

Democracy, Religion & Public Reason

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A convention of democracy is that government should promote the common good. Citizens' common good is based in their shared civil interests, including security of themselves and their possessions, equal basic liberties, diverse opportunities, and an adequate social minimum. Citizens' civil interests ground what John Rawls calls "the political values of justice and public reason." These political values determine the political legitimacy of laws and the political constitution, and provide the proper bases for voting, public discussion, and political justification. These political values similarly provide the terms to properly understand the separation of church and state, freedom of conscience, and free exercise of religion. It is not a proper role of government to promote religious doctrines or practices, or to enforce moral requirements of religion. For government to enforce or even endorse the imperatives or ends of religion violates individuals' freedom and equality: it encroaches upon their liberty of conscience and freedom to pursue their conceptions of the good; impairs their equal civic status; and undermines their equal political rights as free and equal citizens.

In American constitutional democracy, reasonable people generally agree on the fundamental importance of freedom of conscience and religion and a democratic society's duty of tolerance of diverse religious, philosophical, and moral views. Differences on these questions normally concern whether religious beliefs and practices warrant special protections compared with philosophical and nonreligious moral beliefs and practices. And if special protection for religious freedom is warranted, does it extend to providing political support and public endorsement of religious symbols and practices, such as prayer in public schools? The contention that religion has a legitimate place in public political life, and that religious reasons are legitimate grounds for political decisions, are often rationalized by appeals to majoritarian democratic sentiments. If members of a religiously homogenous community support prayer in public schools, then why should this not be permitted so long as children are not coerced to participate? Few who argue this position would accept the teaching of atheism in public schools if it had majority support, on grounds that it violated their freedom of religion. This suggests that political arguments for public religious symbols and practices are not motivated by political values, but rather by belief in the greater importance of religion over nonreligion. The position is in tension with the liber-

al justification for liberty of conscience and tolerance of diverse views and ways of living, which assumes that conscientious religious convictions and conduct are not exceptional or deserving of greater political protection and endorsement than are nonreligious philosophical and moral convictions and conduct.

Is majoritarian democratic support and legal enforcement of religious morality – such as religious opposition to rights of abortion and contraception, or laws declaring fertilized eggs legal persons from the moment of conception – compatible with the First Amendment nonestablishment clause and free exercise clause of the U.S. Constitution and freedom of individual conscience? Similar questions are raised by a government’s endorsement of religious beliefs and symbols of religion. State endorsement of Christianity or religion in general calls into question the political equality of those who reject it. Even if state endorsement of religion or religious symbols and practices does not involve coercive interference with individual conscience, it can jeopardize or diminish the equal civic standing of nonbelievers.¹ State endorsement of religion dilutes nonbelievers’ equal rights of political participation and their claims to a political justification of laws and public policies on terms they can accept as free and equal democratic citizens.

I contend that these and related questions regarding freedom of conscience and religion, political equality, separation of church and state, and special support and accommodation for religion turn on whether political measures can be justified in terms of what John Rawls calls “the political values of justice and public reason,” or sometimes simply “public reasons.”² To explain the idea of political justification by public reasons, I begin with some remarks on the subject of liberal neutrality between religion and the political values of a constitutional democracy. My aim is to clarify the idea of democratic public reason and explain its relevance to questions regarding the proper role of religion in political decisions and public life in a liberal constitutional democracy.

Neutrality *Between Religions and the Good*. Religious critics of liberalism contend that in protecting freedom of conscience and institutional separation of church and state, liberalism claims but inevitably fails to be “neutral” between religion and nonreligion, or with respect to the values individuals affirm, or among different religious, moral, and philosophical views. It is true that liberal institutions and laws cannot be neutral in a causal sense toward religion in their influence and effects on society and its members: the many freedoms and opportunities liberalism guarantees affect beliefs and practices. Indeed, they often draw people to question and abandon their religious views and violate religious imperatives and customary moral norms. Liberalism also influences religious doctrine itself, and eventually the mainstream religions in the West have either come to endorse most of the equal rights, liberties, and opportunities liberalism supports (such as equality for women), or risked marginalizing themselves.

But liberal freedoms and opportunities have the same unsettling effects on secular beliefs and institutions and individuals' adherence to nonreligious doctrines and conventions. So, it can at least be said that liberalism is neutral in its disruptive effects on traditional beliefs, practices, and institutions of all kinds.

In protecting freedom of conscience, thought, and individuals' tastes and pursuits, liberalism is sometimes said to aspire to be "neutral" or impartial with respect to "the Good": the values, commitments, ideals, and ways of living tolerated in liberal society. But liberal institutions, in addition to protecting individual rights and liberties, promote goods and public benefits of many kinds often opposed by traditional religions: the equality of women; publicly funded education to develop individuals' minds, capacities, and skills so they can be productive, self-supporting, and take advantage of diverse employment and cultural opportunities; individuals' health and well-being through public health measures and provision of health care; public goods such as infrastructure necessary for a modern society (highways, airports, public transportation, and so on); scientific and medical research; exploration of nature and outer space; publicly funded libraries and museums for the discovery and preservation of knowledge and culture; and protection of species and the environment. Modern liberals presuppose these are political values that are legitimate for government to protect and pursue, in addition to traditional political values of safety and security of persons and their property, economic prosperity, and individual liberty.

Here, too, it is noteworthy that the traditional justifications of liberalism are grounded in controversial philosophical positions. These include both religious doctrines of natural law originating in God's commands (John Locke), and also nonreligious doctrines that assume such intrinsic values as negative liberty and minimizing coercion (Friedrich Hayek), moral and rational autonomy (Immanuel Kant), social utility (Jeremy Bentham), individuality (J. S. Mill), and the plurality and free choice of values (Isaiah Berlin).³ Further, it is argued that in defining what constitutes the domain of right and justice, liberalism cannot avoid endorsing a particular philosophical view of value and the nature of right and justice that conflicts with religion, or controversial epistemic views about rationality, reasonableness, accessibility of reasons, and mutual acceptability.⁴

