

The Idea of Public Reason¹

A political society, and indeed every reasonable and rational agent, whether it be an individual, or a family or an association, or even a confederation of political societies, has a way of formulating its plans, of putting its ends in an order of priority and of making its decisions accordingly. The way a political society does this is its reason; its ability to do these things is also its reason, though in a different

1. Two lectures on this topic were first given at the University of California at Irvine in late February and early March of 1990 to inaugurate the Melden Lectures, named in honor after A. I. Melden. While much revised, this lecture greatly benefits from discussion then with Sharon Lloyd, Gerassimos Santas, Lawrence Solum, Gary Watson, and Paul Weithman. I have gained much since from many conversations with Samuel Freeman, Peter de Marneffe, and David Estlund.

sense: it is an intellectual and moral power, rooted in the capacities of its human members.

Not all reasons are public reasons, as there are the nonpublic reasons of churches and universities and of many other associations in civil society. In aristocratic and autocratic regimes, when the good of society is considered, this is done not by the public, if it exists at all, but by the rulers, whoever they may be. Public reason is characteristic of a democratic people: it is the reason of its citizens, of those sharing the status of equal citizenship. The subject of their reason is the good of the public: what the political conception of justice requires of society's basic structure of institutions, and of the purposes and ends they are to serve. Public reason, then, is public in three ways: as the reason of citizens as such, it is the reason of the public; its subject is the good of the public and matters of fundamental justice; and its nature and content is public, being given by the ideals and principles expressed by society's conception of political justice, and conducted open to view on that basis.

That public reason should be so understood and honored by citizens is not, of course, a matter of law. As an ideal conception of citizenship for a constitutional democratic regime, it presents how things might be, taking people as a just and well-ordered society would encourage them to be. It describes what is possible and can be, yet may never be, though no less fundamental for that.

§ 1. The Questions and Forums of Public Reason

1. The idea of public reason has been often discussed and has a long history, and in some form it is widely accepted.² My aim

2. The title is suggested by Kant's distinction between public and private reason in "What is Enlightenment?" (1784), although his distinction is different from the one used here. There are other relevant discussions in Kant's works, for example, *Critique of Pure Reason*, B767–97. For a valuable account, see Onora O'Neill, *Constructions of Reason*, (Cambridge: Cambridge University Press, 1989), chap. 2, "The Public Use of Reason." See also her recent essay, "Vindicating Reason," in *The Cambridge*

here is to try to express it in an acceptable way as part of a political conception of justice that is broadly speaking liberal.³

To begin: in a democratic society 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. The first point is that 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. (These are specified in §5.) This means that political values alone are to settle such fundamental questions as: who has the right to vote, or what religions are to be tolerated, or who is to be assured fair equality of opportunity, or to hold property. These and similar questions are the special subject of public reason.

Many if not most political questions do not concern those fundamental matters, for example, much tax legislation and many laws regulating property; statutes protecting the environment and controlling pollution; establishing national parks and preserving wilderness areas and animal and plant species; and laying aside funds for museums and the arts. Of course, sometimes these do involve fundamental matters. A full account of public

Companion to Kant, edited by Paul Guyer (Cambridge: Cambridge University Press, 1992).

3. For some recent views that are roughly speaking liberal though importantly different, see David Lyons, *Exhibit and the Rule of Law* (Cambridge: Cambridge University Press, 1984), with a clear statement, p. 190f.; Ronald Dworkin, "The Forum of Principle," in *A Matter of Principle*, pp. 33-71; Charles Larmore, *Patterns of Moral Complexity* and "Political Liberalism," *Political Theory* 18 (August 1990); Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press, 1991), chap. 14. For a valuable discussion of the idea of deliberative democracy, see Joshua Cohen, "Deliberation and Democratic Legitimacy," in *The Good Polity*, edited by Alan Hamlin (Oxford: Basil Blackwell, 1989). For the bearing of religion on public reason, see Kent Greenawald's *Religious Conviction and Political Choice*, esp. chaps. 8 and 12; Robert Audi, "The Separation of Church and State and the Obligations of Citizenship," *Philosophy and Public Affairs* 18 (Summer 1989) and Paul Weithman's "The Separation of Church and State: Some Questions for Professor Audi," *Philosophy and Public Affairs* 20 (Winter 1991), with Audi's reply in the same issue; and finally, Lawrence Solum's instructive "Faith and Justice," *DePaul Law Review* 39 (Summer 1990).

reason would take up these other questions and explain in more detail than I can here how they differ from constitutional essentials and questions of basic justice and why the restrictions imposed by public reason may not apply to them; or if they do, not in the same way, or so strictly.

Some will ask: why not say that all questions in regard to which citizens exercise their final and coercive political power over one another are subject to public reason? Why would it ever be admissible to go outside its range of political values? To answer: my aim is to consider first the strongest case where the political questions concern the most fundamental matters. If we should not honor the limits of public reason here, it would seem we need not honor them anywhere. Should they hold here, we can then proceed to other cases. Still, I grant that it is usually highly desirable to settle political questions by invoking the values of public reason. Yet this may not always be so.

2. Another feature of public reason is that its limits do not apply to our personal deliberations and reflections about political questions, or to the reasoning about them by members of associations such as churches and universities, all of which is a vital part of the background culture. Plainly, religious, philosophical, and moral considerations of many kinds may here properly play a role. But the ideal of public reason does hold for citizens when they engage in political advocacy in the public forum, and thus for members of political parties and for candidates in their campaigns and for other groups who support them. It holds equally for how citizens are to vote in elections when constitutional essentials and matters of basic justice are at stake. Thus, the ideal of public reason not only governs the public discourse of elections insofar as the issues involve those fundamental questions, but also how citizens are to cast their vote on these questions (§2.4). Otherwise, public discourse runs the risks of being hypocritical: citizens talk before one another one way and vote another.

We must distinguish, however, between how the ideal of public reason applies to citizens and how it applies to various officers

of the government. It applies in official forums and so to legislators when they speak on the floor of parliament, and to the executive in its public acts and pronouncements. It applies also in a special way to the judiciary and above all to a supreme court in a constitutional democracy with judicial review. This is because the justices have to explain and justify their decisions as based on their understanding of the constitution and relevant statutes and precedents. Since acts of the legislative and the executive need not be justified in this way, the court's special role makes it the exemplar of public reason (§6).

§ 2. Public Reason and the Ideal of Democratic Citizenship

1. I now turn to what to many is a basic difficulty with the idea of public reason, one that makes it seem paradoxical. They ask: why should citizens in discussing and voting on the most fundamental political questions honor the limits of public reason? How can it be either reasonable or rational, when basic matters are at stake, for citizens to appeal only to a public conception of justice and not to the whole truth as they see it? Surely, the most fundamental questions should be settled by appealing to the most important truths, yet these may far transcend public reason! I begin by trying to dissolve this paradox and invoke a principle of liberal legitimacy as explained in IV:1.2–3. Recall that this principle is connected with two special features of the political relationship among democratic citizens:

First, it is a relationship of persons within the basic structure of the society into which they are born and in which they normally lead a complete life.

Second, in a democracy political power, which is always coercive power, is the power of the public, that is, of free and equal citizens as a collective body.

As always, we assume that the diversity of reasonable religious, philosophical, and moral doctrines found in democratic

societies is a permanent feature of the public culture and not a mere historical condition soon to pass away.

Granted all this, we ask: when may citizens by their vote properly exercise their coercive political power over one another when fundamental questions are at stake? Or in the light of what principles and ideals must we exercise that power if our doing so is to be justifiable to others as free and equal? To this question political liberalism replies: our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational. This is the liberal principle of legitimacy. And since the exercise of political power itself must be legitimate, the ideal of citizenship imposes a moral, not a legal, duty—the duty of civility—to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason. This duty also involves a willingness to listen to others and a fairness in deciding when accommodations to their views should reasonably be made.⁴

2. Some might say that the limits of public reason apply only in official forums and so only to legislators, say, when they speak on the floor of parliament, or to the executive and the judiciary in their public acts and decisions. If they honor public reason, then citizens are indeed given public reasons for the laws they are to comply with and for the policies society follows. But this does not go far enough.

Democracy involves, as I have said, a political relationship between citizens within the basic structure of the society into which they are born and within which they normally lead a complete life; it implies further an equal share in the coercive political power that citizens exercise over one another by voting

4. On this last, see the instructive discussion by Amy Gutmann and Dennis Thompson in their "Moral Conflict and Political Consensus," *Ethics* 101 (October 1990): 76–86.

and in other ways. As reasonable and rational, and knowing that they affirm a diversity of reasonable religious and philosophical doctrines, they should be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality. Trying to meet this condition is one of the tasks that this ideal of democratic politics asks of us. Understanding how to conduct oneself as a democratic citizen includes understanding an ideal of public reason.

