

Public Reason and Abortion Revisited

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ABSTRACT

For better or for worse, abortion has become a touchstone for the so-called "culture wars" between liberals and secularists on one side, and conservatives and religious believers on the other. One need not embrace any particular view of abortion to recognize that this issue has the potential to divide society into conflicting factions and corrode citizens' capacity for mutual cooperation and trust, as accusations, resentment, and frustration accumulate in the face of what would appear to be insurmountable moral and philosophical differences. In this essay, I investigate whether an ideal of public reason might have something constructive to say about the abortion controversy. I argue for two principal claims: first, that the highly influential Rawlsian ideal, with its focus on epistemic constraints and contractual virtues such as toleration and fairness, can neither settle the abortion dispute, nor significantly mitigate the social and political dangers associated with it. Second, I argue that the Rawlsian ideal should be supplanted by a virtue-ethical ideal, which relaxes Rawls's epistemic constraints and draws on a richer canon of virtue. The virtue-ethical ideal of public reason, though unable to decide policy outcomes directly, may have the potential to mitigate some of the political distrust and conflict that divides prochoice and prolife citizens, and to facilitate cooperation and trust in less contested political domains.

For better or for worse, abortion has become a touchstone for the so-called "culture wars" between liberals and secularists on one side, and conservatives and religious believers on the other. Few issues have been more divisive or passion-inducing, whether in the law courts, legislatures, or popular culture. This is perhaps nowhere more evident than in the United States, where the abortion controversy has continued virtually unabated since 1973, when the Supreme Court recognized a constitutional right to abortion.¹ One need not embrace any particular view of

¹ Roe v. Wade, 410 U.S. 113 (1973). Decided January 22nd 1973.

abortion to recognize that this issue has the potential to divide society into conflicting factions and corrode citizens' capacity for mutual cooperation and trust, as accusations, resentment, and frustration accumulate in the face of what would appear to be insurmountable moral and philosophical differences. In this essay, I investigate whether an ideal of public reason might have something constructive to say about the abortion controversy. I argue for two principal claims: first, that the highly influential Rawlsian ideal, with its focus on epistemic constraints and contractual virtues such as toleration and fairness, can neither settle the abortion dispute, nor significantly mitigate the social and political dangers associated with it. Second, I argue that the Rawlsian ideal should be supplanted by a virtue-ethical ideal, which relaxes Rawls's epistemic constraints and draws on a richer canon of virtue. The virtue-ethical ideal of public reason, though unable to decide policy outcomes directly, may have the potential to mitigate some of the political distrust and conflict that divides prochoice and prolife citizens, and to facilitate cooperation and trust in less contested political domains.

I begin by presenting the main tenets of John Rawls's doctrine of public reason, in particular as advanced in *Political Liberalism*. Second, I explore the implications of Rawlsian public reason for the abortion controversy, arguing that on a plausible interpretation, it leaves the abortion standoff largely just as it was before. Third, I set out the basic parameters of a virtue-ethical ideal of public reason, and suggest that it can go further than the Rawlsian ideal in mitigating the distrust and resentment associated with the abortion standoff, and facilitating cooperation on less contested issues. I conclude by underlining some of the limits inherent in any theory of public reason, pointing out that it is parasitic on a set of social and political practices without which sustained constructive political deliberation would be impossible.

The Rawlsian Ideal of Public Reason

The term “public reason” is most typically used to pick out a set of moral standards governing public deliberation about law and policy.² At the heart of John Rawls’s doctrine of public reason is the principle of “reciprocity,” according to which “our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions.”³ As Rawls interprets the notion of reciprocity in deliberation, it entails what he calls the “duty of civility,” according to which citizens have “a moral, not a legal, duty....to be able to explain to one another...how the principles and policies they advocate and vote for can be supported by the political values of public reason” (PL, 217). “Political” values, as Rawls understands them, have three features: they are (i) already implicit in our political culture; (ii) of limited scope, applying exclusively to the political domain or the “basic structure” of society; and (iii) “freestanding” from or not presupposing the truth or validity of any particular comprehensive doctrine (PL, 11-15). They encompass the “values of political justice,” which are supposed to be reflected in the basic structure or fundamental institutions of society, in particular the State and the economy; and the “values of public reason,” which provide moral standards for political inquiry and deliberation among citizens (PL, 224).

The values of political justice, at least on Rawls’s account, include equal political and civil liberty, equality of opportunity, and social equality. More specifically, they include freedom of conscience and expression, freedom of the press, the right to a fair trial, and the general freedom to pursue one’s favored conception of the good within the limits of justice. The values of

² Though I focus in this paper exclusively on the Rawlsian account, my analysis may be extended, with due qualification, to other accounts that take their cue from Rawls’s, including Stephen Macedo, *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990) and Samuel Freeman, “Public Reason and Political Justification,” *Fordham Law Review* 68 (2004).