These examples suggest that the claim that liberalism purports to be "neutral between religion and the good" is unfortunate. Clearly this is not true of traditional philosophical justifications of liberalism. The philosophical liberalism of Kant, Mill, Rawls's *Theory of Justice*, Ronald Dworkin, Joseph Raz, and others who endorse individual autonomy, while tolerant of diverse religions, make little pretense about being "neutral" toward traditional religions with respect to individuals' good. They all presuppose (partially) comprehensive conceptions of right and value that directly conflict with most religious creeds. Moreover, few if any religions accept the utilitarian conceptions of value affirmed by Bentham, Mill, and

Henry Sidgwick that overall happiness (not communion with God) is the ultimate good in all activities. Fewer still endorse Kant's claims that reason (not God's will) is the source of morality and justice, that a human's rational will is the origin of value, and that moral autonomy – acting for the sake of right and justice – is the ultimate good and measure of a person's moral worth. Kant's and Mill's liberalism are extensions of their comprehensive moral views and address the optimal social and political conditions that enable individuals to fully exercise their capacities and realize moral and rational autonomy (Kant) or individuality (Mill). While both endorse the liberal idea that individuals are to be free to decide their own conceptions of a good life, they both subscribe to a kind of perfectionism of the self to guide individuals' decisions about which values and endeavors they ought to pursue (implicit in Kant's duties to oneself to perfect one's own capacities and Mill's distinction between higher and lower pleasures). Even Rawls's account of "the good" in *A Theory of Justice*, though only "partially comprehensive," is beholden to Kant's and Mill's accounts of rational and moral autonomy.

The intrinsic value that many philosophical liberals assign to individual autonomy means their liberalism is neutral neither in its effects, its aims, its values, nor its justification of liberal institutions. For the implication of these philosophical liberalism is that transcendent religious doctrines are false in crucial respects, regarding both the nature of morality and value, and also (given liberalism's alliance with the natural sciences) the origins of the universe, humankind, and many natural facts. One can understand then why there is so much religious opposition to liberalism among fundamentalists, evangelicals, and orthodox religions: for philosophical liberalism's fundamental ideas are incompatible with the doctrines of the traditional religions.⁵

There is no feasible way to make laws and public policies neutral in their effects on religion or on individuals' conceptions of the good. Liberals contend nonetheless that so long as laws and public policies are *neutral in their aim*, are not designed to discriminate or burden religion, and promote legitimate state purposes (about which liberalism and traditional religions often disagree), these measures should be politically legitimate.⁶ There might be some accommodation given to religions to mitigate burdensome effects, such as exempting Amish children from compulsory education requirements at age fourteen,⁷ or exempting religious employers from providing no-cost contraception in health care they are required to provide employees.⁸ But accommodations and exemptions from legal requirements for religious reasons raise questions of their own regarding neutrality and favoritism toward religion. Still, without any attempt at accommodation whatsoever, there can be problems of unfairness in the distribution of burdens on individuals' exercise of their freedoms of conscience and religion.⁹ To enforce dress codes at school, work, and the military that deny the wearing of any religious headgear seems to unfairly discriminate against members of minority religions when the

attire has great religious and moral significance. If neutrality in the effect of laws with purportedly neutral aims is not always possible, there still remains a question of the neutrality or fairness of treatment of those who experience exceptional burdens in spite of government's pursuit of neutral aims.¹⁰

One promising way to address the problem of political neutrality toward religion and conceptions of the good in a liberal constitutional democracy is with the idea of neutral or impartial justification: *public justification* in terms of *public reason* and the *political values of justice*. To clarify these complex ideas, consider Locke's claim in *A Letter Concerning Toleration* that the business of government is not the salvation and care of people's souls, but instead is restricted to the procurement of certain "civil interests" all have: "Life, Liberty, Health, and Indolency of the Body; and the Possession of outward things, such as Money, Land, Houses, Furniture, and the like."¹¹ The general idea is that government's primary if not exclusive role is to impartially promote the common good, which consists in protecting and procuring certain fundamental interests that are essential to the good of all citizens: their lives, liberties, property, and other political values. Going beyond Locke, so long as government does so impartially without intending to discriminate in favor or against religion, it acts legitimately ("neutrally"), even if laws have disparate effects on certain religious confessions or nonreligious conceptions of the good. There is disagreement about how "compelling" these civil interests must be to restrict religious ritual and conduct, and about whether general laws unfairly burden religion in certain circumstances or are "narrowly tailored" enough so as to avoid such burdens. But the general idea of the legitimate and compelling civil interests that government may impartially pursue is characteristic of the liberal tradition and provides a way into understanding the "neutral" or public justification of laws according to the political values of justice and public reason.

The *Structure of Democratic Public Reason*. The idea of political justification by public reason is a natural corollary to the main idea of social contract theories: that the fundamental terms of social cooperation should be generally acceptable to free and equal persons expected to comply with them. Acceptable on what grounds? Hobbesian contractarians contend that cooperative terms should be acceptable to each when justifiable on grounds of each individual's private interests and personal religious and moral convictions, and when terms of social cooperation are the outcome of a bargain among these conflicting interests and views.¹² The Hobbesian view provides a fitting characterization of the political compromises typical of a pluralist majoritarian democracy wherein citizens vote for candidates who represent their private interests and religious and moral concerns. By contrast, the liberal-democratic contract tradition says that terms of social cooperation should be impartially justified and acceptable to citizens generally on grounds of the shared civil interests they have in their capacity as free and

equal citizens. These civil interests provide the grounding for legitimate constitutional principles and laws that can be impartially justified to all citizens – justified, not as an unstable compromise among conflicting private interests and moral and religious convictions, but in terms of political values of public reason all can endorse in their capacity as free and equal citizens.

Democracy in the United States embodies tendencies of both the Hobbesian and the liberal-democratic social contract views.¹³ Here I focus on the liberal-democratic contract doctrine and its account of public reason as embodying the more appropriate conception of public political justification for a constitutional democracy.

