox Catholic beliefs not think it unfortunate that many people have lost touch not just with the true faith but with religion altogether? How is it possible for a defender of gay liberation not to think it unfortunate that conservative Christians, Jews, Muslims, Sikhs, and Hindus believe that homosexual conduct is sinful? Think also of an ethical vegetarian and animal rights activist faced with a leather-wearing meat-eater. How are we to reconcile ourselves not just to the current existence but to the permanent persistence of such disagreements, between reasonable people? We could pick sides, in each of these disputes, and declare the other unreasonable. Yet if the circle of the reasonable is drawn too narrowly, the distinctiveness of political liberalism relative to other forms of liberalism will be lost, and those claiming to be political liberals will be vulnerable to the charge of simply waging the battle for a comprehensive secular, liberal or liberationist philosophy of life dishonestly, behind the mask of a spurious higher-order impartiality.

To understand how Rawls hoped we could be reconciled to RP, we need to understand his use of the Hegelian notion of reconciliation. Reconciliation was one of the roles Hegel and Rawls attributed to political philosophy. Philosophy could 'calm our frustration and rage against our society and its history,' Rawls explained, 'by showing us the way in which its institutions, when properly understood from a philosophical point of view, are rational.'⁵³ To be reconciled to society, he insisted, is to 'accept and affirm our social world positively, not merely to be resigned to it.'⁵⁴ Reconciliation thus involves coming to view positively something previously viewed as unfortunate — one wouldn't change it

52 A. Buchanan, 'Assessing the Communitarian Critique of Liberalism,' *Ethics* 99 (1989), 877

53 *Justice as Fairness*, 3. The idea of reconciling us to our institutions sounds deeply conservative, but this impression is misleading. What we are supposed to be reconciled to is our 'social world,' by which Rawls means the background conditions that set the limits of the possible, not the specific characteristics of the institutions that exist today (J. Rawls, *The Law of Peoples*, 124).

54 J. Rawls, *Justice as Fairness*, 3

even if one could — not merely accepting the fact that one cannot change an unfortunate situation.⁵⁵ Reasonable pluralism is ‘not always easy to accept,’ Rawls recognized.⁵⁶ It may even seem like a lamentable historical fate,⁵⁷ since it makes it impossible for a democratic society to be a true community (a body of persons united in affirming the same comprehensive doctrine).⁵⁸ Nonetheless, if political philosophy could show us ‘the reason and the political good and benefits of [RP],’⁵⁹ that would ‘reconcile us in part to our condition.’⁶⁰ Reconciliation to RP would require us to show that ‘the existence of reasonable pluralism allows a society of greater political justice and liberty.’⁶¹

55 Michael Hardimon makes this point by contrasting reconciliation with consolation. Both are responses to prior disappointment and both involve a form of acceptance, rather than just passivity in face of the impossibility of change, but consolation involves continuing disappointment. ‘Your spouse dies but you find consolation in the continuing existence of your children. Their existence does not negate the loss, but it does console you.... If, however, you are truly reconciled ... you have no need for consolation, because, in being reconciled, you have fully accepted the situation. There is no thought: ‘Things would be better were they otherwise’ (M. Hardimon, ‘The Project of Reconciliation: Hegel’s Social Philosophy’ *Philosophy and Public Affairs* 21 [1992], 174). Hardimon also insists, however (as explained below), that Hegelian reconciliation does not involve wishing away or ignoring conflict and other problematic features of our social world, such as divorce, poverty, and war (175). Rather, it involves recognizing how the possibility of certain kinds of imperfection is essential to the realization of specific goods.

