

The Idea of Public Reason and Its Ideal\*  
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Ever since the publication of John Rawls's *Political Liberalism*, and even some years before that, discussions in political philosophy have repeatedly fixed on Rawls's idea of "public reason." It seemed the one idea in that book that was genuinely new and possibly a conceptual advance on Rawls's great *A Theory of Justice*. Once we had abandoned the promise or the hope of a society united by one comprehensive doctrine, and accepted what Rawls called "the fact of reasonable pluralism," something like public reason seemed, at least to Rawls, to be indispensable. We require a language with which to justify the use of state power in a society that can reach no consensus about the meaning and purpose of life. Rawls certainly recognized the centrality of the idea of public reason to the project of political liberalism, and offered further thoughts on and revisions to the idea of public reason in one of his last major essays, *The Idea of Public Reason Revisited*, as well as the new introduction to the paperback version of *Political Liberalism*. It seems no exaggeration to say that for Rawls without public reason, there would be no political liberalism.

"Public reason," of course, has not been without its share of critics.<sup>1</sup> One major criticism, the focus of this essay, is of public reason's "crushing conservatism."<sup>2</sup> Public reason, on Rawls's account, must rely on those beliefs and ideals that are "widely shared" among citizens in a democracy. In his words, in justifying the use of political power we are "to appeal only to those presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial."<sup>3</sup> But if public reason relies on the widely shared beliefs of the public, how can it change without departing from those widely shared beliefs? Any novel reason almost by definition would appear to be a departure from the terms of public reason. For Rawls this worry about the conservatism of public reason presents itself in his discussion of the abolitionists. Suppose, he says, that the abolitionists were able to articulate their opposition to slavery only in terms that were not "widely accepted." Does it follow that the abolitionists violated "the ideal of public reason"?<sup>4</sup> Rawls says that they did not, but his answer raises questions about what that "ideal" is, and what precisely it means to act according to that ideal.

My essay has two parts. In the first part, I introduce the conservatism objection and describe what I think are two unsatisfactory responses to it: the "availability" response and the "proviso" response. The second part focuses on Rawls's discussion of the abolitionists in *Political Liberalism*. Rawls's discussion there is enlightening, but

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\* [Acknowledgements]

<sup>1</sup> They are, in fact, legion.

<sup>2</sup> Eric MacGilvray, *Reconstructing Public Reason* (Harvard University Press: 1984): 184.

<sup>3</sup> John Rawls, *Political Liberalism* (expanded edition, Columbia University Press: 2005): 224 (hereinafter PL). See also PL 225: "As far as possible, the knowledge and ways of reasoning that ground our affirming the principles of justice and their application to constitutional essentials and basic justice are to rest on the plain truths now widely accepted, or available, to citizens generally." And see "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies*, 7 (1987): 8 ("We assume, then, that public justification on questions of political and social justice rests on some public consensus, that is, on an agreement in citizens' shared beliefs.").

<sup>4</sup> PL 250.

ultimately unhelpful. Rawls there underplays -- or ignores -- two aspects of public reason which allow us to diminish the force of the conservatism objection: first, that public reason is historical, and second, that it is mutable.

## I. The Conservatism Objection

### A. The Objection Stated

The particular objection I want to consider is one that has been raised by, among others, Jeremy Waldron. Waldron objects that public reason seems to be essentially conservative, that is, resistant to being changed over time. It cannot allow for novel arguments or claims in public debate. Michael Sandel also raises a version of this worry, when he objects that public reason insists too much on “bracketing” controversial moral and political views; in this way, it favors the status quo over controversial new beliefs. In the end, I will conclude that there is much force to the conservatism objection, and that in the main, the objection is not answerable. The best we can do is to try to defend public reason’s worth even in the face of the objection, by attempting to limit the damage.