What is public reason and the political values it incorporates? Turn again to Locke's liberal account of the civil interests of citizens and the political ideal of free and equal persons that informs these civil interests. The duties of government are to attend to the common civil interests of society's members: for Locke, their lives, liberties, health, external possessions, and leisure time. These civil interests are shared among persons with the capacities for reason since all are born free and equal (by virtue of God's creation, Locke says). The civil interests of free and equal persons with capacities for reason ground certain political values and fundamental principles (or "laws of nature" in Locke's terms) that are in each individual's interest when others respect and comply with them. As the political agent of the sovereign people, it is the duty and proper role of government through the laws to promote the common civil interests of free and equal persons by enforcing these principles and political values of justice, which constitute the "public good." Citizens are to exercise their rights of conscience or "private judgment" to decide if government has violated its trust by exceeding its legitimate powers. But there is no mention yet of *public reason* or the duty of government to justify its laws to citizens. Locke, though an early liberal, was not an advocate of democracy. Jean-Jacques Rousseau was the first to invoke the idea of public reason, which he distinguishes from the private reason of individuals grounded in their personal interests and pursuits. Public reason for Rousseau is the reason of the collective body of citizens as they impartially deliberate on measures that meet requirements of justice and promote the common good of all. Public reason is to guide the "general will," or citizens' deliberations and collective judgments on laws that effectively realize the civil interests and common good of all citizens.¹⁴

By the time Rawls inherits the idea of public reason, most of its background and structure are in place. The democratic ideal of public reason and of the public justification it supports presume:

1. An ideal of *free and equal persons* with the capacities for practical reasoning, which are the "moral powers" to be *reasonable* by complying with requirements of justice, and *rational* in forming and pursuing a conception of the good.

2. Free and equal persons' *fundamental civil interests* in developing and exercising their moral powers, since these enable citizens to engage in social and political cooperation as equal citizens and pursue their individual conceptions of the good.
3. *The political values of justice and public reason*, which are necessary to promote the fundamental civil interests of citizens, including for Rawls the "primary social goods": basic rights and liberties, diverse opportunities and powers and positions of office, income and wealth, and the social bases of self-respect.
4. *A political conception of justice* grounded in citizens' fundamental civil interests and their associated political values that enables citizens to assign priorities to political values and determine the balance of public reasons as they are applied to decide laws, public policies, and constitutional questions.

Public reason provides the bases for public political justification of laws to all citizens. Accordingly, it is crucial to the democratic idea of public justification that public reasons must be *shared* among free and equal citizens generally, not simply reasons that are intelligible or otherwise accessible to citizens as in Hobbesian accounts of public justification. Not all reasons shared by citizens are public reasons: we all have reasons for personal cleanliness and to clean our clothes and living quarters periodically, but these are neither political values nor public reasons. Public reasons are shared because they are grounded in the civil interests of free and equal citizens generally and express the political values that these civil interests support. Finally, public reason requires a political conception of justice whose principles and ideals provide determinate "content" to public reasoning, since it enables citizens and their political representatives to address the many disputes regarding the significance and relative weight or importance of political values.

Rawls has a more expansive conception of civil interests than does Locke, Kant, and nineteenth-century classical liberals. They were primarily concerned with establishing personal rights of conscience and belief, and economic rights and liberties for a nondemocratic private commercial society. In order to accommodate liberalism to the circumstances of a modern, diverse democracy, it is necessary to generalize the civil interests of free and equal persons. All reasonable citizens now regard themselves as free, socially equal, and legally independent regardless of race, nationality, or gender. They also regard themselves as responsible for their lives and conceptions of their good, and as having rights to participate as civic equals in democratic deliberation on social policies and decisions on laws required by justice and the common good. For these reasons, free and equal moral persons have, in their capacities as democratic citizens, fundamental civil interests in the "full and informed exercise" of the moral powers of practical reasoning that enable them to rationally decide and pursue their aims, and also to reason

about and responsibly comply with requirements of justice and the common good in their capacity as democratic citizens.

Citizens' civil interests in these capacities for practical reasoning are fundamental, not for perfectionist reasons or because many citizens accept the intrinsic good of rational and moral autonomy. Rather, the exercise of these capacities is necessary for all citizens – regardless of their conscientious convictions and final purposes – to take part in and benefit from social and political cooperation in a democratic society. Without the capacities to be rational and reasonable, individuals are unable to critically deliberate about and effectively pursue their purposes, understand and comply with laws required by justice, and more generally take responsibility for their actions and lives and effectively participate as equal citizens in social and political life. Rawls interprets the more familiar civil interests of Locke and classical liberals – the security of life, liberty, property, and so on – as among the primary social goods mentioned earlier, which are all essential to the exercise and development of the moral powers and the pursuit of most any permissible rational conception of the good in a modern democratic society. The fundamental civil interests of citizens in their moral powers and the primary social goods are the fundamental *political values* that are the main business of government to develop, protect, or procure for all citizens. They provide the foundation for other political values of justice that should ground public reasoning about laws, public policies, and requirements of the political constitution.

Regarding the “political values of justice and public reason,” Rawls says, “These values provide public reasons for all citizens.”¹⁵ Among the liberal political values Rawls specifically mentions are such values of justice as equal political and civil liberty, equality of opportunity, social equality and economic reciprocity, the common good, the social bases of self-respect, and the necessary institutional conditions for these values. There are also the political values of public reason that include guidelines for free and public inquiry, the appropriate use of concepts of judgment, inference and evidence, and such political virtues as reasonableness, fair-mindedness, and a readiness to honor the duty of civility, all of which make reasoned public discussion possible.¹⁶

Rawls later says that the values mentioned in the Preamble to the U.S. Constitution are examples of political values: a more perfect union, justice, domestic tranquility, the common defense, the general welfare, and the blessings of liberty for ourselves and our posterity, all of which include more specific values under them, such as the fair distribution of income and wealth. Effective and efficient use of economic resources are political values, which include promoting economic prosperity and preventing economic, environmental, and other kinds of social loss or waste.¹⁷ This includes the development of human as well as real capital, and thus adequate education of citizens to develop their capacities and skills so that they can be economically productive, self-supporting, and successful in their cho-

sen pursuits. Economic reciprocity is also a political value, which means both that citizens should have adequate means to develop and exercise their moral powers and pursue a wide range of conceptions of the good, and also that there be a fair distribution of income and wealth. Having diverse opportunities for productive employment is a political value, as are the physical health and mental well-being of citizens that are necessary for them to lead productive and successful lives.