56 Rawls, *Justice as Fairness*, 3

57 *Ibid.*, 5

58 *Ibid.*, 3

59 *Ibid.*, 4

60 *Ibid.*, 5

61 J. Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press 1999), 12. The passage from which this quote is taken is not entirely clear. ‘Though we can imagine what we sometimes think would be a happier world — one in which everyone, or all peoples, have the same faith that we do — that is not the question, excluded as it is by the nature and culture of free institutions. To show that reasonable pluralism is not to be regretted, we must show that, given the socially feasible alternatives, the existence of reasonable pluralism allows a society of greater political justice and liberty. To argue this cogently would be to reconcile us to our contemporary political and social condition.’ In the first sentence, Rawls seems to say that questions about community or other goods are not relevant to the issue of reconciliation. Yet to be reconciled to something means to recognize the good it involves, such that one would not change it if one could. By itself, recognizing the impossibility of changing an unfortunate condition (without oppressive use of state

Reconciliation involves positive affirmation rather than merely resignation, but not unqualified affirmation. One way of coming to accept a problematic social condition is to see that one's initial negative attitude toward the condition was simply mistaken, and that one was wrong all along to view the condition in question as unfortunate. If, for example, one were to come to think that community is not in fact valuable, even absent RP, or that RP makes possible a richer kind of community than is possible without RP, one's attitude toward RP might be one of unqualified affirmation.⁶² However, Rawls did not deny that community is valuable, *other things equal*, nor did he claim that RP promotes community. His view seems to have been (and it is more plausible to think), that RP has real costs, in terms of the value of community, costs which are outweighed by greater justice and liberty, but which are nonetheless real. The view that greater justice outweighs the costs of RP is bolstered by Rawls' claim that 'the great evils of human history — unjust war, oppression, religious persecution, slavery and the rest — result from political injustice,' such that 'once political injustice has been eliminated... these great evils will eventually disappear.'⁶³ Once we see that the great evils of human life are forms of or flow from political injustice, and that RP allows for greater justice than would be the case without RP, then even if RP has costs in terms of community or other goods, we can nonetheless be reconciled to RP — affirming it on the whole, but not without qualification.

This account of how we can be reconciled to RP is plausible but somewhat puzzling. For one thing, Rawls doesn't actually try to demonstrate that RP allows greater justice, but only that justice is possible given RP.⁶⁴ If so, RP is not a disaster, but it might still be regrettable.

power, that is) leads only to resignation. To show that reasonable pluralism allows greater justice and liberty we have to compare what is possible given the fact of reasonable pluralism with what would be possible if major differences in comprehensive doctrines were *not* inevitable between reasonable people.

62 This path to reconciliation amounts to simply denying that the world contains defects and imperfections. Hegel's view, again according to Hardimon, was that true reconciliation could not be achieved in this manner, by putting on rose-coloured glasses (Hardimon, 'The Project of Reconciliation,' 175), and believing the world to be in a state of perfect harmony (178). Reconciliation instead required an understanding of how the defects and imperfections that do exist are necessary for the realization of greater goods.

63 *Ibid.*, 126

64 'Our hope for the future rests on the belief that the possibilities of our social world allow a reasonably just constitutional democratic society living as a member of a

Furthermore, it would seem, offhand, that RP would make it *less* rather than more likely that justice would be fully realized. Scarce resources and limited benevolence create conflict over the benefits and burdens of social cooperation, leaving us in the circumstances of justice. Adding the inevitability of moral disagreement between reasonable people will surely not make it easier to attain social justice. Even if we take partiality and pluralism as a package, they do not generate *greater* justice. Without partiality and pluralism, there would be no need for the sense of justice, nor principles of justice — we would be outside the circumstances of justice. The advent of partiality and pluralism give rise to the possibility of both justice and injustice.