Beyond this, the political values realized by a well-ordered constitutional regime are very great values and not easily overridden and the ideals they express are not to be lightly abandoned. Thus, when the political conception is supported by an overlapping consensus of reasonable doctrines, the paradox of public reason disappears. The union of the duty of civility with the great values of the political yields the ideal of citizens governing themselves in ways that each thinks the others might reasonably be expected to accept; and this ideal in turn is supported by the comprehensive doctrines reasonable persons affirm. Citizens affirm the ideal of public reason, not as a result of political compromise, as in a *modus vivendi*, but from within their own reasonable doctrines.

3. Why the apparent paradox of public reason is no paradox is clearer once we remember that there are familiar cases where we grant that we should not appeal to the whole truth as we see it, even when it might be readily available. Consider how in a criminal case the rules of evidence limit the testimony that can be introduced, all this to insure the accused the basic right of a fair trial. Not only is hearsay evidence excluded but also evidence gained by improper searches and seizures, or by the abuse of defendants upon arrest and failing to inform them of their rights. Nor can defendants be forced to testify in their own defense. Finally, to mention a restriction with a quite different ground, spouses cannot be required to testify against one another, this to protect the great good of family life and to show public respect for the value of bonds of affection.

It may be objected that these examples are quite remote from the limits involved in relying solely on public reason. Remote perhaps but the idea is similar. All these examples are cases where we recognize a duty not to decide in view of the whole truth so as to honor a right or duty, or to advance an ideal good, or both. The examples serve the purpose, as many others would, of showing how it is often perfectly reasonable to forswear the whole truth and this parallels how the alleged paradox of public reason is resolved. What has to be shown is either that honoring the limits of public reason by citizens generally is required by certain basic rights and liberties and their corresponding duties, or else that it advances certain great values, or both. Political liberalism relies on the conjecture that the basic rights and duties and values in question have sufficient weight so that the limits of public reason are justified by the overall assessments of reasonable comprehensive doctrines once those doctrines have adapted to the conception of justice itself.⁵

4. On fundamental political questions the idea of public reason rejects common views of voting as a private and even personal matter. One view is that people may properly vote their preferences and interests, social and economic, not to mention their dislikes and hatreds. Democracy is said to be majority rule and a majority can do as it wishes. Another view, offhand quite different, is that people may vote what they see as right and true as their comprehensive convictions direct without taking into account public reasons.

Yet both views are similar in that neither recognizes the duty of civility and neither respects the limits of public reason in voting on matters of constitutional essentials and questions of basic justice. The first view is guided by our preferences and interests, the second view by what we see as the whole truth. Whereas public reason with its duty of civility gives a view about voting on fundamental questions in some ways reminiscent of Rousseau's *Social Contract*. He saw voting as ideally expressing

5. The process of adaptation was described in IV:6-7.

our opinion as to which of the alternatives best advances the common good.⁶

§ 3. Nonpublic Reasons

1. The nature of public reason will be clearer if we consider the differences between it and nonpublic reasons. First of all, there are many nonpublic reasons and but one public reason. Among the nonpublic reasons are those of associations of all kinds: churches and universities, scientific societies and professional groups. As we have said, to act reasonably and responsibly, corporate bodies, as well as individuals, need a way of reasoning about what is to be done. This way of reasoning is public with respect to their members, but nonpublic with respect to political society and to citizens generally. Nonpublic reasons comprise the many reasons of civil society and belong to what I have called the "background culture," in contrast with the public political culture. These reasons are social, and certainly not private.⁷

Now all ways of reasoning—whether individual, associational, or political—must acknowledge certain common elements: the concept of judgment, principles of inference, and rules of evidence, and much else, otherwise they would not be ways of reasoning but perhaps rhetoric or means of persuasion. We are concerned with reason, not simply with discourse. A way of reasoning, then, must incorporate the fundamental concepts and principles of reason, and include standards of correctness and criteria of justification. A capacity to master these ideas is part of common human reason. However, different procedures and methods are appropriate to different conceptions of themselves

6. *The Social Contract*, bk. IV, chap. II, para. 8.

7. The public vs. nonpublic distinction is not the distinction between public and private. This latter I ignore: there is no such thing as private reason. There is social reason—the many reasons of associations in society which make up the background culture; there is also, let us say, domestic reason—the reason of families as small groups in society—and this contrasts both with public and social reason. As citizens, we participate in all these kinds of reason and have the rights of equal citizens when we do so.

held by individuals and corporate bodies, given the different conditions under which their reasoning is carried out, as well as the different constraints to which their reasoning is subject. These constraints may arise from the necessity to protect certain rights or to achieve certain values.

To illustrate: the rules for weighing evidence in a court of law—the rules relating to hearsay evidence in a criminal trial and requiring that the defendant be shown guilty beyond a reasonable doubt—are suited to the special role of courts and needed to protect the right of the accused to a fair trial. Different rules of evidence are used by a scientific society; and different authorities are recognized as relevant or binding by different corporate bodies. Consider the different authorities cited in a church council discussing a point of theological doctrine, in a university faculty debating educational policy, and in a meeting of a scientific association trying to assess the harm to the public from a nuclear accident. The criteria and methods of these nonpublic reasons depend in part on how the nature (the aim and point) of each association is understood and the conditions under which it pursues its ends.

2. In a democratic society nonpublic power, as seen, for example, in the authority of churches over their members, is freely accepted. In the case of ecclesiastical power, since apostasy and heresy are not legal offenses, those who are no longer able to recognize a church's authority may cease being members without running afoul of state power.⁸ Whatever comprehensive reli-

8. In this case we think of liberty of conscience as protecting the individual against the church. This is an example of the protection that basic rights and liberties secure for individuals generally. But equally, liberty of conscience and other liberties such as freedom of association protect churches from the intrusions of government and from other powerful associations. Both associations and individuals need protection, and so do families need protection from associations and government, as do the individual members of families from other family members (wives from their husbands, children from their parents). It is incorrect to say that liberalism focuses solely on the rights of individuals; rather, the rights it recognizes are to protect associations, smaller groups, and individuals, all from one another in an appropriate balance specified by its guiding principles of justice.

gious, philosophical, or moral views we hold are also freely accepted, politically speaking; for given liberty of conscience and freedom of thought, we impose any such doctrine on ourselves. By this I do not mean that we do this by an act of free choice, as it were, apart from all prior loyalties and commitments, attachments, and affections. I mean that, as free and equal citizens, whether we affirm these views is regarded as within our political competence specified by basic constitutional rights and liberties.

By contrast, the government's authority cannot be evaded except by leaving the territory over which it governs, and not always then. That its authority is guided by public reason does not change this. For normally leaving one's country is a grave step: it involves leaving the society and culture in which we have been raised, the society and culture whose language we use in speech and thought to express and understand ourselves, our aims, goals, and values; the society and culture whose history, customs, and conventions we depend on to find our place in the social world. In large part we affirm our society and culture, and have an intimate and inexpressible knowledge of it, even though much of it we may question, if not reject.

The government's authority cannot, then, be freely accepted in the sense that the bonds of society and culture, of history and social place of origin, begin so early to shape our life and are normally so strong that the right of emigration (suitably qualified) does not suffice to make accepting its authority free, politically speaking, in the way that liberty of conscience suffices to make accepting ecclesiastical authority free, politically speaking. Nevertheless, we may over the course of life come freely to accept, as the outcome of reflective thought and reasoned judgment, the ideals, principles, and standards that specify our basic rights and liberties, and effectively guide and moderate the political power to which we are subject. This is the outer limit of our freedom.⁹

9. Here I accept the Kantian (not Kant's) view that what we affirm on the basis of free and informed reason and reflection is affirmed freely; and that insofar as our

§ 4. The Content of Public Reason

1. I now turn to the content of public reason, having considered its nature and sketched how the apparent paradox of honoring its limits may be dissolved. This content is formulated by what I have called a "political conception of justice," which I assume is broadly liberal in character. By this I mean three things: first, it specifies certain basic rights, liberties, and opportunities (of the kind familiar from constitutional democratic regimes); second, it assigns a special priority to these rights, liberties, and opportunities, especially with respect to claims of the general good and of perfectionist values; and third, it affirms measures assuring all citizens adequate all-purpose means to make effective use of their basic liberties and opportunities. The two principles stated in I:1.1–2 fall under this general description. But each of these elements can be seen in different ways, so there are many liberalisms.

In saying a conception of justice is political I also mean three things (I:2): that it is framed to apply solely to the basic structure of society, its main political, social, and economic institutions as a unified scheme of social cooperation; that it is presented independently of any wider comprehensive religious or philosophical doctrine; and that it is elaborated in terms of fundamental political ideas viewed as implicit in the public political culture of a democratic society.