Other political values Rawls mentions relating to human health and the environment are preserving the natural order to further the good of ourselves and future generations; promoting biological and medical knowledge by fostering species of animals and plants; and protecting the beauties of nature for purposes of public recreation and “the pleasures of a deeper understanding of the world.”¹⁸ From his brief discussions of the right to abortion, we learn that among the relevant political values are “appropriate respect for human life,” the reproduction of liberal society over time, full equality of women, and respecting the requirements of public reason itself in political discussion of controversial issues.¹⁹ Political values that relate to the family are the freedom and equality of women, the equality of children as future citizens, the freedom of religion, and the value of the family in securing the orderly production and reproduction of society and its culture from one generation to the next.²⁰

This is not an exhaustive list of the political values that should govern public reason, political decisions, and political justification in a constitutional democracy. In general, political values include the values, principles, and ideals that are significant if not essential to enable democratic citizens generally to adequately develop and fully exercise their moral powers, take advantage of diverse opportunities and pursue their freely determined conceptions of the good, and participate as socially and politically equal members of a democratic society on grounds of reciprocity and mutual respect. Given the many political values that are significantly instrumental to these ends, most if not all political questions that legitimately arise in a democratic society can and should be addressed by reasoning in terms of these shared political values. In this regard, public reason is, Rawls says, “complete.”²¹ This is especially the case when “constitutional essentials” and “matters of basic justice” are at stake: questions regarding individuals’ constitutional rights and liberties, equal opportunities and equal protection under law, the proper constitutional powers and procedures of government, the fulfillment of individuals’ basic needs so they can effectively exercise basic rights and liberties and take advantage of opportunities, and finally the achievement of economic reciprocity with the fair distribution of income and wealth.²²

But even regarding questions that are not constitutional essentials or matters of basic justice, the political values of public reason normally should guide political officials’ judgments. This seems reasonable if not required in the case of the adequate provision of many public goods that may not be required by basic justice,

such as where to construct highways and public transportation, public works, funding postsecondary education for all, the provision of certain public services (like legal aid), and funding cultural institutions (such as art museums, orchestras, and convention centers). In the absence of political values that guide decisions on these and other publicly funded measures, public funds will be misused for nonpublic purposes or prone to unfair distributions depending on people's wealth and political influence.

Rawls envisioned certain ostensibly perfectionist values governments can support when constitutional essentials and basic justice are not involved, such as art, historical, and other museums, or subsidies for orchestras, jazz concerts, and theaters. Public subsidies for parks, national holiday celebrations, convention centers and coliseums, perhaps even stadiums for athletic events, also seem to qualify. For given the wide range of political values of public reason Rawls mentions – including “public recreation and the pleasures of a deeper understanding of the world” – even many perfectionist, entertainment, and other leisure values would seem to be instrumentally justifiable in terms of the political values of education, health and mental well-being, and so on. As Rawls says in justifying laws that protect “the claims of animals and rest of nature”: “In each case we should start from the status of adult citizens and proceed subject to certain constraints to obtain a reasonable law.”²³ The constraints he mentions are that measures that promote perfectionist and other values not required by constitutional essentials and basic justice must sufficiently relate to and suitably advance citizens' fundamental civil interests in the “adequate development and full and informed exercise of the moral powers” and other political values of public reason.

It is because the political values of public reason can accommodate a wide range of subsidiary instrumental values that Rawls can claim that the political values of public reason are virtually “complete”: they are sufficient to address all or nearly all legitimate questions regarding political policies and laws regulating conduct and individuals' rights, liberties, opportunities, and other matters of legitimate public concern, at least so far as constitutional essentials and basic justice are concerned. Still, it is important that the values many consider perfectionist (scientific, mathematical, and literary knowledge, aesthetic creativity and appreciation, athletic prowess and dexterity) are not to be promoted for their own sake even though individuals may value them as such. They are rather to be promoted since they are conducive to realizing citizens' civil interests and the public good.

Political Legitimacy. The implication of the liberal-democratic claim – that the proper role of government is to promote only the civil interests of free and equal citizens and associated political values – is that laws and policies designed to promote nonpolitical values that cannot be justified in terms of civil

interests and political values of public reason exceed government's mandate and are not politically legitimate. If democratic government is to exercise its coercive powers to justifiably compel conduct or expend public funds, then it should do so only for reasons that citizens can accept as compatible with the civil interests and political values they share as citizens. Moreover, political legitimacy is important because it defines the limits on government officials' powers to exercise political authority, and also citizens' duties to obey laws that they might regard as contrary to their particular interests or conscientious beliefs, or even as unfair or unjust. Even if they regard laws as contrary to their conscientious beliefs or as unjust, citizens with few exceptions have a moral duty of political justice to comply with politically legitimate laws, those justifiable in terms of political values of public reason.

Rawls tells us that laws and "all questions arising in the legislature that concern or border on constitutional essentials or questions of basic justice should be settled, so far as possible, by principles and ideals that can be endorsed" by "common human reason" and supported by political values that "*can serve as a basis of public reason and justification.*"²⁴ This is a condition on laws' political legitimacy. The mere fact of majority will – that a majority of citizens support measures that promote their individual interests or comprehensive religious, philosophical, and moral views – is not sufficient to bestow political legitimacy on measures. Instead, political officials in their public acts and decisions have a "duty to honor public reason" in order to confer political legitimacy.²⁵ Moreover, citizens also have a moral "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."²⁶

These are three separate requirements of political legitimacy. The first imposes a political obligation on government officials: that they make decisions on laws and other matters on grounds of the political values of public reason and provide a public justification in these terms. The second is an analogous moral duty of civility on citizens: that they publicly advocate and vote only for candidates who support measures that are politically legitimate and supported by the political values of public reason. Third, citizens have a duty that applies especially when they advocate and vote for political policies or legal measures on the basis of their religious and other comprehensive views: to explain to other citizens how their votes also conform to the political values of public reason.²⁷

Many argue that it is unreasonable to expect religious citizens *not* to vote their religious views but vote political values instead, since it compromises their "religious integrity." For this reason, citizens' duty of civility allegedly cannot require that citizens vote or advocate public reasons if they are contrary to their religious beliefs. This is but one religious challenge to the implications of political legitimacy and public reason.