To get a better handle on the question of whether we can reconcile ourselves to RP, it will help to consider the example of divorce.⁶⁵ Even people who think that many divorced couples would have done better not to divorce can accept the permissibility of divorce, not just because some couples are better off divorced, but because for all couples, the legal possibility of divorce is integral to realizing the highest ideal of marriage. If marriage is not simply about transmitting property and cementing social alliances, but is instead about the real emotional and spiritual union of two persons, divorce must be legally permissible. For only if divorce is permitted is the continuing union of two persons voluntary; only if divorce is permitted does their continuing union represent a special personal commitment, instead of just resignation to an externally imposed law and an ill-considered decision of years ago. Reconciliation to the fact of divorce therefore involves coming to see that the possibility of divorce is necessary for realizing the true good of marriage. The possibility of divorce is necessary for true marriage, however, only because human feelings are contingent (subject to change independent of the will). 'If only human emotions were more stable,' one might be tempted to say, 'we could have the good of marriage without the possibility of divorce.' However, if one could simply decide to love in perpetuity, without risk of diminution in our affections, then a lifelong commitment to another person would not have the special significance and importance it has. Part of what makes marital commitment special, assuming it is special, is that one cannot take love for granted. No matter

reasonably just Society of Peoples. And essential step to being reconciled to our social world is to see that such a Society of Peoples is indeed possible' (Rawls, *The Law of Peoples*, 124). The possibility of a just society is only a step towards reconciliation.

65 The following discussion builds on Hardimon's discussion of Hegel (Hardimon, 'The Project of Reconciliation' 176-7).

how strongly one feels now, no matter how happy the relationship at present, there is no guarantee that it will remain that way in the future. Relationships require attention, work and periodic renewal, for this reason. The variability of sentiment independent of the will is problematic, therefore, but not unfortunate on the whole. Marital commitment would not be a special achievement and marital intimacy would not have the same importance, if it was impossible ever to fall out of love. Without the contingency of feelings, marriage would not be the good that it is.

To be fully reconciled with RP would require that we adopt an attitude to the inevitability of reasonable moral disagreement analogous to the attitude we adopt toward the changeability of human sentiment. Without pluralism, there would be no problem of social conflict for principles of justice to solve. Perhaps we might be happier, in some sense, outside the circumstances of justice, in Socrates's 'healthy' city, with its effortless harmony of ends. But the absence of injustice, in this case, would not be an achievement, and we could not claim the dignity of reasonable and rational agents — agents who disagree, but who are nonetheless able to regulate their conduct by mutually acceptable principles. Perhaps we could not see ourselves as free beings, able to determine the conditions of our own interaction, if there were no disagreement to make us aware of the existence of alternatives and different points of view. The value of justice, then, would not simply be the absence of injustice. The absence of injustice in the circumstances that make injustice possible represents an achievement, and gives a dignity to the persons who are able to regulate their conduct according to principles of justice, a dignity they would not have, were principles of justice unnecessary. It is in this sense, perhaps, that RP allows for greater justice and liberty.

If this is the reasoning that lies behind Rawls's hopes for reconciliation to reasonable pluralism, it seems to me only partly successful. The problem with this account of reconciliation to RP is that only *some* disagreement is necessary for us to recognize our freedom as reasonable and rational agents, but the domain of non-temporary reasonable disagreement extends beyond this range. Intelligent people, fully able and willing to reason with others sincerely about the issues at stake, can reason their way — not just temporarily, through inattention, lack of information, or other momentary shortcomings, but as a matter of stable conviction — to conclusions that we find (in various, conflicting ways) fundamentally mistaken, and which we cannot see as necessary to any greater good. From my point of view, orthodox Catholic views about sexuality falls in this intermediate zone of reasonable but unfortunate disagreement. I do not think that the Catholic doctrine of chastity are unreasonable, in the sense that belief in such doctrines would cast doubt on the intellectual capacities, willingness to reason, or moral seriousness

of people subscribing to such notions, nor in the sense that such beliefs make it impossible for these people to participate in a system of fair cooperation.⁶⁶ Belief in Catholic doctrine need not be motivated by hate, fear, or the naked, malicious or selfish desire to oppress a minority group.⁶⁷ Nonetheless, I think it unfortunate that orthodox Catholics believe that homosexuality a disordered condition, and homosexual conduct sinful, and all the more unfortunate if we have to expect such beliefs to persist. I do not see how the existence of such views is necessary for the dignity that justice confers, nor for any other good — and I presume that orthodox Catholics must think the same of my views.