2. Now it is essential that a liberal political conception include, besides its principles of justice, guidelines of inquiry that specify ways of reasoning and criteria for the kinds of information relevant for political questions. Without such guidelines substantive principles cannot be applied and this leaves the political concep-

conduct expresses what we affirm freely, our conduct is free to the extent it can be. Freedom at the deepest level calls upon the freedom of reason, both theoretical and practical, as expressed in what we say and do. Limits on freedom are at bottom limits on our reason: on its development and education, its knowledge and information, and on the scope of the actions in which it can be expressed, and therefore our freedom depends on the nature of the surrounding institutional and social context.

tion incomplete and fragmentary. That conception has, then, two parts:

- a. first, substantive principles of justice for the basic structure; and
- b. second, guidelines of inquiry: principles of reasoning and rules of evidence in the light of which citizens are to decide whether substantive principles properly apply and to identify laws and policies that best satisfy them.

Hence liberal political values are likewise of two kinds:

- a. The first kind—the values of political justice—fall under the principles of justice for the basic structure: the values of equal political and civil liberty; equality of opportunity; the values of social equality and economic reciprocity; and let us add also values of the common good as well as the various necessary conditions for all these values.
- b. The second kind of political values—the values of public reason—fall under the guidelines for public inquiry, which make that inquiry free and public. Also included here are such political virtues as reasonableness and a readiness to honor the (moral) duty of civility, which as virtues of citizens help to make possible reasoned public discussion of political questions.

3. As we have said, on matters of constitutional essentials and basic justice, the basic structure and its public policies are to be justifiable to all citizens, as the principle of political legitimacy requires. We add to this that in making these justifications we are to appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial. The liberal principle of legitimacy makes this the most appropriate, if not the only, way to specify the guidelines of public inquiry. What other guidelines and criteria have we for this case?

This means that in discussing constitutional essentials and matters of basic justice we are not to appeal to comprehensive

religious and philosophical doctrines—to what we as individuals or members of associations see as the whole truth—nor to elaborate economic theories of general equilibrium, say, if these are in dispute. As far as possible, the knowledge and ways of reasoning that ground our affirming the principles of justice and their application to constitutional essentials and basic justice are to rest on the plain truths now widely accepted, or available, to citizens generally. Otherwise, the political conception would not provide a public basis of justification.

As we consider later in §5, we want the substantive content and the guidelines of inquiry of a political conception, when taken together, to be complete. This means that the values specified by that conception can be suitably balanced or combined, or otherwise united, as the case may be, so that those values alone give a reasonable public answer to all, or to nearly all, questions involving the constitutional essentials and basic questions of justice. For an account of public reason we must have a reasonable answer, or think we can in due course find one, to all, or nearly all, those cases. I shall say a political conception is complete if it meets this condition.

4. In justice as fairness, and I think in many other liberal views, the guidelines of inquiry of public reason, as well as its principle of legitimacy, have the same basis as the substantive principles of justice. This means in justice as fairness that the parties in the original position, in adopting principles of justice for the basic structure, must also adopt guidelines and criteria of public reason for applying those norms. The argument for those guidelines, and for the principle of legitimacy, is much the same as, and as strong as, the argument for the principles of justice themselves. In securing the interests of the persons they represent, the parties insist that the application of substantive principles be guided by judgment and inference, reasons and evidence that the persons they represent can reasonably be expected to endorse. Should the parties fail to insist on this, they would not act responsibly as trustees. Thus we have the principle of legitimacy. In justice as fairness, then, the guidelines of public reason and

the principles of justice have essentially the same grounds. They are companion parts of one agreement. There is no reason why any citizen, or association of citizens, should have the right to use state power to decide constitutional essentials as that person's, or that association's, comprehensive doctrine directs. When equally represented, no citizen could grant to another person or association that political authority. Any such authority is, therefore, without grounds in public reason, and reasonable comprehensive doctrines recognize this.

5. Keep in mind that political liberalism is a kind of view. It has many forms, depending on the substantive principles used and how the guidelines of inquiry are set out. These forms have in common substantive principles of justice that are liberal and an idea of public reason. Content and idea may vary within these limits.

Accepting the idea of public reason and its principle of legitimacy emphatically does not mean, then, accepting a particular liberal conception of justice down to the last details of the principles defining its content. We may differ about these principles and still agree in accepting a conception's more general features. We agree that citizens share in political power as free and equal, and that as reasonable and rational they have a duty of civility to appeal to public reason, yet we differ as to which principles are the most reasonable basis of public justification. The view I have called "justice as fairness" is but one example of a liberal political conception; its specific content is not definitive of such a view.

The point of the ideal of public reason is that citizens are to conduct their fundamental discussions within the framework of what each regards as a political conception of justice based on values that the others can reasonably be expected to endorse and each is, in good faith, prepared to defend that conception so understood. This means that each of us must have, and be ready to explain, a criterion of what principles and guidelines we think other citizens (who are also free and equal) may reasonably be expected to endorse along with us. We must have some test we are ready to state as to when this condition is met. I have else-

where suggested as a criterion the values expressed by the principles and guidelines that would be agreed to in the original position. Many will prefer another criterion.

Of course, we may find that actually others fail to endorse the principles and guidelines our criterion selects. That is to be expected. The idea is that we must have such a criterion and this alone already imposes very considerable discipline on public discussion. Not any value is reasonably said to meet this test, or to be a political value; and not any balance of political values is reasonable. It is inevitable and often desirable that citizens have different views as to the most appropriate political conception; for the public political culture is bound to contain different fundamental ideas that can be developed in different ways. An orderly contest between them over time is a reliable way to find which one, if any, is most reasonable.

§ 5. The Idea of Constitutional Essentials

1. We said above (§4.3) that to find a complete political conception we need to identify a class of fundamental questions for which the conception's political values yield reasonable answers. As these questions I propose the constitutional essentials and questions of basic justice. To explain:

There is the greatest urgency for citizens to reach practical agreement in judgment about the constitutional essentials. These are of two kinds:

- a. fundamental principles that specify the general structure of government and the political process: the powers of the legislature, executive and the judiciary; the scope of majority rule; and
- b. equal basic rights and liberties of citizenship that legislative majorities are to respect: such as the right to vote and to participate in politics, liberty of conscience, freedom of thought and of association, as well as the protections of the rule of law.

These things are a complex story; I merely hint at what is meant. There is, however, an important difference between the constitutional essentials under (a) which specify the general structure of government and the political process and the essentials under (b) which specify the equal basic rights and liberties of citizens.

2. Essentials of the first kind can be specified in various ways. Witness the difference between presidential and cabinet government. But once settled it is vital that the structure of government be changed only as experience shows it to be required by political justice or the general good, and not as prompted by the political advantage of one party or group that may at the moment have the upper hand. Frequent controversy over the structure of government, when it is not required by political justice and when the changes proposed tend to favor some parties over others, raises the stakes of politics and may lead to distrust and turmoil that undermines constitutional government.

By contrast, the essentials of the second kind concern basic rights and liberties and can be specified in but one way, modulo relatively small variations. Liberty of conscience and freedom of association, and the political rights of freedom of speech, voting, and running for office are characterized in more or less the same manner in all free regimes.

3. Observe further an important distinction between the principles of justice specifying the equal basic rights and liberties and the principles regulating basic matters of distributive justice, such as freedom of movement and equality of opportunity, social and economic inequalities, and the social bases of self-respect.

A principle specifying the basic rights and liberties covers the second kind of constitutional essentials. But while some principle of opportunity is surely such an essential, for example, a principle requiring at least freedom of movement and free choice of occupation, fair equality of opportunity (as I have specified it) goes beyond that and is not such an essential. Similarly, though a social minimum providing for the basic needs of all citizens is

also an essential, what I have called the "difference principle" is more demanding and is not.¹⁰

4. The distinction between the principles covering the basic freedoms and those covering social and economic inequalities is not that the first expresses political values while the second does not. Both express political values. Rather, the basic structure of society has two coordinate roles, the principles covering the basic freedoms specifying the first role, the principles covering the social and economic inequalities specifying the second. In the first role that structure specifies and secures citizens' equal basic rights and liberties and institutes just political procedures. In the second it sets up the background institutions of social and economic justice appropriate to citizens as free and equal. The first role concerns how political power is acquired and the limits of its exercise. We hope to settle at least those questions by referring to political values that can provide a public basis of justification.

Whether the constitutional essentials covering the basic freedoms are satisfied is more or less visible on the face of constitutional arrangements and how these can be seen to work in practice. But whether the aims of the principles covering social and economic inequalities are realized is far more difficult to ascertain. These matters are nearly always open to wide differences of reasonable opinion; they rest on complicated inferences and intuitive judgments that require us to assess complex social and economic information about topics poorly understood. Thus, although questions of both kinds are to be discussed in terms of political values, we can expect more agreement about whether the principles for the basic rights and liberties are realized than about whether the principles for social and economic justice are

10. On fair equality of opportunity, see *Theory*, pp. 72f. On the difference principle, *ibid.*, §13. Political discussions of the reasons for and against fair opportunity and the difference principle, though they are not constitutional essentials, fall under questions of basic justice and so are to be decided by the political values of public reason.

realized. This is not a difference about what are the correct principles but simply a difference in the difficulty of seeing whether the principles are achieved.