Religion and the Neutrality of Political Justification through Public Reason. The political values of public reason, as I've described them, potentially include development of human capacities that might seem to be perfectionist values, provided they are instrumental to realizing the fundamental civil interests of democratic citizens. But if that is so, then why shouldn't religious faith, such as belief in God and in the divine ordering of the universe, also be contemplated as instrumental to promoting political values and legitimate public grounds for laws and public policies? After all, for many people, religious knowledge and experience (knowledge of the Bible and theology, prayer and meditation), like knowledge of science, art, and literature taught in public schools, are conducive to their being well-rounded persons and law-abiding citizens. So why should certain religious beliefs, symbols, and practices, such as school prayer and religious instruction, not be incorporated into public reason and the political domain, so long as they promote good citizenship, public education, and other political values as well as many citizens' sense of justice?

The requirement that government impartially promote the common good, and that it do so without aiming to discriminate in favor or against religion, rules out relying on religious means to promote civic ends and the common good. Let us assume that public school prayer would in fact calm students at the beginning of the school day and help them focus on their classes and schoolwork. Even if the primary purpose of school prayer is not religious but to promote the education of children, still the means taken to promote this civic purpose does so in ways that discriminate in favor of religion. It is difficult to argue that promoting religion is not a secondary aim here since there are many legitimate alternative means other than compulsory school prayer to achieve the same civic purpose of providing optimal conditions to educate students (for instance, mindfulness or breathing exercises, or a moment of silence for reflection). Applying the constitutional test of strict scrutiny when fundamental rights are at stake (liberty of conscience and freedom of thought), prayer in public schools is not "narrowly tailored" to achieve legitimate civil aims or interests. Moreover, school prayer and religious symbols in civic places, even if for civil purposes, promote particular religions or religion generally; as Justice O'Connor said, this makes those who have different or no religious beliefs appear and feel as if they are outsiders and not fully members of the civic community.²⁸ Finally, these practices involve government entanglement with religion, and jeopardize the democratic value of "separation of church and state."

Some philosophers claim that for many people, religious beliefs and values ground their beliefs about justice, and it is difficult for them to understand political values of justice and their duty to obey valid laws apart from their religion.²⁹ Nor can they maintain their "integrity" as persons unless they can appeal to their religious faith in coming to a decision and justifying their position on all pub-

lic matters. For many religious persons, prayer in public school and political forums, religious displays and symbols in publicly owned places, and other public recognition of their religious faith reinforce their commitment to justice and being conscientious law-abiding citizens, and hence promote the virtues of justice and other political values of public reason. This raises a different question from whether religious citizens have a civic or moral duty at all to exercise their political rights only in accord with the political values of public reason (addressed below). Conceding that they do, the question here is whether religious reasons, symbols, and practices should be publicly acknowledged and endorsed by government as a source of legitimate public reasons when they are sufficiently conducive to citizens' compliance with justice and their accepting political values of public reason.

In general, the fact that political endorsement of religious reasons, symbols, and practices might be conducive to promoting the moral powers and related political values for many people does not mean that religious reasons themselves should be regarded as public reasons; nor that they should have a politically recognized role in official decisions regarding laws and policies; nor does it justify political endorsement of religious practices or symbols. For to be *public*, political values must be *shareable* among *all* reasonable citizens and relate to their civil interests *in their capacity as free and equal citizens*. Teaching the arts and sciences in public schools to develop human capacities for reasoning, scientific, mathematical, and historical knowledge, literary and aesthetic appreciation, and sports and physical prowess enables citizens to choose from and take advantage of diverse employment and cultural opportunities, cultivate habits of maintaining good health, and promote other political values. But advocating and encouraging particular religious beliefs and spiritual connection to the divine is to provide reasons and instill beliefs that are accepted by some citizens but rejected by others. They reject these religious reasons not simply as false or misguided on grounds of their own conscientious religious, philosophical, and moral convictions and conceptions of the good, but also reject them as politically unreasonable *in their capacity as democratic citizens based on their fundamental civil interests* because they are not conducive to the development and exercise of the moral powers of citizens generally or to realizing other public political values. The same is not true of general education in the sciences, math, and history, even the history of art, philosophy, and religion. For there is little or no reason to question the evidential standards of these intellectual inquiries, even if there may be grounds for questioning the aesthetic value of some art and music, or the truth of the philosophical, ethical, and religious doctrines surveyed in such courses. There is a clear difference between teaching the beliefs, practices, and histories of different religions, versus advocating, affirming, and enacting religious beliefs and practices, such as by affirming religious creeds in public schools, legislatures, or courts.

Chief among the political values of justice are social and civic equality and the priority of equal basic rights and liberties, including equal liberty of conscience and freedom of thought and association, over other social values. When the official grounds for laws and public policies are based in religious reasons that are not acceptable as either comprehensive or public political values by democratic citizens generally, then they conflict with rather than promote the exercise of many citizens' fundamental civil interests, as well as their conceptions of the good. Liberty of conscience protects not simply freedom of conscientious belief but also the freedom to act on one's moral convictions consistent with the civil interests and legitimate rights of citizens. When religious reasons are made to serve as political reasons for coercive laws (such as prohibitions or unreasonable restrictions on extramarital and gay sex, contraception, or abortions), then there are serious questions regarding infringement upon dissenters' liberty of conscience and freedom of thought and association: they are being legally required to comport themselves with others' religious morality without justification by the political values of public reason.

Moreover, even if conduct and beliefs are not legally coerced by political endorsement of religion and religious morality, still many citizens' civil interests are treated as irrelevant or overridden on the basis of other citizens' religious, philosophical, or moral beliefs. Nonconformists then are not being publicly treated or regarded as fully equal citizens, since they decline to recognize or participate in publicly sanctioned religion and its practices. Moreover, the exercise of democratic political power in which they share is being employed for reasons that they reject based not simply on their conception of the good, but even in their capacity as equal citizens.³⁰ The exercise of their equal rights of political participation is thereby impaired, and their claim to a public political justification in terms of public reasons they can accept is denied.³¹