V Compromise on Reasons and Compromise on Policies

If we cannot be fully reconciled to RP, then accepting the principle of public reason will seem to be a moral compromise, at least in the abstract. Conservatives often view liberal professions of higher-order impartiality with suspicion, however, when the claim to a ‘political not metaphysical’ conception of justice is accompanied by uncompromisingly liberal

66 Some of the reasons for thinking Catholic doctrine not unreasonable is that it condemns a whole range of sexual activity as sinful, not just homosexual conduct, and that it does so on the basis of a complex set of views about personal integrity and openness to the divine gift of the potential to bring a new life into the world. Catholic doctrine also claims to be concerned for the true good of all, gays and lesbians included, and criticizes expressions of malice and hate directed towards gays and lesbians. ‘Homosexual persons, as human persons, have the same rights as all persons including the right of not being treated in a manner which offends their personal dignity’ (1986 ‘Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons,’ available at <http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20040731_collaboration_en.html>).

67 This is not to say that every official pronouncement of the Congregation for the Doctrine of the Faith is reasonable. The Vatican’s ‘Considerations Regarding Proposals To Give Legal Recognition To Unions Between Homosexual Persons’ states that ‘[t]here are *absolutely* no grounds for considering homosexual unions to be in any way similar or *even remotely analogous* to God’s plan for marriage and family’ (emphasis added; available at <http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html>). Even if one grants the truth of Catholic doctrine, it seems to me to display an almost wilful moral blindness to suggest that *no* homosexual relationship bears *any* similarity to a true marriage in *any* of the goods it realizes.

conclusions about policy.⁶⁸ Does public reason really involve moral compromise, such critics will protest, if the restriction of the grounds of public decision to putatively public reasons yields all of the same policy conclusions liberals previously endorsed on deeper philosophical grounds? Being liberal, the conservative will object, means eating one's cake and having it too — only conservatives find that their policy positions must change, when they restrict themselves to making public decisions on the limited set of reasons liberals deem public.

Although it is understandable that conservatives should be suspicious, there is no reason to think that acceptance of the principle of public reason should imply parity of concession at the level of policy. It all depends on what positions the two sides initially espouse. Because the left is only arguing that homosexuality is *not* sinful, not that heterosexuality *is* sinful, politically bracketing the question of sin and sexual orientation will be more costly for conservatives, relative to the status quo, but there is no reason to take the status quo as a normative baseline. On the other hand, it is not obvious that religious conservatives are the only ones whose policy preferences would have to change if they accepted the principle of public reason. Marxists, deep ecologists, feminists, gay liberationists and even some liberals might find the limits of public reason binding, compared to the policies they initially advocate based on the full set of their philosophical and spiritual views. In this section, I will briefly consider the question of whether the set of policies that is optimal on comprehensive liberal grounds is identical with the set that is optimal on a reasonable conception of the restricted set of public grounds.

In the case of same-sex marriage, I think the answer is arguably 'yes.' Although it is true that one of the reasons people may support same-sex marriage is to win a cultural battle about the spiritual and ethical significance of sexual orientation, there are good arguments for same-sex marriage that do not depend on the view that homo and heterosexuality are fully spiritually and ethically equivalent. People of many spiritual persuasions will find it unfair if convicted felons are allowed to marry,

68 For example, Robert George suggests that public reason is a doctrine promoted by comprehensive liberals to advance their political ends without having to justify them philosophically. 'If we observe that whenever the doctrine of public reason is deployed, the result is that 'we' (i.e. those of us who dissent from the prevailing liberal orthodoxy on questions such as abortion, euthanasia, homosexuality, and human cloning) are declared to have lost even before the argument begins, perhaps our suspicion is not entirely unwarranted' (R. George and C. Wolfe, 'Natural Law and Liberal Public Reason,' *American Journal of Jurisprudence* 42 [1997], 32).

but not gays and lesbians.⁶⁹ So long as the marriage is a privileged status reserved for opposite-sex couples, gays and lesbians are being treated unequally, unless it can be shown that there is something distinctive about the situation of opposite sex couples that requires this special treatment and that requires the exclusion of same-sex couples from the institution, something apart from the *denial* of full equivalence, which is no more legitimate than the collective assertion of spiritual and ethical equivalence.