³ John Rawls, *Political Liberalism, The John Dewey Essays in Philosophy* (New York: Columbia University Press, 1993), xlvi. From now on, references to this work will occur in parenthesis as “PL.”

public reason, on the other hand, include the virtue of reasonableness, which involves general epistemic responsibility and competence (for example, a willingness to consider relevant evidence and observance of basic logical canons), moral responsiveness to the interests and rights of others, and a willingness to observe the “duty of civility,” by offering “political” arguments for conclusions about matters of fundamental law or basic justice.

Examples of arguments that probably wander outside the domain of public reason, and thus violate the duty of civility, are arguments against homosexual marriage grounded in the authority of scripture; arguments for special political treatment for persons of religious faith based on the notion that they are the “chosen people”; and arguments against abortion based on a doctrine of ensoulment. But nonreligious arguments, e.g. an argument in favor of homosexual marriage grounded in a Kantian doctrine of autonomy, or an argument for the death penalty based exclusively on utilitarian principles, or an argument against abortion based on natural law theory, might potentially violate the duty of civility, at least insofar as their foundational values are widely contested and are not part of the shared patrimony of public reason in a liberal democratic political culture.

But this raises the question, why are arguments that fail to rally “public” reasons in their defense morally suspect on the Rawlsian view? One answer could be that they are simply false or unsound. But this is not Rawls’s answer—on the contrary, Rawls goes to some length to avoid making any such controversial claim.⁴ Rather, the reason these arguments are morally suspect is that they advocate coercive interference in another person’s lifeplans without offering arguments that could reasonably be expected to appeal to the shared reason of the speaker and his addressee. The fundamental premise of Rawlsian public reason is that we are required to respect people’s

⁴ “We try, so far as we can, neither to assert nor to deny any particular comprehensive religious, philosophical, or moral view, or its associated theory of truth and the status of values...” (PL, 150). But cf. Joseph Raz, “Facing Diversity: The Case of Epistemic Abstinence,” *Philosophy & Public Affairs* 19, no. 1 (1990) and David Estlund, “The Insularity of the Reasonable: Why Political Liberalism Must Admit the Truth,” *Ethics* 108, no. 2 (1998) for arguments skeptical of this move.

autonomy, understood as their ability to pursue a conception of the good of their own choice, subject only to constraints that they could approve, assuming they are both rational (i.e. capable of more or less competent reasoning about ends and means) and reasonable (i.e. minimally sensitive to the basic interests of others). Respect for autonomy so understood is at the bedrock of the duty of civility (i.e. the duty to offer political or public reasons when advocating laws and policies affecting the basic structure of society).⁵

To sum up: since each of us is free and equal, no one of us has any right to dispose of another or wield control over another's life (special circumstances aside⁶) without providing grounds for that intervention that are accessible to the other, i.e. grounds that are not only intelligible, but minimally cogent and capable of legitimizing the intervention in the eyes of the other without stretching his current belief system to a breaking point. In other words, I owe you a *justification* for impeding your freedom to pursue your life goals, and not just any justification, but one you could reasonably and voluntarily view as legitimate. Otherwise, I am showing scant regard for your moral status as free and equal to me, and it will appear, from your standpoint, that I am just acting on reasons that I happen to believe (but have no weight for you), rather than appealing to our shared reason. I might as well say to you, "You really ought to obey this law, because *I* believe it's good for you to do so."⁷ In short, the duty of civility reflects the requirement

⁵ Admittedly, Rawls is not altogether forthcoming on this point. He may be interpreted as political "all the way down," that is, as arguing that it is the political acceptance of autonomy that makes autonomy a salient value. However, this interpretation has a hard time explaining the fundamental rationale for the search for common political values—it is hardly convincing to say that finding common political values is worthwhile "just because it happens to be a goal valued around here." For a defense of political liberalism that is unequivocally grounded in the autonomy of moral agents, see Charles Larmore, "The Moral Basis of Political Liberalism," *The Journal of Philosophy* 96, no. 12 (1999).

⁶ For example, the relation between adults and children, as well as between adults and the mentally incompetent, are not relations between equally competent and responsible agents, and as such, respect here takes on a different hue.

⁷ See PL, 247: "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." Cf. Christopher Eberle, *Religious Convictions in*

to respect the equal autonomy of other citizens, by justifying laws on grounds they can view as legitimate.

Finally, it is important to keep in mind that the duty of civility has a restricted scope, and thus does not apply to all political arguments. It only applies to arguments that: (a) direct the use of the coercive power some citizens wield over others; (b) pertain to matters that affect the “basic structure” of society, or what Rawls calls “constitutional essentials and matters of basic justice.” The first condition, that the argument directs the use of coercive power by some over others, is straightforward enough. On the presumption that individual autonomy deserves special protection, any rule backed by coercive force requires some special justification. The second condition, that it pertains to society’s “basic structure,” is a little less obvious. When Rawls speaks of matters affecting the basic structure of society, he has in mind the principles governing the distribution of tangible benefits and burdens, e.g. basic rights and responsibilities, social status, opportunities, and wealth, by society’s fundamental social, political, and economic institutions. Once the basic “rules of the game,” the constitutional essentials, are laid down, Rawls believes that local instances of policies democratically enacted need not adhere so stringently to the requirements of public reason, since these simply do not shape people’s lives in as fundamental a way.⁸

Public Reason and Abortion Through a Rawlsian Lens

Now, I would like to consider the relevance of Rawlsian public reason to the abortion controversy. Most of us are familiar with the depth of resentment, anger, and alienation that the

Liberal Politics (Cambridge: Cambridge University Press, 2002), 52-54, for a concise articulation of the Rawlsian understanding of the relation between respect and public reason.