Here is the way Waldron puts the conservatism objection, which I quote at length:

John Rawls offers . . . an overly narrow conception of the matrix of public reason, suggesting that it must always proceed from some consensus -- “from premises that we can others recognize as true, or as reasonable for the purpose of reaching a workable agreement.” He suggests that public deliberation be limited to “the shared methods of, and the public knowledge available to, common sense, and the procedures and conclusions of science when these are not controversial.” What this conception seems to rule out is the novel or disconcerting move in political argumentation: the premise that no one has ever thought of before, but which, once stated, sounds plausible or interesting. Rawls’ conception seems to assume an inherent limit in the human capacity for imagination and creativity in politics, implying as it does that something counts as a legitimate move in public reasoning only to the extent that it latches onto existing premises that everybody already shares.<sup>5</sup>

Waldron’s objection neatly turns around what might be thought the advantage of public reason -- that we proceed on grounds everybody shares, and this respects those who we disagree with about fundamental matters -- into a disadvantage. Because we can only use arguments that are shared, or noncontroversial, public reason seems unable to account for the novel argument, the argument “no one has heard before.” In his essay, Waldron presents one upshot of his objection to be that debate done according to the rules of Rawlsian public reason will be stale, uninteresting, boring.

But if this is the only consequence of Waldron’s argument from novelty, then the defender of public reason may be relatively unmoved. He may think that the tradeoff between novelty and civic respect (or, at the limit, stability) while present, may not be that worrisome. A lack of novelty may simply be the price we pay for acting in accord

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<sup>5</sup> Jeremy Waldron, “Religious Contributions in Public Deliberation,” *San Diego Law Review*, 30 (1993): 837-88.

with the duty of civility.<sup>6</sup> If we introduce novel premises into the debate, then we may be reasoning on grounds that would be unacceptable to those with whom we are debating. Moreover, although novel arguments may be more interesting, they also may be more confusing or strange or simply unhelpful, and to the extent “interestingness” *is* a value, we can most realize it in the background culture of our society, where debate is free and unconstrained and does not have to proceed from premises that are already generally accepted.

I think there is a deeper worry that drives Waldron’s analysis, and it is not a worry about the quality of debate in the first instance. The trade-off may be wrongly posed if it is seen as merely between novelty and civility, as if these are the only values that are at stake. For what the novel argument may also disclose is that there is a real *injustice* in the status quo, and it is one that public reason does not yet have the capacity to address fully.<sup>7</sup> If public reason prescind from the controversial premise, the argument no one has ever heard before or that is not widely accepted, then it may be also prescinding from the argument that the status quo is unjust, that it is treating some unequally or unfairly. The point is about substance, not merely about process. If we have to reason using the premises everyone already accepts and the common sense beliefs they already have, then how can we convince others that those premises and common sense are wrong (perhaps radically wrong), *without departing from those premises and that common sense?*

A few examples will help us to see the nature of this objection. Take the example of slavery. If we stipulate that the common sense beliefs at the time of slavery were that blacks were genuinely inferior, then it would seem that the premise that blacks are equal and therefore deserving of equal treatment would be a novel and controversial belief. To reason from that particular belief to the argument that slavery is unjust would seem to violate the “very great values” of public reason: it would be to give others a reason which they could, it seems, reasonably reject based on the prevailing common sense (and we can even add the “scientific”) beliefs of the day.

Michael Sandel, in his famous early review of *Political Liberalism*, made a version of this objection, but he did so in an unnecessarily contentious way. He sometimes phrased it in terms of whether public reason would allow a controversial substantive *moral* judgment. Rawls, Sandel said, seemed to disallow this, because he wanted to avoid inserting moral judgments into politics.<sup>8</sup> Better to bracket morality altogether. But because Sandel put the objection this way, Rawls were able to avoid it by saying that *of course* public reason involves moral judgments, and the judgment that slavery was a great moral wrong could certainly be part of public political discourse. As Rawls said in reply to Sandel, “Certainly [Lincoln and Douglas] were debating fundamental political principles about the [moral] rights and wrongs of slavery. Since the

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<sup>6</sup> The duty of civility is fulfilled when one is can explain to other citizens “how the principles and policies they advocate and vote for can be supported by the political values of public reason.” (PL 217)

<sup>7</sup> Waldron’s own example is economic injustice, and the belief of American Catholic Bishops that we have a radically duty to aid the poor.