To conclude: there are four grounds for distinguishing the constitutional essentials specified by the basic freedoms from the principles governing social and economic inequalities.

- a. The two kinds of principles specify different roles for the basic structure.
- b. It is more urgent to settle the essentials dealing with the basic freedoms.
- c. It is far easier to tell whether those essentials are realized.
- d. It much easier to gain agreement about what the basic rights and liberties should be, not in every detail of course, but about the main outlines.

These considerations explain why freedom of movement and free choice of occupation and a social minimum covering citizens' basic needs count as constitutional essentials while the principle of fair opportunity and the difference principle do not.

Here I remark that if a political conception of justice covers the constitutional essentials and matters of basic justice—for the present this is all we aim for—it is already of enormous importance even if it has little to say about many economic and social issues that legislative bodies must regularly consider. To resolve these more particular and detailed issues it is often more reasonable to go beyond the political conception and the values its principles express, and to invoke nonpolitical values that such a view does not include. But so long as there is firm agreement on the constitutional essentials and established political procedures are reasonably regarded as fair, willing political and social cooperation between free and equal citizens can normally be maintained.

§ 6. The Supreme Court as Exemplar of Public Reason

1. At the beginning (§1.2) I remarked that in a constitutional regime with judicial review, public reason is the reason of its supreme court.¹¹ I now sketch two points about this: first, that public reason is well suited to be the court's reason in exercising its role as the highest judicial interpreter but not the final interpreter of the higher law;¹² and second, that the supreme court is the branch of government that serves as the exemplar of public reason. To clarify these points, I mention briefly five principles of constitutionalism.¹³

The first principle is Locke's distinction in the *Two Treatises* between the people's constituent power to establish a new regime and the ordinary power of officers of government and the electorate exercised in day-to-day politics. That constituent power of the people (II:134, 141) sets up a framework to regulate ordinary power, and it comes into play only when the existing regime has been dissolved.

The second distinction is between higher and ordinary law. Higher law is the expression of the people's constituent power and has the higher authority of the will of We the People, whereas ordinary legislation has the authority, and is the expression of, the ordinary power of Congress and of the electorate. Higher law binds and guides this ordinary power.

11. This is not a definition. I assume that in a well-ordered society the two more or less overlap. I am grateful to James Fleming for valuable guidance in formulating many points in this section.

12. Here I have found particularly helpful: Bruce Ackerman, "Constitutional Politics/Constitutional Law," *Yale Law Journal* 99 (December 1989), as well as his recent *We The People: Foundations* (Cambridge, Mass.: Harvard University Press, 1991), vol. 1.

13. Here I draw upon John Agresto, *The Supreme Court and Constitutional Democracy* (Ithaca: Cornell University Press, 1984), esp. pp. 45–55; Stephen Holmes, "Gag Rules or the Politics of Omission," and "Precommitment and the Paradox of Democracy," both in *Constitutionalism and Democracy*, edited by Jon Elster and Rune Slagstad (Cambridge: Cambridge University Press, 1987); Jon Elster, *Ulysses and the Sirens* (Cambridge: Cambridge University Press, 1979), pp. 81–86, 88–103. There is nothing at all novel in my account.

As a third principle, a democratic constitution is a principled expression in higher law of the political ideal of a people to govern itself in a certain way. The aim of public reason is to articulate this ideal. Some of the ends of political society may be stated in a preamble—to establish justice and to promote the general welfare—and certain constraints are found in a bill of rights or implied in a framework of government—due process of law and equal protection of the laws. Together they fall under political values and its public reason. This principled expression of higher law is to be widely supported and for this and other reasons it is best not to burden it with many details and qualifications. It should also be possible to make visible in basic institutions its essential principles.¹⁴

A fourth principle is that by a democratically ratified constitution with a bill of rights, the citizen body fixes once and for all certain constitutional essentials, for example, the equal basic political rights and liberties, and freedom of speech and association, as well as those rights and liberties guaranteeing the security and independence of citizens, such as freedom of movement and choice of occupation, and the protections of the rule of law. This ensures that ordinary laws are enacted in a certain way by citizens as free and independent. It is through these fixed procedures that the people can express, even if they do not, their reasoned democratic will, and indeed without those procedures they can have no such will.

Fifth and last, in constitutional government the ultimate power cannot be left to the legislature or even to a supreme court, which is only the highest judicial interpreter of the constitution. Ultimate power is held by the three branches in a duly specified relation with one another with each responsible to the people.¹⁵

14. For these reasons, among others, I suppose that the principle of fair equality of opportunity and the difference principle are not constitutional essentials, though, as I have said, in justice as fairness they are matters of basic justice (§3.3).

15. In saying this I follow what I understand to be Lincoln's view as expressed in his remarks about Dred Scott (1857) in his speeches and in his debates with Douglas in *Lincoln: Speeches and Writings*, edited by Don Fehrenbacher (New York: Library of

Now admittedly, in the long run a strong majority of the electorate can eventually make the constitution conform to its political will. This is simply a fact about political power as such. There is no way around this fact, not even by entrenchment clauses that try to fix permanently the basic democratic guarantees. No institutional procedure exists that cannot be abused or distorted to enact statutes violating basic constitutional democratic principles.¹⁶ The idea of right and just constitutions and basic laws is always ascertained by the most reasonable political conception of justice and not by the result of an actual political process. I return to a question this raises below (§6.4).

2. Thus, constitutional democracy is dualist: it distinguishes constituent power from ordinary power as well as the higher law of the people from the ordinary law of legislative bodies. Parliamentary supremacy is rejected.

A supreme court fits into this idea of dualist constitutional democracy as one of the institutional devices to protect the higher law.¹⁷ By applying public reason the court is to prevent that law from being eroded by the legislation of transient majorities, or more likely, by organized and well-situated narrow interests skilled at getting their way. If the court assumes this role and effectively carries it out,¹⁸ it is incorrect to say that it is straight-

America, 1989), vol. 1, pp. 392f., 450ff., 524ff., 714—17, 740f.; and in his *First Inaugural* (1861), *ibid.*, vol. 2, 220f. For accounts of Lincoln's view see Alexander Bickel, *The Last Dangerous Branch* (New York: Bobbs-Merrill, 1962), pp. 65—69; 259—69; Agresto, *The Supreme Court*, esp. pp. 86—95, 105, 128f.; and Don Fehrenbacher, *Lincoln: In Text and Context* (Stanford: Stanford University Press, 1987), esp. pp. 20—23, 125ff., and 293.

16. Similarly, there is no procedure of inquiry, not even that of the investigations of science and scholarship that can be guaranteed in the long run to uncover the truth. As we commented at the end of III.8, we cannot define truth as given by the beliefs that would stand up even in an idealized consensus, however far extended.

17. See Ackerman, "Constitutional Politics/Constitutional Law," pp. 464f. and *We the People*, pp. 6—10.

18. It must be said that historically the court has often failed badly in this role. It upheld the Alien and Sedition Acts of 1798 and one need only mention Dred Scott (1857). It emasculated the Reconstruction amendments by interpreting them as a charter of capitalist liberty rather than the liberty of the freed slaves; and from Lochner (1905) through the early New Deal years it did much the same.

forwardly antidemocratic. It is indeed antimajoritarian with respect to ordinary law, for a court with judicial review can hold such law unconstitutional. Nevertheless, the higher authority of the people supports that. The court is not antimajoritarian with respect to higher law when its decisions reasonably accord with the constitution itself and with its amendments and politically mandated interpretations.

Suppose we agree that the three most innovative periods of our constitutional history are the founding, Reconstruction, and the New Deal.¹⁹ Here it is important that all three seem to rely on, and only on, the political values of public reason. The constitution and its amendment process, the Reconstruction amendments that sought to remove the curse of slavery, and the modern activist so-called welfare state of the New Deal, all seem to fit that description, though it would take some time to show this. Yet accepting this as correct, and seeing the Court as the highest judicial though not the final interpreter of this body of higher law, the point is that the political values of public reason provide the Court's basis for interpretation. A political conception of justice covers the fundamental questions addressed by higher law and sets out the political values in terms of which they can be decided.²⁰

Some will say, certainly, that parliamentary supremacy with no bill of rights at all is superior to our dualist regime. It offers firmer support for the values that higher law in the dualist scheme tries to secure. On the other hand, some may think it better that a constitution entrench a list of basic rights, as the German constitution does. It places those rights beyond amendment, even by the people and the German supreme court, and in enforcing those rights can be said to be undemocratic. Entrenchment has that consequence. Judged by the values of a reasonable

political conception of justice, these regimes may be superior to a dualist regime in which these basic questions are settled by the higher law of *We the People*.²¹

Political liberalism as such, it should be stressed, does not assert or deny any of these claims and so we need not discuss them. Our point here is simply that, however these questions are decided, the content of a political conception of justice includes the values of public reason by appeal to which the merits of the three kinds of regime are to be judged.