⁸ See PL, 230: “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 [...] [S]o 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” (from now on, I will abbreviate *Political Liberalism* to PL).

abortion debate can evoke, and how difficult it can be to find instances of constructive and respectful deliberation across the prochoice-prolife divide. Prochoicers often suspect that proliferers want to impose their theological worldview on the rest of society by means of laws that heavily restrict people's lifestyles and choices, and have little or no interest in entertaining rational arguments that transcend scripture and faith; while proliferers often view prochoicers as "baby killers" with little or no regard for the values of religion, community, and family life.

This ideological and social rift has some troubling implications for democratic politics: insofar as bitterness, resentment, distrust, and blame are directed at particular persons or groups, it becomes much more difficult to cooperate with them and converse with them in other domains, even in domains where cooperation might otherwise be possible, e.g. in the fight against crime, or in attempts to extend educational opportunities to previously underprivileged classes of persons. When rational argumentation breaks down on issues dear to people's hearts, there is a danger that the parties will come to view each other as somehow beyond rational persuasion on *any* important moral or political issue, and therefore be disinclined to address serious arguments to each other not just on highly contested issues, but in general. When the attempt at rational persuasion is abandoned, even if only in reference to a particular section of the population, the politics of persuasion and compromise is quickly replaced with the politics of power and majoritarianism. And this approach to democratic politics, to the extent that it becomes the order of the day, can cast doubt over the legitimacy of the entire process, at least in the eyes of the losing parties, who feel disenfranchised by the unilateral and majoritarian strategies of their opponents. Indeed, it seems plausible to speculate that the frequency with which political controversies have been litigated in the courts, especially in the United States, is a sign that the ordinary politics of democratic persuasion and compromise has been displaced by the politics of power and litigation.⁹

⁹ I have in mind issues such as same-sex marriage, abortion, and the free exercise of religion.

Assuming I am right, and the standoff between pro-lifers and pro-choicers can result in lost opportunities for political cooperation, as well as displacing the politics of persuasion with the politics of power and majoritarianism, what can Rawls's doctrine of public reason do about it? Abortion, insofar as it involves contested claims about basic justice, whether on the side of a woman's freedom of choice, or the unborn's right to life, seems to fall squarely under the category of "questions of basic justice." Consequently, at least according to Rawls, it ought to be settled in the political arena in accordance with "political" values. But what might such values be, and would they be likely to favor one side of the abortion debate over the other? In a much discussed footnote in *Political Liberalism*, Rawls suggests that "any reasonable balance" of the political values relevant to the abortion dispute, in particular "the due respect for human life," "the ordered reproduction of political society over time," and "the equality of women as equal citizens," would give a woman "a duly qualified right" to abortion in the first trimester of her pregnancy, and that a comprehensive doctrine that denied such a right would be, to that extent, "unreasonable," even if it was reasonable in other respects.¹⁰

Now, Rawls may interpret the political values of a constitutional democracy as licensing abortion in the first trimester, but it seems more than a stretch to suggest that "any reasonable balance" of political values would line up with his interpretation.¹¹ The difficulty with directly inferring a right to abortion from political values such as equality and liberty is that the issue at stake between pro-life and pro-choice citizens is precisely how we are to interpret such values and how we ought to rank them in case of conflict. While in certain cases, citizens may overcome

¹⁰ PL, 243, fn. 32.

¹¹ In a later essay, "The Idea of Public Reason Revisited," Rawls appears to take a more ecumenical line on abortion, asserting that "when hotly disputed questions, such as that of abortion, arise which may lead to a stand-off between different political conceptions, citizens must vote on the question according to their complete ordering of political values" (605). He suggests that his abortion footnote was meant to "express [his] opinion" about the implications of public reason, not offer an argument for first-trimester abortion. The purpose of the footnote, he says, "was only to illustrate and confirm the following statement in the text to which the footnote [was] attached: 'The only comprehensive doctrines that run afoul of public reason are those that cannot support a reasonable balance [or ordering] of political values [on the issue].'" (John Rawls, *John Rawls' Collected Papers*, ed. Samuel Freeman (Cambridge, Massachusetts and London, England: Harvard University Press, 1999), 605, fn. 80).

deep philosophical differences through rational conversation and deliberation, an ideal of public reason designed to regulate the conversation cannot preemptively settle citizens' disputes for them. For that would be to smuggle the author's own robust conception of justice and the good into his ideal of public reason, and effectively render the hard work of moral reasoning and deliberation superfluous. But this would be to vastly overestimate the role of a theory of public reason, which can arguably propose general principles, norms, and virtues of discourse, but possesses neither the philosophical resources nor the authority to preemptively settle major political and moral controversies. These points apply with even more force to Rawls's theory of public reason, which claims to be more or less impartial among citizens' competing comprehensive doctrines.