The view here does not apply only to religion, so it does not discriminate against religion as such. For the same constraints should apply to laws that are justifiable purely on grounds of nonreligious philosophical and moral views acceptable to only a portion of democratic citizens. This includes utilitarian values of maximizing aggregate welfare, libertarian values of absolute property and self-ownership, Kantian values of moral autonomy, Millian individuality and other perfectionist doctrines to develop excellences, and virtues and ways of "flourishing" that cannot be justified in terms of political values of justice and public reason. Likewise, for government to publicly endorse or advocate in public schools atheism and scientific materialism (that the material universe is all there is) as in the former Soviet Union and other communist nations, or similar controversial metaphysical doctrines, also conflicts with public reason. Believing these philosophical doctrines is not necessary for the development and full and informed exercise of the moral powers, or educating citizens so that they can be productive, be self-

supporting, and fully take advantage of a liberal society's diverse opportunities, or fulfill their roles and duties as free and equal citizens. Here I assume that the empirical and mathematical sciences, including Darwinian evolution, can be taught in public schools without denying what many believe to be God's role in creating the universe, and without the implication of scientific materialism and atheism. There is no legitimate empirical science of either atheism or of God's necessary role in creation, nor are these metaphysical positions necessary assumptions for any of the empirical sciences, nor for a liberal political conception of justice.

Let us return now to the issue of liberal neutrality and what it could mean in the context of political liberalism and public reason. Political liberalism we have seen is not neutral with respect to the good if that is taken to mean that there can be no conception of individuals' good or fundamental interests that it is the role of a liberal society to secure and encourage. Public reason assumes there are certain fundamental civil interests of democratic citizens that it is the purpose of government to realize and promote, since they are essential for free and equal citizens to lead free, independent, and productive lives and fulfill the obligations of citizens. Chief among these are the primary social goods: rights and liberties; diverse educational, employment, and cultural opportunities; powers and positions of office and responsibility; income and wealth; and the social bases of self-respect. Other political values are assumed to be essential to realizing the fundamental civil interests of citizens and the primary social goods necessary for them (health and absence of disease, education and development of individuals' capacities, and social unity, among others). What political liberalism eschews is a conception of the final ends or ultimate good that is presumed to be essential to each individuals' good: whether that be maximum happiness, moral autonomy, individuality or rational autonomy, human flourishing or perfectibility, the beatific vision of God or experience of the Holy Spirit, and so on. The basic liberal rights and liberties guarantee each person the political freedom to decide, revise, and pursue their own conception of the ends and pursuits that give meaning to their lives. This does not mean that moral autonomy, individuality, or individual freedom are themselves intrinsic values within political liberalism. But it does mean that having the *political* freedom to decide and act on one's conception of the good and having ample diverse opportunities to pursue it – as guaranteed by the basic liberties and their priority and fair equal opportunity – as well as the *political* autonomy to participate as a social and political equal in civic and public life of a democratic society are political values of justice and public reason that are fundamental to liberal constitutional democracy.

Nor does political liberalism and the values of public reason pretend that laws must be neutral in their effects. As we saw above, there is no way to formulate laws or public policy so that they do not advantage or burden anyone or the pursuit of some values more than others. What can be required by public reason is *procedural*

impartiality in decisions and *substantive fairness* in the distribution of benefits and burdens, and also that government take appropriate means to reduce unnecessary burdens of its decisions and mitigate or compensate for the costs to individuals that laws and policies may cause.

Procedural impartiality in making and applying laws and government regulations suggests a way that liberalism *should* aspire to be neutral: *neutrality of aim* is basically an impartiality requirement of public reason. It requires that governments in their decision-making not aim to advantage or disadvantage particular persons or groups or permissible conceptions of the good or comprehensive doctrines unless justifiable by sufficient public reasons. This is part of formal justice: that laws be general in their content and application, and fairly apply to everyone or all within some relevant group aimed to be affected by the laws (such as the elderly, the disabled, owners of motor vehicles, convicted felons, and so on). Nor should the state aim to do anything intended to advantage or disadvantage one or more comprehensive religious, moral, or philosophical doctrines more than others, or give greater assistance to those who pursue it.

Finally, and perhaps most significant, the political values of public reason are *neutral with respect to the justification* of laws and public policies. That there be shared political reasons grounded in the civil interests and essential good of free and equal democratic citizens and the political values these interests support is the primary purpose of appeal to political values of public reason in deliberating on laws and public policies, and in citizens' justification to others of the political positions they advocate and politically support and vote for. Democratic citizens with different individual interests and who affirm diverse and conflicting religious, philosophical, and moral views cannot be expected to agree on all the laws that are legislated in their name as members of the body politic. But they should be able to accept and endorse the political *reasons* that underlie and are used to justify the laws. Otherwise, the political power they share is being imposed to promote individual interests and religious, philosophical, and moral views that they reject and that cannot be justified on any grounds reasonably acceptable to them. Then both their freedom as individuals and their equal status and political power as citizens are being curbed for reasons they can reasonably reject, and they are not fully free and equal citizens.

Political Legitimacy, the Duty of Civility, and the Scope of Public Reason. We have seen that political legitimacy imposes a political duty on government officials to make decisions on grounds of the political values of public reason, at least when constitutional essentials and basic justice are at stake. Second, an analogous moral duty of civility extends to citizens: they advocate and vote for candidates who support measures that are also politically legitimate and hence are supported by the political values of public reason. Third, citizens' duty of civil-

ity also requires that, when citizens advocate and vote for measures on the basis of their religious and other comprehensive views, they explain to other citizens how their votes also conform to the political values of public reason.³²

Some contend it is unreasonable to expect religious citizens to constrain their votes by political values of public reason. Such constraints limit their fundamental freedom of religion, deprive them of their religious identity, and compromise their integrity as religious persons.³³ This is supposedly why religious citizens cannot have *the duty of civility* to explain their votes in terms of political values of public reason, or even a duty to consistently vote political values when these conflict with their conscientious religious beliefs.³⁴

The duty of civility is a moral duty, not a legal duty backed by sanctions. Moreover, liberty of conscience means that citizens legally can vote and politically advocate as their religious convictions require, and they have the freedom to act on their religious convictions so long as they do not violate the rights, liberties, and equal opportunities of others or violate any legitimate laws. So religious believers who oppose, for example, contraception and all rights to abortion on grounds of religious doctrine have a political right to advocate and vote their religious beliefs, even though this conflicts with their duty of civility and the political values of public reason. Political rights of liberty of conscience override the *moral* duty of civility so that citizens cannot be legally required to vote only political values of public reason or to explain how their votes and political advocacy on religious grounds is (or is not) compatible with public reason. But citizens' basic rights and liberties legally entitle them to speak and act in ways that conflict with many moral duties that are not legally mandated. News sources and politicians who regularly misrepresent the truth to the public normally have a legal right to do so, even though they violate moral duties of veracity and political obligations as fiduciary agents of the public. Still, the fact remains that the policies and laws they advocate are not politically legitimate according to the principle of political legitimacy unless they comply with political values of public reason. So, if candidates vote to enact laws that express their political supporters' religious and moral objections to all contraception and abortion, or to gay marriage or LGBT military service, then these laws are not politically legitimate, however much majoritarian support they may have. The problem is that other free and equal citizens are being coerced into compliance with a majority's religious and moral convictions with no public political justification in terms of political values of public reason.