3. Now I turn to a second point: the court's role is not merely defensive but to give due and continuing effect to public reason by serving as its institutional exemplar.²² This means, first, that public reason is the sole reason the court exercises. It is the only branch of government that is visibly on its face the creature of that reason and of that reason alone. Citizens and legislators may properly vote their more comprehensive views when constitutional essentials and basic justice are not at stake; they need not justify by public reason why they vote as they do or make their grounds consistent and fit them into a coherent constitutional view over the whole range of their decisions. The role of the justices is to do precisely that and in doing it they have no other reason and no other values than the political. Beyond that they

21. Robert Dahl, in his *Democracy and Its Critics* (New Haven: Yale University Press, 1989), discusses the relative merits of these forms of democratic institutions. He is in some ways critical of the British parliamentary system (the "Westminster model") (pp. 156–57), and although he is also critical of judicial review (pp. 187–91), he thinks there is no one universally best way to solve the problem of how to protect fundamental rights and interests. He says: "In the absence of a universally best solution, specific solutions need to be adapted to the historical conditions and experiences, political culture, and concrete political institutions of a particular country" (p. 192). I incline to agree with this and thank Dennis Thompson for correcting my earlier misunderstanding of Dahl's view.

22. The judiciary with a supreme court is not the only institution that does this. It is essential that other social arrangements also do the same, as is done for example by an orderly public financing of elections and constraints on private funding that achieves the fair value of the political liberties, or at least significantly move the political process in that direction. See *Theory*, pp. 224–27 and VIII:7, 12 at pp. 324–31 and 356–63, respectively.

19. Here I follow Ackerman's account in "Constitutional Politics/Constitutional Law," at essentially pp. 486–515, and *We the People*, chaps. 3–6 passim.

20. See Samuel Freeman, "Original Meaning, Democratic Interpretation, and the Constitution," *Philosophy and Public Affairs* 21 (Winter 1992), pp. 26f. and 36f., where these matters are discussed.

are to go by what they think the constitutional cases, practices, and traditions, and constitutionally significant historical texts require.

To say that the court is the exemplar of public reason also means that it is the task of the justices to try to develop and express in their reasoned opinions the best interpretation of the constitution they can, using their knowledge of what the constitution and constitutional precedents require. Here the best interpretation is the one that best fits the relevant body of those constitutional materials, and justifies it in terms of the public conception of justice or a reasonable variant thereof. In doing this it is expected that the justices may and do appeal to the political values of the public conception whenever the constitution itself expressly or implicitly invokes those values, as it does, for example, in a bill of rights guaranteeing the free exercise of religion or the equal protection of the laws. The court's role here is part of the publicity of reason and is an aspect of the wide, or educative, role of public reason.

The justices cannot, of course, invoke their own personal morality, nor the ideals and virtues of morality generally. Those they must view as irrelevant. Equally, they cannot invoke their or other people's religious or philosophical views. Nor can they cite political values without restriction. Rather, they must appeal to the political values they think belong to the most reasonable understanding of the public conception and its political values of justice and public reason. These are values that they believe in good faith, as the duty of civility requires, that all citizens as reasonable and rational might reasonably be expected to endorse.²³

23. This account of what the justices are to do seems to be the same as Ronald Dworkin's view as stated say in "Hard Cases" in *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1978) or in *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), chap. 7, except for possibly one proviso. I have said that the justices in interpreting the constitution are to appeal to the political values covered by the public political conception of justice, or at least by some recognizable variant thereof. The values the justices can invoke are restricted to what is reasonably

But, as I have said (§4.5), the idea of public reason does not mean that judges agree with one another, any more than citizens do, in the details of their understanding of the constitution. Yet they must be, and appear to be, interpreting the same constitution in view of what they see as the relevant parts of the political conception and in good faith believe it can be defended as such. The court's role as the highest judicial interpreter of the constitution supposes that the political conceptions judges hold and their views of constitutional essentials locate the central range of the basic freedoms in more or less the same place. In these cases at least its decisions succeed in settling the most fundamental political questions.

4. Finally, the court's role as exemplar of public reason has a third aspect: to give public reason vividness and vitality in the public forum; this it does by its authoritative judgments on fundamental political questions. The court fulfills this role when it clearly and effectively interprets the constitution in a reasonable way; and when it fails to do this, as ours often has, it stands at the center of a political controversy the terms of settlement of which are public values.

The constitution is not what the Court says it is. Rather, it is what the people acting constitutionally through the other branches eventually allow the Court to say it is. A particular understanding

believed to be covered by that conception or its variants, and not by a conception of morality as such, not even of political morality. The latter I think too broad. Thus, though an appeal to a social minimum specified by basic needs is appropriate (accepting Frank Michelman's view as stated in "Welfare Rights and Constitutional Democracy," *Washington University Law Quarterly* 1979 (Summer 1979)), an appeal cannot be made to the difference principle unless it appears as a guideline in a statute (§5.3). I believe Dworkin thinks that his requirement of fit alone leads to roughly the same conclusion, as he takes the requirement of fit to distinguish interpretation from invention and that a reasonable interpretation suffices to show what is already implicit in the law as articulated within the political conception, or one of its recognizable variants. He may be correct about this but I am unsure. I incline to require, in addition to fit, that in order for the court's decisions to be properly judicial decisions of law, that the interpretation fall within the public political conception of justice or a recognizable variant thereof. I doubt that this view differs in substance from Dworkin's.

of the constitution may be mandated to the Court by amendments, or by a wide and continuing political majority, as it was in the case of the New Deal.²⁴ This raises the question whether an amendment to repeal the First Amendment, say, and to make a particular religion the state religion with all the consequences of that, or to repeal the Fourteenth Amendment with its equal protection of the laws, must be accepted by the Court as a valid amendment.²⁵ It is tristic to say, as I said above, that if the people act constitutionally such amendments are valid. But is it sufficient for the validity of an amendment that it be enacted by the procedure of Article V?²⁶ What reasons could the Court or the executive have (assuming the amendment was over its veto) for counting invalid an enactment meeting that condition?

Consider the following reasons: an amendment is not merely a change. One idea of an amendment is to adjust basic constitutional values to changing political and social circumstances, or to incorporate into the constitution a broader and more inclusive understanding of those values. The three amendments related to the Civil War all do this, as does the Nineteenth Amendment granting women the vote; and the Equal Rights Amendment attempted the same. At the Founding there was the blatant contradiction between the idea of equality in the Declaration of Independence and the Constitution and chattel slavery of a subjugated race; there were also property qualifications for voting and women were denied the suffrage altogether. Historically those amendments brought the Constitution more in line with

24. See Ackerman, "Constitutional Politics/Constitutional Law," pp. 510-15 and *We the People*, chap 5.

25. Ackerman suggests that a commitment to dualist democracy implies that the Court must accept the amendment as valid, whereas I want to deny this. While Ackerman says he would be proud to belong to the generation that entrenched the Bill of Rights, as that would give a more ideal regime, entrenchment, he thinks, is contrary to the idea of our dualist democracy. *We the People*, pp. 319-22.

26. I am indebted to Stephen Macedo for valuable discussion that led me to take up this question. See his *Liberal Virtues* (Oxford: Clarendon Press, 1990), pp. 182f. What I say is similar to what he says there.

its original promise.²⁷ Another idea of amendment is to adapt basic institutions in order to remove weaknesses that come to light in subsequent constitutional practice. Thus, with the exception of the Eighteenth, the other amendments concern either the institutional design of government, witness the Twenty-second, which allows the president to serve only two terms; or certain basic matters of policy, witness the Sixteenth, which grants Congress the power to levy income taxes. Such has been the role of amendments.

The Court could say, then, that an amendment to repeal the First Amendment and replace it with its opposite fundamentally contradicts the constitutional tradition of the oldest democratic regime in the world. It is therefore invalid. Does this mean that the Bill of Rights and the other amendments are entrenched? Well, they are entrenched in the sense of being validated by long historical practice. They may be amended in the ways mentioned above but not simply repealed and reversed. Should that happen, and it is not inconceivable that the exercise of political power might take that turn, that would be constitutional breakdown,²⁸ or revolution in the proper sense, and not a valid amendment of the constitution. The successful practice of its ideas and principles over two centuries place restrictions on what can now count as an amendment, whatever was true at the beginning.