To bring out the limits of public reason as a solvent for the abortion debate, consider the sorts of arguments we most frequently hear for and against abortion. Prolifers will argue that the unborn child is a human being deserving of legal protection, on account of the dignity and/or sacredness of human life, which comes into existence at the moment of conception or fertilization.¹² But given their epistemic and moral commitments, which they have adopted, let us assume, in good faith, prochoice citizens might, not unreasonably,¹³ reject the prolife conception of human dignity as overly expansive—why, they might object, should the dignity of a month-old fetus trump the freedom of an adult woman? Surely, the objection might go on, the woman is more fully a “person,” a bearer of rights and interests, than a human embryo or fetus which as yet has little or no history or life in the world? Insofar as they fail to advance reasons

¹² For a recent defense of the pro-life position, see Robert P. George and Christopher Tollefsen, *Embryo: A Defense of Human Life* (New York: Doubleday, 2008).

¹³ Here, I have in mind a relatively procedural, Rawlsian conception of reasonableness, consisting roughly of some minimal threshold of epistemic and moral conscientiousness. A “reasonable” belief so understood might be erroneous or deeply flawed, provided it was formed in a morally and epistemically responsible fashion. A more robust conception of reasonableness, say a conception derived from Thomistic or Aristotelian ethics, would be inclined to view substantive deviations from truth and goodness as “unreasonable,” even if the agent happened to follow appropriate belief-forming procedures and generally adhered to basic principles of morality.

that *could be accepted* by reasonable citizens with diverse comprehensive doctrines, it would appear that prolife arguments fail Rawls's test of reciprocity.

But prochoice arguments for abortion do not fare any better under Rawls's reciprocity test. Prochoicers are likely to defend the legality of abortion based on some idea of personal autonomy. The embryo may be living and human, they will argue, but it is insufficiently developed to be the subject of human interests and rights. The mother, in stark contrast, is fully formed and has a life and interests of her own. She deserves the right to choose to either embrace or reject the burdens of pregnancy, even if this requires the termination of the life of the developing embryo or fetus.¹⁴ This argument has had a powerful presence in our legislatures, courtrooms, and popular culture. But a prolife would likely object that the decision to treat the embryo as a second class human is ultimately arbitrary—that physiological and neurological development are accidental features of a human being, not features that define its basic worth or dignity. He would go on to point out that we routinely restrict people's choices when they impinge on the welfare or life of others, and that a mother's autonomy pales by comparison with the survival and bodily integrity of the human being within her. Are these objections any less "reasonable" than the prochoice objections cited earlier, given the epistemic and moral commitments of prolife citizens? It would seem rather question-begging to dismiss prolife arguments as "unreasonable" while admitting the reasonableness of prochoice arguments, which are no less controversial among philosophers and ordinary citizens alike.¹⁵

¹⁴ For one version of this argument, see Ronald Dworkin, *Life's Dominion: An Argument About Abortion* (New York: Alfred A. Knopf, 1993).

¹⁵ Gutmann and Thompson, who are no champions of the prolife cause, concur: "We have to face up to the fact," they say, "that reciprocity is powerless to resolve [certain conflicts among citizens]...both pro-life and pro-choice advocates argue from fundamentally different but plausible premises to conflicting public policies. Both make generalizable claims that are also recognizably reciprocal" (Amy Gutmann and Dennis Thompson, *Democracy and Disagreement: Why Moral Conflict Cannot Be Avoided in Politics, and What Should Be Done About It* (Cambridge, Massachusetts and London, England: The Belknap Press of Harvard University Press, 1996), 74). The only quibble I have with this formulation would be that a "reasonable" belief may not necessarily be "plausible," from a more objective standpoint or from a standpoint that is less distorted (at least along certain moral dimensions) than the agent's. Even *reasonable* people, after all, may become blinded by the prejudices and preconceptions of their surrounding cultures, and thus adopt premises a more informed or morally advanced culture might recognize as implausible.

We are left, then, at a bit of an impasse: neither prolife nor prochoice arguments are likely to pass Rawls's test of reciprocity—in other words, neither side of the debate can justify its position in terms other reasonable citizens of diverse philosophical and religious persuasions could accept. Yet ultimately, the State must come to *some* decision on abortion, somewhere between total prohibition and unrestricted permission. Since none of these positions appears to be defensible in line with Rawls's principle of reciprocity, abortion policies are doomed to be illegitimate, and the political conversation about abortion is bound to end in an impasse between mutually unacceptable, and therefore illegitimate, arguments.