Finally, regarding the contention that it is *unreasonable* to expect religious persons to vote contrary to their religious convictions when they conflict with public reason: in what sense is it unreasonable? It may be unreasonable within the terms of their comprehensive religious or philosophical doctrine and its account of what is reasonable and unreasonable. But it is not *politically unreasonable* within the terms of the political values of justice and the requirements of public reason, nor

within a liberal political conception of justice. What is politically reasonable and unreasonable is not to be decided by the conception of reason set forth in one or another comprehensive doctrine. Instead, within political liberalism, the notion of reasonableness, like the notion of being rational, is constrained by public reason and the requirements of public political justification. Recall that among the political values of public reason are guidelines for free and public inquiry, the appropriate use of concepts of judgment, inference, and evidence, and such political virtues as reasonableness, fair-mindedness, and a readiness to honor the duty of civility, all of which make reasoned public discussion possible.³⁵ We cannot generate the requirements of public reason and a liberal political conception by starting “outside” political argument with one or another philosophical conception of reason and reasonableness. Reason and reasonableness themselves need to be given a moral-political interpretation in terms of what is appropriate to demand or expect of others in their capacity as democratic citizens. So, Rawls specifies the idea of free and equal moral persons implicit in democratic culture and their fundamental civil interests; then he constructs the account of political values, public reason, and political reasonableness on those bases. When is someone being *politically* unreasonable? That is largely a matter of working out whether someone is offering and insisting on using considerations in public political arguments that are unsuited to the setting of justification addressed to free and equal persons with shared civil interests but different reasonable comprehensive views. Citizens and politicians are politically reasonable when they seek to cooperate with and support laws that can be justified to other citizens on grounds of principles, reasons, and political values they can accept in their capacity as free and equal citizens motivated by their fundamental civil interests. It is politically unreasonable for legislators, judges, and lawyers engaged in political argument to rely exclusively on philosophical or religious doctrine regarding the requirements of reason (such as natural law doctrine) in deciding whether rights to gay marriage, contraception, or abortion are reasonable. And the same is true of other comprehensive metaphysical and moral doctrines. Comprehensive doctrines are not relevant to determining what is politically reasonable and politically justifiable in terms of public reason.³⁶

Political appeals to religion occupy an ambiguous place in U.S. history. Religious reasons argued by the abolitionists and later Martin Luther King Jr. played a significant role in the public rejection of slavery and racial segregation. Such religious arguments for the dignity and equality of humankind are politically legitimate and compatible with public reason. But appeals to religion also play a continuing role in the rejection of the civil rights of gay and transgender people, opposition to contraception and abortion, and support for nativist immigration policies.³⁷ These are politically illegitimate appeals to religious reasons.

It is not the role of a constitutional democracy to either intentionally promote or impede citizens' religious beliefs or doctrines. Religious reasons and motives are not legitimate grounds for advocating public policy and deciding laws unless consistent with democratic citizens' civil interests and political values of justice and public reason. These political values provide the legitimate bases for public political justifications of laws and public policies among free and equal citizens in a democratic society.

AUTHOR'S NOTE

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ENDNOTES

- ¹ See Justice O'Connor's concurring opinion in *Lynch v. Donnelly* 465 U.S. 668 (1984), in which she says that government's endorsement of religion "sends a message to nonadherents that they are outsiders, not full members of the political community." Christopher Eisgruber and Lawrence Sager, *Religious Freedom and the Constitution* (Cambridge, Mass.: Harvard University Press, 2007); and Cécile Laborde, *Liberalism's Religion* (Cambridge, Mass.: Harvard University Press, 2017), 84–92, provide thorough discussion of this and related issues.
- ² John Rawls, *Political Liberalism*, expanded ed. (New York: Columbia University Press, 2005), 139, 224.
- ³ See John Locke, *The Second Treatise of Government* (1690); Immanuel Kant, *Groundwork of the Metaphysics of Morals* (1785); Jeremy Bentham, *An Introduction to the Principles of Morals and*