Thus, in the midst of any great constitutional change, legitimate or otherwise, the Court is bound to be a center of controversy. Often its role forces political discussion to take a principled form so as to address the constitutional question in line with the political values of justice and public reason. Public discussion becomes more than a contest for power and position. This edu-

27. See the late Judith Shklar's lucid brief account of this history in her *American Citizenship: The Quest for Inclusion* (Cambridge, Mass.: Harvard University Press, 1991).

28. This is the term Samuel Freeman uses in his "Original Meaning, Democratic Interpretation, and the Constitution," pp. 41f., where he contrasts his view with Ackerman's. I am indebted to his discussion.

cates citizens to the use of public reason and its value of political justice by focusing their attention on basic constitutional matters.

To conclude these remarks on the Supreme Court in a constitutional regime with judicial review, I emphasize that they are not intended as a defense of such review, although it can perhaps be defended given certain historical circumstances and conditions of political culture. Rather, my aim has been to elaborate the idea of public reason, and in order to make this idea more definite, I have looked at the way in which the Court may serve as its exemplar. And while the Court is special in this respect, the other branches of government can certainly, if they would but do so, be forums of principle along with it in debating constitutional questions.²⁹

§ 7. Apparent Difficulties with Public Reason

1. Recall from §4.3 that we look for a political conception whose combined values of justice and of public reason yield reasonable answers for all, or nearly all, fundamental political questions: those that involve constitutional essentials and matters of basic justice. I discuss several apparent difficulties.

One difficulty is that public reason often allows more than one reasonable answer to any particular question. This is because there are many political values and many ways they can be characterized. Suppose, then, that different combinations of values, or the same values weighted differently, tend to predominate in a particular fundamental case. Everyone appeals to political values but agreement is lacking and more than marginal differences persist. Should this happen, as it often does, some may say that public reason fails to resolve the question, in which case citizens may legitimately invoke principles appealing to nonpolitical values to resolve it in a way they find satisfactory.³⁰ Nor everyone

would introduce the same nonpolitical values but at least all would have an answer suitable to them.

The ideal of public reason urges us not to do this in cases of constitutional essentials and matters of basic justice. Close agreement is rarely achieved and abandoning public reason whenever disagreement occurs in balancing values is in effect to abandon it altogether. Moreover, as we said in §4.5, public reason does not ask us to accept the very same principles of justice, but rather to conduct our fundamental discussions in terms of what we regard as a political conception. We should sincerely think that our view of the matter is based on political values everyone can reasonably be expected to endorse. For an electorate thus to conduct itself is a high ideal the following of which realizes fundamental democratic values not to be abandoned simply because full agreement does not obtain. A vote can be held on a fundamental question as on any other; and if the question is debated by appeal to political values and citizens vote their sincere opinion, the ideal is sustained.

2. A second difficulty concerns what is meant by voting our sincere opinion. Let us say that we honor public reason and its principle of legitimacy when three conditions are satisfied: a) we give very great and normally overriding weight to the ideal it prescribes; b) we believe public reason is suitably complete, that is, for at least the great majority of fundamental questions, possibly for all, some combination and balance of political values alone reasonably shows the answer; and finally c) we believe that the particular view we propose, and the law or policy based thereon, expresses a reasonable combination and balance of those values.

But now a problem arises: I have assumed throughout that citizens affirm comprehensive religious and philosophical doctrines and many will think that nonpolitical and transcendent values are the true ground of political values. Does this belief

29. For this last aspect, see Dworkin, "The Forum of Principle," in *A Matter of Principle* (Cambridge: Harvard University Press, 1985), pp. 70f.

30. Kent Greenawald seems inclined to this view. See his detailed discussion in

chaps. 6–7 of *Religious Convictions and Political Choice* (New York: Oxford University Press, 1988).

make our appeal to political values insincere? It does not. These comprehensive beliefs are fully consistent with the three conditions above stated. That we think political values have some further backing does not mean we do not accept those values or affirm the conditions of honoring public reason, any more than our accepting the axioms of geometry means that we do not accept the theorems. Moreover, we may accept the axioms as much because of the theorems they lead to as the other way around.³¹

In affirming the three conditions, we accept the duty to appeal to political values as the duty to adopt a certain form of public discourse. As institutions and laws are always imperfect, we may view that form of discourse as imperfect and in any case as falling short of the whole truth set out by our comprehensive doctrine. Also, that discourse can seem shallow because it does not set out the most basic grounds on which we believe our view rests. Yet we think we have strong reasons to follow it given our duty of civility to other citizens. After all, they share with us the same sense of its imperfection, though on different grounds, as they

31. This is an important point: namely, that we must distinguish the order of deduction from the order of support. Deductive argument lays out the order of how statements can be connected; axioms, or basic principles, are illuminating in setting out these connections in a clear and perspicuous way. A conception such as that of the original position is illuminating in the same way and enables us to present justice as fairness as having a certain unity. But the statements that justify a normative conception and make us confident that it is reasonable may, or may not, be high in the order of deduction. If we rank principles and convictions according to how strongly they support the doctrine that leads to them, then principles and convictions high in this order of support may be low in the order of deduction. The idea of reflective equilibrium allows that convictions of any level of generality may provide supporting reasons. So in a well presented doctrine the order of deduction, so far as there is one, may be clear; but the order of support is another matter and must be decided by due reflection. Even then, how do we tell? Once this distinction is made, there are no grounds for saying that people who affirm religious or philosophical views cannot be sincere in affirming public reason as well. It might be thought that religious people would balk at the distinction between the order of deduction and the order of support. Yet they need not, for in their case, beginning with the existence of God, the orders of deduction and support are the same. The conceptual distinction between those orders does not imply that they cannot be isomorphic.

hold different comprehensive doctrines and believe different grounds are left out of account. But it is only in this way, and by accepting that politics in a democratic society can never be guided by what we see as the whole truth, that we can realize the ideal expressed by the principle of legitimacy: to live politically with others in the light of reasons all might reasonably be expected to endorse.

What public reason asks is that citizens be able to explain their vote to one another in terms of a reasonable balance of public political values, it being understood by everyone that of course the plurality of reasonable comprehensive doctrines held by citizens is thought by them to provide further and often transcendent backing for those values. In each case, which doctrine is affirmed is a matter of conscience for the individual citizen. It is true that the balance of political values a citizen holds must be reasonable, and one that can be seen to be reasonable by other citizens; but not all reasonable balances are the same. The only comprehensive doctrines that run afoul of public reason are those that cannot support a reasonable balance of political values.³² Yet given that the doctrines actually held support a rea-

32. As an illustration, consider the troubled question of abortion. Suppose first that the society in question is well-ordered and that we are dealing with the normal case of mature adult women. It is best to be clear about this idealized case first; for once we are clear about it, we have a guide that helps us to think about other cases, which force us to consider exceptional circumstances. Suppose further that we consider the question in terms of these three important political values: the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens. (There are, of course, other important political values besides these.) Now I believe any reasonable balance of these three values will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester. The reason for this is that at this early stage of pregnancy the political value of the equality of women is overriding, and this right is required to give it substance and force. Other political values, if tallied in, would not, I think, affect this conclusion. A reasonable balance may allow her such a right beyond this, at least in certain circumstances. However, I do not discuss the question in general here, as I simply want to illustrate the point of the text by saying that any comprehensive doctrine that leads to a balance of political values excluding that duly qualified right in the first trimester is to that extent unreasonable; and depending on details of its formulation, it may also be cruel and

sonable balance, how could anyone complain? What would be the objection?³³

3. A third difficulty is to specify when a question is successfully resolved by public reason. Some think it leaves many questions without answers. Yet we want a political conception of justice to be complete: its political values should admit of a balance giving a reasonable answer for all or nearly all fundamental questions (§4.3). To discuss this matter, I mention several "problems of extension," as I have called them (1:3.4) as these may seem unanswerable from within a political conception.

As time does not permit an account of these questions, I recall what we said earlier (1:3.4) that there are at least four such problems. One is extending justice to cover our duties to future generations (under which falls the problem of just savings). Another is the problem of extending it to the concepts and principles that apply to international law and political relations between peoples—the traditional *jus gentium*. A third problem of extension is that of setting out the principles of normal health

oppressive; for example, if it denied the right altogether except in the case of rape and incest. Thus, assuming that this question is either a constitutional essential or a matter of basic justice, we would go against the ideal of public reason if we voted from a comprehensive doctrine that denied this right (see §2.4). However, a comprehensive doctrine is not as such unreasonable because it leads to an unreasonable conclusion in one or even in several cases. It may still be reasonable most of the time.