In the domain of education, however, the comprehensive and political views of liberalism are more likely to come apart. Ideally, we should teach children the *truth* about sex, sexuality, and sexual orientation, one would think, just as we teach the truth about physics and economics. For the comprehensive liberal, this would mean teaching that homosexuality is a perfectly normal and morally acceptable form of human sexuality, to be not only respected but celebrated on equal terms with heterosexuality. Such a curriculum would repudiate official Catholic and other conservative religious doctrine. In contrast, the principle of public reason would suggest that children should be taught that all citizens, gay or straight, have the same civic rights, without going on to champion the idea that there is or is not full ethical and spiritual equivalency between homo and heterosexuality. True, public grounds may require that we take a stand on questions about sin and sexual orientation, even if views about sin and sexual orientation are not in themselves public. Taking a stand might be unavoidable, in some contexts, given the need to teach children that all citizens must be treated as equals in public life, regardless of sexual orientation. In kindergarten, for example, it seems plausible that children who are exposed only to stories of opposite-sex parents will conclude that there is something wrong with same-sex parents and

69 This is the intuition behind one of the main constitutional arguments for same-sex marriage in the United States, the view that marriage is one of the fundamental rights not enumerated but still protected by the Constitution: E. Gerstman, *Same-Sex Marriage and the Constitution* (Cambridge: Cambridge University Press 2004). Of course, gays, and lesbians are permitted by law to marry — they simply cannot marry someone of the same sex, no more than can heterosexuals marry someone of the same sex. Clearly, however, sexual orientation is, for most people, unchosen and virtually impossible to change. Many gays and lesbians therefore cannot honestly marry someone of the opposite sex, which gives the comparison with the rights of felons its force. I do not claim that this argument is convincing as a constitutional argument, but rather that it is a powerful moral argument. If the right to marry is so important that one can't lose it, no matter what crimes one commits, then how can we define marriage so that for some citizens the right to marry is virtually empty (since these citizens are allowed to marry only people they could not possibly want to marry)?

with homosexuals in general, while children exposed to stories with both opposite and same-sex parents will conclude that there is no ethical difference at all between the two orientations. Yet teaching public non-discrimination would require exposing children to stories about both opposite and same-sex parents, even if doing so had the consequence of also undermining the conservative religious teachings of their parents about sexual orientation. For primary school, then, political and comprehensive liberalism converge in their policy recommendations. At higher grades, however, the two forms of liberalism will diverge, as it becomes possible to treat questions about sexual orientation pluralistically, in the context of a debate between rival moral positions, and as it becomes possible for children to distinguish public non-discrimination from personal ethical approval.⁷⁰ Thus it seems plausible to think that whether one *brackets* the question of sin and sexual orientation or *denies* conservative religious views would (logically) make a difference to the policies one ends up supporting. One could make a similar arguments, I think, for questions about what the limits of permissible curricula should be for private schools, whether the state should accord charitable tax status to schools teaching the view that homosexual conduct is sinful, and the proper scope of hate speech laws. There is reason to believe, therefore, that liberals who accept the principle of public reason do not get to eat their cake and have it too.