- Legislation* (1823); John Stuart Mill, *On Liberty* (1859); Friedrich Hayek, *The Constitution of Liberty* (1960); and Isaiah Berlin, *Two Concepts of Liberty* (1958).
- ⁴ See Christopher Eberle, *Religious Convictions in Liberal Politics* (Cambridge: Cambridge University Press, 2002), 14–16, on controversial epistemic assumptions of justificatory liberalism; and Laborde, *Liberalism's Religion*, 162–163, on Rawlsian liberalism's controversial distinction between the domain of right and justice versus the good.
- ⁵ See Alisdair MacIntyre, *After Virtue* (Notre Dame, Ind.: University of Notre Dame Press, 1981); and Patrick Deneen, *Why Liberalism Failed* (New Haven, Conn.: Yale University Press, 2018).
- ⁶ In *Employment Division v. Smith* 494 U.S. 872 (1990), the Supreme Court argued that since drug laws are neutral in their aim and not designed to burden religious practices, this justifies the denial of unemployment benefits to Native Americans fired for using peyote in religious rituals. However, Justice Scalia, writing the majority opinion for the Court, failed to consider whether enforcement of drug laws against religious rituals served any compelling government purpose.
- ⁷ *Yoder v. Wisconsin* 406 U.S. 205 (1972).
- ⁸ *Burwell v. Hobby Lobby Stores* 573 U.S. 682 (2014).
- ⁹ Compare *Employment Division v. Smith* with *Sherbert v. Verner* 374 U.S. 398 (1963), which held that a Seventh-day Adventist who refused to work on Saturdays for religious reasons could not be denied unemployment benefits.
- ¹⁰ On the fairness justification and neutrality of treatment, see Alan Patten, "Liberal Neutrality: An Interpretation and Defense," *The Journal of Political Philosophy* 20 (3) (2012): 249–272; and Alan Patten, "Religious Exemptions and Fairness," in *Religion in Liberal Political Philosophy*, ed. Cécile Laborde and Aurélia Bardou (Oxford: Oxford University Press, 2017).
- ¹¹ See Locke, *A Letter Concerning Toleration* (1689), ed. James Tully (Indianapolis: Hackett, 1983), 26. By "indolency of the body" Locke seems to mean the absence of pain and exertion, which suggests that leisure or free time—the time not required to work to meet basic needs—is a civil interest. See Julie Rose, *Free Time* (Princeton, N.J.: Princeton University Press, 2016).
- ¹² See David Gauthier, *Morals by Agreement* (Oxford: Oxford University Press, 1986); and Gerald Gaus, *The Order of Public Reason* (Cambridge: Cambridge University Press, 2011), two of the most prominent contemporary Hobbesian contract views.
- ¹³ Currently we live in a degenerating democracy with a president who thrives on conflict, shuns compromise and impartiality, and makes no attempt at public political justification to all citizens, but instead promotes only the personal, moral, and religious interests of his supporters.
- ¹⁴ See Jean-Jacques Rousseau, *On the Social Contract* (1762) (Indianapolis: Hackett, 2019).
- ¹⁵ John Rawls, "The Idea of Public Reason Revisited," in *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 2001), 601.
- ¹⁶ Rawls, *Political Liberalism*, 139, 224.
- ¹⁷ Rawls, *Collected Papers*, 584.
- ¹⁸ Rawls, *Political Liberalism*, 245.

- ¹⁹ See also John Rawls, *Justice as Fairness: A Restatement* (Cambridge Mass.: Harvard University Press, 2001), 117; and Rawls, *Political Liberalism*, 243.
- ²⁰ Rawls, *Collected Papers*, 601.
- ²¹ Rawls, *Political Liberalism*, 225, 241.
- ²² *Constitutional essentials* for Rawls are 1) matters that concern or affect the exercise of basic rights and liberties and opportunities and their priority over other social values, as well as the basic social minimum providing for the basic needs of all citizens, all of which are covered by his first principle of justice; and 2) the structure of government, including constitutional offices and their legitimate powers and the procedures for legislating, applying, and enforcing laws. Rawls, *Political Liberalism*, 227–228; and Rawls, *Justice as Fairness*, 47–48. *Basic justice* concerns matters that determine or significantly affect the structure of the economy, the specification of economic property rights, and the fair or just distribution of income and wealth; and questions whether justice requires fair equal opportunities or some other conception of equal opportunities, which are covered by Rawls's second principle of justice. Rawls, *Political Liberalism*, 228–229; and Rawls, *Justice as Fairness*, 48–49. Most issues regarding the economy concern basic justice and should be settled by political values of public reason. Rawls, *Political Liberalism*, 229.
- ²³ Rawls, *Political Liberalism*, 245.
- ²⁴ *Ibid.*, 137, 215.
- ²⁵ *Ibid.*, 217.
- ²⁶ *Ibid.*
- ²⁷ Rawls calls this requirement “the proviso.” *Ibid.*, 453, 462–466.
- ²⁸ See Justice O'Connor in *Lynch v. Donnelly*.
- ²⁹ See, for example, Paul Weithman, *Religion and the Obligations of Citizenship* (Cambridge: Cambridge University Press, 2006). See also Eberle, *Religious Convictions in Liberal Politics*; and Nicholas Wolterstorff, “The Role of Religion in Decision and Discussion of Political Issues,” in Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square: The Place of Religious Convictions in Political Debate* (New York: Roman and Littlefield, 1997).
- ³⁰ See Joshua Cohen, “Establishment, Exclusion, and Democracy's Public Reason,” in *Reasons and Recognition: Essays in Honor of T. M. Scanlon*, ed. R. Jay Wallace, Rahul Kumar, and Samuel Freeman (New York: Oxford University Press, 2011), 256–275.
- ³¹ Robert Audi makes a similar point with respect to governmental preference for a religion, which he says tends to concentrate greater political power in the preferred religion and its members and impairs democracy, since other citizens do not have equal opportunities to exercise political power on a fair basis. Robert Audi, “The Separation of Church and State and the Obligations of Citizenship,” *Philosophy and Public Affairs* 18 (3) (1989): 259–296, 266.
- ³² Rawls, *Political Liberalism*, 462–466.
- ³³ See Kent Greenawalt, *Private Consciences and Public Reason* (Oxford: Oxford University Press, 1995), 67.
- ³⁴ In addition to *ibid.* and Eberle's *Religious Convictions in Liberal Politics*, see Wolterstorff, “The Role of Religion in Decision and Discussion of Political Issues”; Michael Perry, *Love and Power: The Role of Religion and Morality in American Politics* (Oxford: Oxford University Press, 1993); Jeremy Waldron, “Isolating Public Reasons,” in *Rawls's Political Liberalism*,

ed. Thom Brooks and Martha C. Nussbaum (New York: Columbia University Press, 1993); and Gerald Gaus and Kevin Vallier, "The Roles of Religious Conviction in a Publicly Justified Polity," *Philosophy and Social Criticism* 35 (1–2) (2009): 51–76.

³⁵ Rawls, *Political Liberalism*, 139, 224.

³⁶ This responds to Eberle's contention, in *Religious Convictions in Liberal Politics*, that political liberalism is not neutral with respect to epistemic considerations, such as notions of rationality, reasonableness, and other grounds for justification. Political liberalism is neutral, I contend, because its account of political reasonableness and public justification comes from within political liberalism itself, and is not grounded in comprehensive doctrines regarding the requirements of reason.

³⁷ See, for example, Paula White in Julia Duin, "She Led Trump to Christ: The Rise of the Televangelist Who Advises the White House," *Washington Post Magazine*, November 14, 2017.