Even in cases where both sides of the abortion controversy ostensibly appeal to “political” values such as dignity, equality, freedom, and rights, the appearance of a common language is highly misleading. The two sides remain profoundly divided on the meaning and implications of political values, and in many cases, they continue to view each others' conclusions as fundamentally illegitimate or immoral. For example, the fact that a prolife frames his arguments in terms of human rights may not convince his prochoice adversary that he has given due regard to the rights of women. Conversely, the prochoice advocate's appeal to time-honored values like liberty and equality may well be perceived by pro-lifers as rationalizations of an inhumane and barbaric practice. Thus, adherence to Rawlsian public reason, while it may generate a common political vocabulary, does not seem likely to reduce the accumulated tensions and distrust between prolife and prochoicers.¹⁶ These tensions cannot be healed, let alone substantially diminished, by simply cleaning up the content of people's arguments to filter out the “interference” of comprehensive doctrines. A more challenging and difficult transformation, not in the words, but in the *character and relationships* of the interlocutors, is required. Enter the

¹⁶ For example, conservatives have become increasingly willing to bracket their religious claims and advance their case in the public square based on what they take to be public and broadly secular reasons (I have in mind groups like the Family Research Council and the Heritage Foundation, not to mention the popular evangelical radio host James Dobson). But this development does not appear to have ushered in a new era of mutual trust and cooperation across the abortion divide.

virtue-ethical conception of public reason.

The Virtue-Ethical Ideal of Public Reason

The aretaic or virtue-ethical approach to public reason distinguishes itself from rival conceptions, in particular from Rawls's, not because it sees virtues as making an essential contribution to a functional deliberative process (after all, Rawls himself appeals to virtues such as reciprocity, reasonableness, and civility), but because it puts substantially more weight on character than on moral rules or hypothetical contracts as a tool for securing just outcomes. To adopt an aretaic perspective on political discourse is not to disregard questions of freedom, obligation, and legitimacy, but to focus one's attention and imagination, for the most part, on other questions deemed more fundamental and fruitful, in particular questions pertaining to the character or virtues of interlocutors.¹⁷ The basic intuition is that when we reflect on what makes a political conversation respectful, fair, constructive, and non-manipulative, our attention is drawn less to the strict duties or obligations of interlocutors, and more towards their attitudes, dispositions, and temperament. What makes for a constructive and respectful conversation is not primarily compliance with obligations (though the fulfilment of obligations clearly plays a role), but the participation of persons of just, resourceful, tactful, imaginative, intelligent, sensitive, magnanimous, courageous, and sincere character.¹⁸

¹⁷ Cf. Stephen G. Salkever, "Virtue, Obligation and Politics," *American Political Science Review* 68, no. 1 (1974), which helpfully distinguishes "two basic ways" of interpreting the meaning of politics: "politics conceived as a problem of moral and intellectual virtue, and politics conceived as a problem of obligation and legitimacy" (78). I do not believe the aretaic approach need ignore or disregard the problem of obligation and legitimacy—it just interprets it in a broader moral context and gives it a less dominant theoretical role.

¹⁸ While a Rawlsian might readily concede this point in principle, the extent to which he seeks to control the conversation by means of a priori rules and the limited extent to which he elaborates a conception of discursive virtue, indicate that his approach is not deeply informed by these premises. Gutmann and Thompson go further than Rawls in fleshing out the virtues of public reason, in particular what they call reciprocity, civic integrity, and civic magnanimity (Gutmann and Thompson, *Democracy and Disagreement*, 52-94). But even their account represents a relatively narrow spectrum of the virtues of public reason.

Any successful and stable deliberative process is marked by mutual trust and goodwill. Citizens must trust each other to keep their agreements and refrain from taking advantage of the other's goodwill¹⁹; and they must have sufficient regard for each other's welfare and moral standing to voluntarily seek out a mutually acceptable compromise rather than impose their own will at the first opportunity. Mutual trust is clearly fostered by virtues such as honesty, generosity, forgiveness, and gratitude. Honesty, or the disposition to be truthful with others about one's beliefs, perceptions, and feelings, is essential in order to generate trust. As soon as one is caught in a serious and consequential dishonesty or lie, those who witness it, and in particular those directly affected by it, are much less likely to trust one in future. Acts of generosity emanating from different sections of society that might ordinarily be in conflict with each other prevents the political process from descending into a mere bargaining tool for protecting private interests rather than a process for solving common problems in an equitable manner.²⁰ Similarly, gestures of forgiveness, when received with gratitude and humility rather than contempt or indifference, can serve to defuse long-standing feuds among citizens, and have a cathartic effect that preempts the emotional need for vengeance, clearing the air among warring factions, and opening a space for the gradual restoration of mutual trust.²¹

¹⁹ For accounts of the critical role of trust in maintaining the cohesion of political and economic institutions in a free society, see Francis Fukuyama, *Trust: The Social Virtues and the Creation of Prosperity* (New York: Free Press, 1996); and Adam B. Seligman, *The Problem of Trust* (Princeton: Princeton University Press, 2000).