33. I believe the idea of public reason as explained here and elsewhere in the text is consistent with the view of Greenawald in his *Religious Convictions and Political Choice*. That he thinks to the contrary is due, I think, to his interpreting philosophical liberalism and the requirements expressed by its ideal of liberal democracy as being far stronger than those of what I have called "political liberalism." For one thing, the requirements of public reason belong to an ideal of democratic citizenship and are limited to our conduct in the public political forum and how we are to vote on constitutional essentials and questions of basic justice. Moreover, as the text above brings out, public reason does not ask citizens "to pluck out their religious convictions" and to think about those questions as if "they started from scratch, disregarding what they presently take as basic premises of moral thought" (Greenawald, p. 155). Indeed, this suggestion is altogether contrary to the idea of an overlapping consensus. I think the text is consistent with Greenawald's discussion at pp. 153–56 in the important central chapter of the book and with what he says in pt. III, which deals with such matters as the appropriate political discussion in a liberal society.

care; and finally, we may ask whether justice can be extended to our relations to animals and the order of nature. As I have said (1:3.4), I believe that justice as fairness can be reasonably extended to cover the first three problems, although I can't discuss them here.

Instead, I simply express my conjecture that these three problems can be resolved in a similar way. Some views drawing on the tradition of the social contract, and justice as fairness is one, begin by taking for granted the full status of adult persons in the society in question (the members of its citizen body) and proceed from there: forward to other generations, outward to other societies, and inward to those requiring normal health care. In each case we start from the status of adult citizens and proceed subject to certain constraints to obtain a reasonable law. We can do the same with the claims of animals and the rest of nature; this has been the traditional view of Christian ages. Animals and nature are seen as subject to our use and wont.³⁴ This has the virtue of clarity and yields some kind of answer. There are numerous political values here to invoke: to further the good of ourselves and future generations by preserving the natural order and its life-sustaining properties; to foster species of animals and plants for the sake of biological and medical knowledge with its potential applications to human health; to protect the beauties of nature for purposes of public recreation and the pleasures of a deeper understanding of the world. The appeal to values of this kind gives what many have found a reasonable answer to the status of animals and the rest of nature.

Of course, some will not accept these values as alone sufficient to settle the case. Thus, suppose our attitude toward the world is one of natural religion: we think it utterly wrong to appeal solely to those values, and others like them, to determine our relations with the natural world. To do that is to see the natural order

34. See Keith Thomas, *Man and the Natural World* (New York: Pantheon, 1983), for the view of Christian ages in chap. 1, while later chapters trace the development of modern attitudes beginning with the eighteenth century.

from a narrowly anthropocentric point of view, whereas human beings should assume a certain stewardship toward nature and give weight to an altogether different family of values. In this case our attitude might be much the same as those who reject abortion on theological grounds. Yet there is this important difference: the status of the natural world and our proper relation to it is not a constitutional essential or a basic question of justice, as these questions have been specified (§5).³⁵ It is a matter in regard to which citizens can vote their nonpolitical values and try to convince other citizens accordingly. The limits of public reason do not apply.

4. Let us pull the threads together by stating when a fundamental question is resolved by public reason. Clearly, for public reason to yield a reasonable answer in a given case, it is not required that it yield the same answer that any chosen comprehensive doctrine would yield if we proceeded from it alone. In what sense, though, must the answer of public reason itself be reasonable?

In reply: the answer must be at least reasonable, if not the most reasonable, as judged by public reason alone. But beyond this, and thinking of the ideal case of a well-ordered society, we hope that answer lies within the leeway allowed by each of the reasonable comprehensive doctrines making up an overlapping consensus. By that leeway I mean the scope within which a doctrine can accept, even if reluctantly, the conclusions of public reason, either in general or in any particular case. A reasonable and effective political conception may bend comprehensive doctrines toward itself, shaping them if need be from unreasonable to reasonable. But even granting this tendency, political liberalism itself cannot argue that each of those comprehensive doctrines should find the conclusions of public reason nearly always within its leeway. To argue that transcends public reason.

35. Of course, these questions may become ones of constitutional essentials and basic justice once our duties and obligations to future generations and to other societies are involved.

All the same, we can maintain that the political conception is a reasonable expression of the political values of public reason and justice between citizens seen as free and equal. As such the political conception makes a claim on comprehensive doctrines in the name of those fundamental values, so that those who reject it run the risk of being unjust, politically speaking. Here recall what we said in II:3.3: namely, that in recognizing others' comprehensive views as reasonable, citizens also recognize that, in the absence of a public basis of establishing the truth of their beliefs, to insist on their comprehensive view must be seen by others as their insisting on their own beliefs. If we do so insist, others in self-defense can oppose us as using upon them unreasonable force.

§ 8. The Limits of Public Reason

1. A last question about the limits of public reason.³⁶ I have often referred to these limits. To this point they would appear to mean that, on fundamental political matters, reasons given explicitly in terms of comprehensive doctrines are never to be introduced into public reason. The public reasons such a doctrine supports may, of course, be given but not the supporting doctrine itself. Call this understanding of public reason the "exclusive view." But as against this exclusive view, there is another view allowing citizens, in certain situations, to present what they regard as the basis of political values rooted in their comprehensive doctrine, provided they do this in ways that strengthen the ideal of public reason itself. This understanding of public reason we may call the "inclusive view."

The question, then, is whether we should understand the ideal of public reason in accordance with the exclusive or the inclusive

36. I am greatly indebted to Amy Gutmann and Lawrence Solum for discussion and correspondence about these limits. At first I inclined to what I call the "exclusive view"; they persuaded me that this was too restrictive, as the examples of the abolitionists (which is Solum's) and of Martin Luther King, Jr., brings out. I have not begun to cover the complexities of this question as shown in their correspondence.

view. The answer turns on which view best encourages citizens to honor the ideal of public reason and secures its social conditions in the longer run in a well-ordered society. Accepting this, the inclusive view seems the correct one. For under different political and social conditions with different families of doctrine and practice, the ideal must surely be advanced and fulfilled in different ways, sometimes by what may look like the exclusive view, at others by what may look like the inclusive view. Those conditions determine, then, how the ideal is best attained, either in the short or the longer run. The inclusive view allows for this variation and is more flexible as needed to further the ideal of public reason.

2. To illustrate: let us suppose first the ideal case: the society in question is more or less well ordered. Its members recognize a firm overlapping consensus of reasonable doctrines and it is not stirred by any deep disputes. In this case the values of the political conception are familiar and citizens honor the ideal of public reason most clearly by appealing to those values. Other than the motives of ordinary politics, they have no great interest in introducing other considerations: their fundamental rights are already guaranteed and there are no basic injustices they feel bound to protest. Public reason in this well-ordered society may appear to follow the exclusive view. Invoking only political values is the obvious and the most direct way for citizens to honor the ideal of public reason and to meet their duty of civility.

A second case is when there is a serious dispute in a nearly well-ordered society in applying one of its principles of justice. Suppose that the dispute concerns the principle of fair equality of opportunity as it applies to education for all. Diverse religious groups oppose one another, one group favoring government support for public education alone, another group favoring government support for church schools as well. The first group views the latter policy as incompatible with the so-called separation of church and state, whereas the second denies this. In this situation those of different faiths may come to doubt the sincerity of one another's allegiance to fundamental political values.

One way this doubt might be put to rest is for the leaders of the opposing groups to present in the public forum how their comprehensive doctrines do indeed affirm those values. Of course, it is already part of the background culture to examine how various doctrines support, or fail to support, the political conception. But in the present kind of case, should the recognized leaders affirm that fact in the public forum, their doing so may help to show that the overlapping consensus is not a mere *modus vivendi* (IV:3). This knowledge surely strengthens mutual trust and public confidence; it can be a vital part of the sociological basis encouraging citizens to honor the ideal of public reason.³⁷ This being so, the best way to strengthen that ideal in such instances may be to explain in the public forum how one's comprehensive doctrine affirms the political values.