All of this depends, of course, on the assumption that the view that homosexuality is sinful is a genuine, at least not *unreasonable* moral claim, so that it falls within the scope of public reason's neutrality. That is to say, I am assuming that people can disagree about whether homosexual conduct is sinful, as a matter of permanent conviction, despite ongoing deliberation, and debate, without this belief putting their reasonableness into question. And I am assuming that people can believe that homosexual conduct is sinful, but still be willing to live according to terms of cooperation that all can reasonably accept as fair, given our different moral views and our need to share common institutions. If instead we were to judge that Catholic doctrine is merely a rationalization of the malicious desire to subordinate one group to another, we

70 Such reasoning could be used to support the Supreme Court of Canada's 2002 decision in the Surrey, BC, book-banning case, *Chamberlain v. Surrey School District No. 36*, 4 S.C.R. 710, although the Court did not distinguish between (a) putting the goal of teaching non-discrimination and civic equality above parents' ability to guide the moral education of their children, given the inevitable conflict between the two concerns at the level of primary school, and (b) teaching children (of all ages) that parents with conservative religious views are wrong about sin and sexual orientation.

would have to treat Catholicism as we treat doctrines of white supremacy, anti-Semitism, and such.⁷¹ Our public stance toward such views is opposition, not neutrality, since we take them to be the product of prejudice and hate, rather than the product of reason, and incompatible with justice. We actively discourage such views in our education system, and we withdraw all public support for organizations advancing such views. In the US, the IRS took away the charitable tax status of private Christian colleges in the South, on the grounds that they were being used to evade desegregation. Should we do the same with private Christian, Jewish, or Muslim schools that teach that homosexuality is sinful? I think not, at least not for all such religious doctrines, though it is admittedly not easy to justify the distinctions one must then draw, between race and sexual orientation, and between different religious doctrines. In any case, here is the limit of the *moral* compromise involved in public reason, according to politically liberal view I am articulating: acceptance of civic equality, meaning equal treatment for all citizens in public institutions and public life, regardless of sexual orientation, but without any further public opposition to or denial of conservative religious views on sexual orientation.

VI Conclusion

Supposing the argument thus far to have been persuasive, one might still object that public reason has been shown to involve moral compromise only in a limited way. The contents of public reason are not specified by compromise, but by independent argument, argument meant to be acceptable to adherents of any reasonable comprehensive doctrine, not just to adherents of those doctrines currently in existence. All the paper has shown is that the principle of public reason is accepted as a compromise, conditional on the fact of reasonable pluralism, a fact to which we cannot be fully reconciled. Yet this compromise is not a compromise with any specific persons or groups, but a response to the general inevitability of religious and philosophical disagreement, between reasonable persons. We may originally accept public reason as the result of a specific conflict, but if that conflict disappears, there would be another to take its

71 Such a response seems appropriate, for example, with respect to the fanatical, hateful views of the Reverend Fred Phelps of the Westboro Baptist Church of Kansas. Phelps' views are clearly unreasonable, both in the theoretical sense of not being a possible conclusion of undistorted human reason, and in the practical sense of not being a possible component of a fair and stable system of social cooperation.

place, another disagreement that, when conjoined with the principle of respect for persons, would also command our commitment to public reason. One might fairly ask, therefore, whether it still makes sense to speak of public reason as a form of compromise, if no one is compromising specifically with anyone else, in accepting the principle.

It is one thing to accept a principle in theory, however, and another to respect the principle in practice, when it comes into conflict with competing values and ideals. In any specific instance in which the restriction of the grounds of public decision to public reasons implies a policy that is different than the policy one would have advocated, absent the fact of inevitable reasonable disagreement, one will think that the policy chosen is right only because other people reasonably but unfortunately disagree. In its application, the principle of public reason will still feel very much like a compromise, raising questions about the motivational force and stability of the principle. It is perhaps for this reason that Rawls resisted the line of thinking this paper has pursued. The danger of recognizing an element of compromise at the heart of public reason is that it may weaken people's commitment to the principle. It seems to me, however, that only as a form of moral compromise will the principle of public reason be able to gain wide acceptance among reasonable persons, at least as a principle distinct from (and hence which in some ways limits) comprehensive, philosophical liberalism. For only when understood as involving an element of moral compromise will it be clear how public reason and political liberalism can be anything but a subterfuge through which comprehensive liberals seek to advance their philosophy of life under cover of a sham neutrality.

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