²⁰ See Danielle S. Allen, *Talking to Strangers* (Chicago: University of Chicago Press, 2004), for a persuasive case that voluntary sacrifice (which is ordinarily impossible without a generous spirit) played a vital and underappreciated role in ameliorating racial tensions in the South in the mid twentieth century. Other conflicts whose resolution benefited from the generous sacrifices of civic leaders and ordinary citizens include the struggle over apartheid in South Africa, and the conflicts between unionists and republicans in Northern Ireland.

²¹ This is one of the premises of South Africa's Truth and Reconciliation Commission (1995-1998), which provided an institutional structure through which perpetrators of injustice associated with the apartheid regime could publicly repent and seek forgiveness from their victims. Even Thomas Hobbes, not known for his idealism, lists "Facility to Pardon" as one of the laws of nature conducive to peace, and ultimately, to one's self-preservation (Hobbes 1994 [1651], chap.15, p. 96).

Mutual respect and goodwill are fostered by the virtues of justice and empathy. Start with justice: only those who have learnt to act justly towards others, giving each person his due irrespective of their own bargaining strength or other advantages, will act in a way that fully acknowledges the moral status and legitimate claims of others on a regular basis. The habit of acknowledging the status and entitlements of others, especially when these are not exhaustively settled by the letter of the law, is not acquired overnight, but learnt from one's parents and later in dealings with one's friends, colleagues, and peers in a variety of contexts.²² The virtue of empathy also plays a critical role in fostering mutual respect: to both recognize the legitimate claims of one's peers, and have some genuine regard for their interests, it is extremely helpful, and arguably essential, to be able to identify oneself with the perspective of another, to make that perspective one's own, at least imaginatively, and thus come to have some emotional stake in the welfare of another. Without the capacity to empathize with one's fellow citizens, it is extremely difficult, and perhaps impossible, to show them the sort of consideration that seems to keep the civic bond alive and well.²³

At first sight, it may appear that there is little to distinguish the virtue-ethical approach from Rawls's: after all, Rawls himself appeals to virtues such as reasonableness, fairness, toleration, and reciprocity, so surely he would welcome this attempt to flesh out the discursive virtues and explicate their benefits? Perhaps he would. But appearances are deceptive. I part company with Rawls in at least two important respects: first, I reject Rawls's "duty of civility,"

²² Rawls (1971, chap. VIII) has a thoughtful account of the development of a sense of justice from infancy to adulthood. Indeed, from a virtue-ethical perspective, this is clearly a strength of Rawls's early work, although even here, his attention to virtue is narrowed to contractarian virtues such as fairness and toleration.

²³ The modern *locus classicus* for the essential contribution of empathy (or "sympathy") to a decent social order is Adam Smith, *The Theory of Moral Sentiments* (New York: FQ Classics, 2007 [1759]). Rawls's notion of reciprocity, which involves an imaginative role reversal, clearly requires some degree of empathy. However, rather than viewing empathy as an aspect of reasonableness, I view it as a virtue in its own right, that can be acquired and developed to differing degrees. For example, some people are remarkably sensitive to other people's feelings, while others, even "reasonable" people, may be much less sensitive, through no obvious fault of their own.

which attempts to contain acceptable reasons within the limits of a “political” conception of justice and delegitimate reasons grounded exclusively in “comprehensive” doctrines. While few would deny the importance of a fair-minded and empathetic disposition in democratic deliberation, the aretaic conception of public reason maintains that citizens of diverse ethical and religious persuasions are fully entitled to engage in candid political deliberation on terms that do not presuppose a marginal role for “comprehensive doctrines” in the deliberative process, provided they exhibit a due measure of respect, fairness, courtesy, and thoughtfulness in their interventions.²⁴

Secondly, my account of public reason departs from Rawls’s in attributing the successes and failures of public discourse to a substantially broader catalogue of virtues and vices. Rawls traces the failures of public discourse either to reasonable disagreement among comprehensive doctrines, or to the unreasonableness (unfairness, irrationality, intolerance) of some participants who are insufficiently cooperative or accommodating towards the rights or interests of others. Concomitantly, he prescribes reasonableness (fairness, rationality, tolerance) and epistemic restraint (i.e. refraining from relying on one’s comprehensive doctrines in public advocacy) as the remedy to discourse failure. I do not wish to deny that some virtues of reasonableness and some vices of unreasonableness can play a role in accounting for the successes and failures of public discourse. However, my account advances beyond the concepts of the *reasonable* and the *unreasonable*, attributing the failures of discourse not only to philosophical differences, but to vices such as arrogance, selfishness, dishonesty, injustice, cowardice, tactlessness, and imprudence; and the successes of discourse to a broad range of virtues such as honesty, justice, charity, humility, empathy, generosity, forgiveness, and tact, which go far beyond the Rawlsian ideal of a “reasonable” citizen.