3. A very different kind of case arises when a society is not well ordered and there is a profound division about constitutional essentials. Consider the abolitionists who argued against the antebellum South that its institution of slavery was contrary to God's law. Recall that the abolitionists agitated for the immediate, uncompensated, and universal emancipation of the slaves as early as the 1830s, and did so, I assume, basing their arguments on religious grounds.³⁸ In this case the nonpublic reason

37. I am indebted to Lawrence Solum and Seana Shiffrin for stressing this point. 38. For an account of the abolitionists, see James McPherson, *The Struggle for Equality* (Princeton: Princeton University Press, 1964), pp. 1–8 and passim. *The Antislavery Argument*, edited by William Pease and Jane Pease (New York: Bobbs-Merrill, 1965) contains a number of abolitionists writings. Characteristic is this from William Ellery Channing's *Slavery*, 3d ed. (1836): "I come now to what is to my own mind the great argument against seizing and using a man as property. He cannot be property in the sight of God and justice, because he is a Rational, Moral, Immortal Being, because created in God's image, and therefore in the highest sense his child, because created to unfold godlike faculties, and to govern himself by a Divine Law written on his heart, and republished in God's word. From his very nature it follows, that so to seize him is to offer an insult to his Maker, and to inflict aggravated social wrong. Into every human being God has breathed an immortal spirit, more precious than the whole outward creation. . . . Did God create such a being to be owned as a tree or a brute?" (in Pease and Pease, *The Antislavery Argument*, pp. 115f.). While the abolitionists often argued in the usual way, appealing to political values and political considerations, I assume for purposes of the question that the religious basis of their views was always clear.

of certain Christian churches supported the clear conclusions of public reason. The same is true of the civil rights movement led by Martin Luther King, Jr., except that King could appeal—as the abolitionists could not—to the political values expressed in the Constitution correctly understood.³⁹

Did the abolitionists go against the ideal of public reason? Let us view the question conceptually and not historically, and take for granted that their political agitation was a necessary political force leading to the Civil War and so to the destruction of the great evil and curse of slavery. Surely they hoped for that result and they could have seen their actions as the best way to bring about a well-ordered and just society in which the ideal of public reason could eventually be honored. Similar questions can be raised about the leaders of the civil rights movement. The abolitionists and King would not have been unreasonable in these conjectured beliefs if the political forces they led were among

39. Thus, King could, and often did, appeal to *Brown v. Board of Education*, the Supreme Court's decision of 1954 holding segregation unconstitutional. For King, "just law is a man-made code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law." To put it in the terms of Saint Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law. Any law that uplifts human personality is just. Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality." In the next paragraph, a more concrete definition: "Unjust law is a code that the majority inflicts on a minority that is not binding on itself. This is difference made legal. . . . A just law is a code that a majority compels a minority to follow that it is willing to follow itself. This is sameness made legal." The following paragraph has: "An unjust law is a code inflicted on a minority which that minority had no part in enacting or creating because they did not have the unhampered right to vote" (from paragraphs 14–16, respectively, of *Letter from Birmingham City Jail* (April 1963), in *A Testament of Hope: The Essential Writings of Martin Luther King*, edited by J. M. Washington (San Francisco: Harper and Row, 1986), pp. 293f.). Other of King's writings and addresses can be cited to make the same point. For example his "Give us the Ballot," (ibid., pp. 197–200), his address of May 1957 on the third anniversary of *Brown* and "I Have a Dream," (ibid., pp. 217–23), his keynote address of the March on Washington for civil rights, August 1963, both given in Washington before the Lincoln Memorial. Religious doctrines clearly underlie King's views and are important in his appeals. Yet they are expressed in general terms: and they fully support constitutional values and accord with public reason.

the necessary historical conditions to establish political justice, as does indeed seem plausible in their situation.

On this account the abolitionists and the leaders of the civil rights movement did not go against the ideal of public reason; or rather, they did not provided they thought, or on reflection would have thought (as they certainly could have thought), that the comprehensive reasons they appealed to were required to give sufficient strength to the political conception to be subsequently realized. To be sure, people do not normally distinguish between comprehensive and public reasons; nor do they normally affirm the ideal of public reason, as we have expressed it. Yet people can be brought to recognize these distinctions in particular cases. The abolitionists could say, for example, that they supported political values of freedom and equality for all, but that given the comprehensive doctrines they held and the doctrines current in their day, it was necessary to invoke the comprehensive grounds on which those values were widely seen to rest.⁴⁰ Given those historical conditions, it was not unreasonable of them to act as they did for the sake of the ideal of public reason itself.⁴¹ In this case, the ideal of public reason allows the inclusive view.

4. This brief discussion shows that the appropriate limits of public reason vary depending on historical and social conditions. While much more would have to be said to make this suggestion at all convincing, the main point is that citizens are to be moved to honor the ideal itself, in the present when circumstances permit, but often we may be forced to take a longer view. Under

40. It seems clear from n. 31 that Channing could easily do this. I am indebted to John Cooper for instructive discussion of points in this paragraph.

41. This suggests that it may happen that for a well-ordered society to come about in which public discussion consists mainly in the appeal to political values, prior historical conditions may require that comprehensive reasons be invoked to strengthen those values. This seems more likely when there are but a few and strongly held yet in some ways similar comprehensive doctrines and the variety of distinctive views of recent times has not so far developed. Add to these conditions another: namely, the idea of public reason with its duty of civility has not yet been expressed in the public culture and remains unknown.

different conditions with different current doctrines and practices, the ideal may be best achieved in different ways, in good times by following what at first sight may appear to be the exclusive view, in less good times by what may appear to be the inclusive view.

Here I assume that the political conception of justice and the ideal of honoring public reason mutually support one another. A well-ordered society publicly and effectively regulated by a recognized political conception fashions a climate within which its citizens acquire a sense of justice inclining them to meet their duty of civility and without generating strong interests to the contrary. On the other hand, the institutions of a well-ordered society are in turn supported once the ideal of public reason is firmly established in its citizens' conduct. But whether these assumptions are correct and can be founded on the moral psychology I sketched in II:7 are large questions I cannot take up here. It's clear, however, that should these assumptions be mistaken, there is a serious problem with justice as fairness as I have presented it. One must hope, as I have throughout, that the political conception and its ideal of public reason are mutually sustaining, and in this sense stable.

5. Looking back, I note a few main points. An ideal of public reason is an appropriate complement of a constitutional democracy, the culture of which is bound to be marked by a plurality of reasonable comprehensive doctrines. This is often said and in some form it is surely correct. Yet it is difficult to specify that ideal in a satisfactory way. In the attempt to do so, I have proposed the kinds of political questions to which public reason applies: namely, to questions concerning constitutional essentials and matters of basic justice (§1.1), and we have examined what these questions are (§5). As to whom public reason applies, we say that it applies to citizens when they engage in political advocacy in the public forum, in political campaigns for example and when they vote on those fundamental questions. It always applies to public and government officers in official forums, in their debates and votes on the floor of the legislature (§1.1). Public

reason applies especially to the judiciary in its decisions and as the one institutional exemplar of public reason (§6). The content of public reason is given by a political conception of justice: this content has two parts: substantive principles of justice for the basic structure (the political values of justice); and guidelines of inquiry and conceptions of virtue that make public reason possible (the political values of public reason) (§4.1-3).

I stress that the limits of public reason are not, clearly, the limits of law or statute but the limits we honor when we honor an ideal: the ideal of democratic citizens trying to conduct their political affairs on terms supported by public values that we might reasonably expect others to endorse. The ideal also expresses a willingness to listen to what others have to say and being ready to accept reasonable accommodations or alterations in one's own view. Public reason further asks of us that the balance of those values we hold to be reasonable in a particular case is a balance we sincerely think can be seen to be reasonable by others. Or failing this, we think the balance can be seen as at least not unreasonable in this sense: that those who oppose it can nevertheless understand how reasonable persons can affirm it. This preserves the ties of civic friendship and is consistent with the duty of civility. On some questions this may be the best we can do.⁴²

All this allows some latitude, since not all reasonable balances are the same. The only comprehensive doctrines that do not accord with public reason on a given question are those that cannot support a reasonable balance of political values on the issues it raises (§7.2). Certain reasonable comprehensive views fail to do this in some cases but we must hope that none that endure over time in a well-ordered society is likely to fail in all or even in many cases.

The innovations, if any, in my account of public reason are possibly two: the first is the central place of the duty of civility as an ideal of democracy (§2.1-3); the second is that the content of

42. I am indebted to Robert Adams for instructive discussion of this point.

public reason be given by the political values and the guidelines of a political conception of justice (§4.1–4). The content of public reason is not given by political morality as such, but only by a political conception suitable for a constitutional regime. To check whether we are following public reason we might ask: how would our argument strike us presented in the form of a supreme court opinion?⁴³ Reasonable? Outrageous?

Finally, whether this or some other understanding of public reason is acceptable can be decided only by examining the answers it leads to over a wide range of the more likely cases. Also we should have to consider other ways in which religious beliefs and statements can have a role in political life. We might ask whether Lincoln's Proclamation of a National Fast Day in August of 1861 and his two Proclamations of Thanksgiving in October of 1863 and 1864 violate the idea of public reason. And what are we to say of the Second Inaugural with its prophetic (Old Testament) interpretation of the Civil War as God's punishment for the sin of slavery, and falling equally on North and South? I incline to think Lincoln does not violate public reason as I have discussed it and as it applied in his day—whether in ours is another matter—since what he says has no implications bearing on constitutional essentials or matters of basic justice. Of whatever implications it might have could surely be supported firmly by the values of public reason. I mention these questions only to indicate that much remains to be discussed. And of course not all liberal views would accept the idea of public reason as I have expressed it. Those that would accept some form of it, allowing for variations, we may call political liberalism.

43. Think not of an actual court but of the court as part of a constitutional regime ideally conceived. I say this because some doubt that an actual supreme court can normally be expected to write reasonable decisions. Also, courts are bound by precedents in ways that public reason is not, and must wait for questions to come before them, and much else. But these points do not affect the propriety of the check suggested in the text.

Institutional Framework