²⁴ A similar approach to deliberation is adopted by Jeffrey Stout, who rejects Rawls’s prior moral restraints on speech and urges citizens instead to “cultivate the virtues of democratic speech, love justice, and say what you please.” (Jeffrey Stout, *Democracy and Tradition* (Princeton, New Jersey: Princeton University Press, 2004), 85).

Public Reason and Abortion Through a Virtue-Ethical Lens

Now, what does the aretaic view of public reason have to say about the abortion controversy? Neither side of the abortion debate is likely to give up, or substantially compromise, their core political and moral commitments anytime soon. Nevertheless, some sort of interaction will likely continue as long as these two groups inhabit the same polity, and that interaction may be more or less hostile, acrimonious, angry, alienating, disrespectful, and counterproductive, not just with respect to principled disagreements, but even with respect to disagreements where compromise or cooperation might otherwise be possible. It seems hard to deny that self-righteousness, arrogance, selfishness, insensitivity, carelessness about the truth, thoughtless demonization of one's opponents, uncharitable construals of one's adversaries' motives, and dishonesty in one's arguments, all exacerbate, or reinforce, the mutual suspicion and distrust that has festered, over the years, between prolife and prochoice citizens. And neither side can claim immunity from these vices.

The way to mitigate this tension, from a virtue-ethical standpoint, is not to rule out reliance on comprehensive doctrines—which is only likely to alienate citizens who wish to candidly discuss foundational issues—but to advance a moral ideal that can help reform the *character* of interlocutors. If vices tend to exacerbate the tensions between prolife and prochoice citizens, then it stands to reason that virtues may eventually ease those tensions, at least to some degree. This relaxation of tension may then permit both sides to cooperate in less contested political domains and form coalitions that might have been unthinkable at the height of their mutual distrust and enmity. A range of virtues may counteract the vices that intensify and reinforce the abortion standoff, including humility, charity, honesty, and tact. At least some of these virtues appear to be reflected in a 2006 speech by Barack Obama, in his capacity as Senator of Illinois. Rather than giving a point by point analysis of the speech, which spoke in a general

way to the “mutual suspicion that sometimes exists between secular and religious America,”²⁵ I would like to consider the conclusion of the speech, in which Obama (then Senator Obama) discusses an exchange between himself and a pro-life doctor who had voted for him in the primary election. The doctor had read an entry that Obama’s campaign had posted on his website, which suggested that he (Obama) would fight “right-wing ideologues who want to take away a woman’s right to choose.” As Obama reports the story, the doctor sent him an email, writing

I sense that you have a strong sense of justice...and I also sense that you are a fair minded person with a high regard for reason...Whatever your convictions, if you truly believe that those who oppose abortion are all ideologues driven by perverse desires to inflict suffering on women, then you, in my judgment, are not fair-minded...You know that we enter times that are fraught with possibilities for good and for harm, times when we are struggling to make sense of a common polity in the context of plurality, when we are unsure of what grounds we have for making any claims that involve others...I do not ask at this point that you oppose abortion, only that you speak about this issue in fair-minded words.²⁶

Having reported the doctor’s call for a more fair-minded spirit, Obama goes on to admit that he felt a “pang of shame” upon re-reading the doctor’s email. “It is people like him,” he observes, “who are looking for a deeper, fuller conversation about religion in this country. They may not change their positions, but they are willing to listen and learn from those who are willing to speak in fair-minded words.” Obama wrote back to the doctor, and “thanked him for his advice.” He then removed the offending statement from his website. The speech concludes as follows:

And that night, before I went to bed, I said a prayer of my own—a prayer that I might extend the same presumption of good faith to others that the doctor had extended to me. It’s a prayer I think I share with a lot of Americans. A hope that we can live with one another in a way that reconciles the beliefs of each with the good of all. It’s a prayer

²⁵ I do not mean to imply that the pro-life position is uniquely associated with “religious America,” but this was the context in which Obama addressed the abortion issue.

²⁶ As reported in then Senator Obama’s “Call to Renewal Keynote Address” on June 28th, 2006 in Washington, DC.

worth praying, and a conversation worth having in this country in the months and years to come.

It is of course possible that this was a cynical exercise in self-promotion dressed up in high-minded words. But in the absence of evidence to the contrary, I will assume the speech is sincere and well-intended. On that assumption, there are a number of virtues exhibited in the exchange, on both sides, and each of these virtues promotes an atmosphere of mutual trust and respect, in which the conversation may continue, and at least some degree of mutual collaboration may be realistic, at least on less contentious issues than abortion. In particular, both interlocutors exhibit charity in construing each other's motives as well as the circumstances will permit. They exhibit tact in appealing to each other's best motives and building from common ground, without papering over their disagreements. Obama exhibits humility and honesty in taking personal responsibility for a serious error in judgment on the part of his campaign staff, and not just a technical error, but a moral error. The doctor is honest about his own feelings and judgments, but manages to combine this honesty with a charitable reading of his interlocutor's character. This helps to build up a platform of mutual trust and respect, and mitigate feelings of resentment and hostility.

Notice that in this particular case, no clear-cut solution is reached to the issue of abortion, nor is one likely to emerge that will satisfy both parties. However, by evincing virtues such as generosity, humility, charity, and honesty in the course of the conversation, each party walks away with at least some modicum of mutual trust and respect. Discursive virtue does not guarantee immediate resolutions to political disputes, but it does keep the door open for further conversation, and it does help to prevent the relationship between citizens from descending into a bitter and resentful feud in which each views the other as the enemy of truth and justice, not only with respect to abortion, but across the board. Preserving some threshold of mutual trust and respect, even in cases where citizens remain deeply divided on major political and moral questions, is vitally important if democratic politics is to remain a rational and deliberative

enterprise, rather than descend into “civil war carried on by other means.”²⁷

The Limits of Public Reason

So far, I have argued that the Rawlsian ideal of public reason is of limited value as a tool for mitigating the political and social costs of the abortion standoff, both because it underdetermines the outcome of the dispute, and because it offers a relatively impoverished conception of discursive virtue; and I have suggested that a virtue-ethical ideal of public reason may fare better, in particular on account of its expanded repertoire of virtues. Specifically, I have argued that it may lay the groundwork for greater cooperation among citizens on less contested areas of public policy, and it may arrest the slide towards mutual distrust and resentment, at least to some degree. The virtue-ethical ideal of public reason thus promises a more impressive practical payoff than the Rawlsian ideal, especially in the context of the ongoing abortion dispute. But lest we get carried away and overestimate the power of a theory of public reason, it seems fitting to conclude this analysis by highlighting some of the limits inherent in *any* theory of public reason, conceived as a guide to political and social conduct.

First, it is worth keeping in mind that a theory of public reason is just a theory of public reason, not a theory of political order. So in spite of the undeniable centrality of speech to the political enterprise, no account of public reason, even one that has a major institutional component, can function as a full explanation of politics, nor can it usurp the role of a theory of justice. Public reason cannot fully explain politics because political outcomes (abortion policies are no exception) are driven by many factors falling outside the domain of public reason, including the rearing and education of children, the values and goals of citizens, and the norms and attitudes embodied in numerous institutions, whether political, economic, religious, or cultural. It cannot serve as a general guide to politics because political norms are derived from a

²⁷ This is how MacIntyre characterizes judicial disputes over abortion and other contested issues in a modern liberal regime (Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (London: Duckworth, 1981), 253).

conception of justice, which is much broader than an ideal of public reason. Consequently, this essay's conclusions, insofar as they are addressed primarily to the practice of public reason, fall far short of a comprehensive political strategy for addressing the abortion question. The overall approach one takes to abortion at the political level will inevitably be informed by a much broader and deeper range of considerations than a theory of public reason can hope to provide, including principles of political morality, some account of the value of human life, and some view of the proper scope of human liberty. The fact that I have not addressed these questions should not be interpreted as a sign of disinterest or skepticism, but as a reflection of my insistence upon the philosophical limits of an ideal of public reason.

Second, a theory of public reason is just a *theory*, and however inspiring and exalted its call to virtue may be, this sort of ideal cannot be instantiated in our society without the right institutional and sociological conditions. From an institutional perspective, the deliberative process is shaped not merely by character, but by institutions such as courts, legislatures, town halls, churches, the mass media, schools, universities, and corporations. Consequently, a useful ideal of public reason cannot function effectively without appropriately designed and well-run deliberative forums. From a social psychological perspective, the virtues of public reason must be engendered in citizens and preserved from decay, through an intergenerational process of habituation and instruction. This would presumably occur in families, professional institutions, and voluntary associations, as well as in the political culture at large. No ideal of public reason will have sufficient purchase in the real world unless the relevant moral habits have already begun to take root in citizens *before they have even entered the deliberative arena*.

* * *

If my remarks have served their purpose, then I hope to have persuaded the reader that the most valuable function of an ideal of public reason is not to settle public policy issues—and

certainly not to settle the abortion dispute—but to specify the conditions under which tendencies towards mutual distrust, animosity, and resentment can be checked, and in certain cases even reversed. Of course, in an ideal world all parties to the abortion dispute would be completely reasonable and rational, and would come to the same correct views about abortion and other matters upon mature reflection. But in the world we live in, political disagreement over abortion is likely to persist for some considerable time. While a good dose of humility, charity, justice, and procedural propriety may in certain cases help to narrow or even close the moral chasm between prolife and prochoice citizens, in most cases the best we can hope for, at least in the short to medium term, is that more honest, charitable, humble, and fair-minded deliberation on abortion and other heated issues will open up a space for greater cooperation and trust in less contested political domains, and perhaps pave the way for a public and morally credible resolution of the controversy many years (and probably several generations) hence.

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