<sup>8</sup> See especially the section entitled “Bracketing Grave Moral Questions” in Michael Sandel, “Review of *Political Liberalism*,” *Harvard Law Review*, 107 (1994).

rejection of slavery is a clear case of securing the constitutional essential of the equal basic liberties, surely Lincoln's view was reasonable."<sup>9</sup>

This seems to me to miss the force of the objection, which we can make -- and which I've tried to make -- less in terms of the morality of slavery, and more about whether the judgment that slavery is wrong could proceed from controversial "metaphysical" judgments of the person that would make that argument violate the restrictions of public reason. Lincoln's argument may not have been unreasonable because it was moral, but it might have been *publicly* unreasonable nonetheless. It may have taken as its premise a controversial metaphysical view about the personhood of blacks, one which was not yet part of the public political culture.<sup>10</sup>

Or take a different example, that of the equality of women. Rawls writes that the Supreme Court is the exemplar of public reason. So take as an example what a Justice of the Supreme Court said about whether women could become lawyers. "[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman," Justice Bradley wrote. "Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life." *Bradwell v. State*, 83 U.S. 130, 141 (1872) (Bradley, J., concurring) Here, like the slavery case, there is a mix of both the moral and the metaphysical. There is a claim about women's proper role, as well as a subsidiary claim about women are able to do (which may make them suited for some roles rather than others). Suppose that the Justice is saying something about the role of women which, at the time, was non-controversial. Did his opinion violate public reason? It would seem it did not. He reasoned from commonly accepted moral beliefs, and the widely shared "common sense" of the time. If Justice Bradley had asserted the opposite, he might in fact have been violating public reason.

Let me try to consolidate my examples and bring them to a point. Rawls says that the content of public reason is fixed by the widely shared moral ideas of the time, as well as common sense beliefs and the deliverances of science, when these are not controversial. Waldron says that this places public reason firmly on the side of the status quo, and doesn't allow for novel arguments. This is a relatively weak objection if it is just made in terms of the value of novelty alone. It becomes a significantly more troubling objection if we look at what kinds of novel arguments might be made, and for what. Is it novel to claim an equal status for members of a certain race when that race is widely believed to be inferior or unfit for freedom? Would it violate public reason to assert gender equality for women when many believe (including Justices of the Supreme Court) that women are suited only to certain roles, and not to others? The objection that public reason excludes novel arguments appears to answer these questions "yes." But

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<sup>9</sup> "The Idea of Public Reason Revisited" in *Political Liberalism*, 484 (hereinafter IPRR). Rawls also adds in a footnote, "Perhaps some think that a political conception is not a matter of (moral) right and wrong. If so, that is a mistake and is simply false." (IPRR 484 n. 91)

<sup>10</sup> Of course, I have stipulated that at the time Lincoln was speaking that this was a controversial statement. It seems plausible and right to say that it was not, that people simply *knew* that blacks were persons and that arguments to the contrary were being made in bad faith, etc. Still, it still may have been that many Southerners did think of blacks more as children, and they made the paternalistic arguments to them in good faith. Did Lincoln violate the duty of civility towards *them*?

this may mean that public reason would to that extent “cover up” what might be very real injustices.

## B. Two Unsatisfactory Responses

### 1. The “Availability” Response

In an article specifically directed to Waldron’s novelty objection, Lawrence Solum develops a reply which I’ll call the “availability” reply.<sup>11</sup> Solum replies that Waldron has too narrowly read Rawls’s restriction on the types of reasoning and the type of premise that can be called part of public reason. In particular, Solum says, Rawls did not limit the reasons that can be used in public debate to only those reasons and premises that are already *accepted* by citizens. That indeed would rule out any novelty in debate. But this is not what Rawls said. Instead, Rawls said that citizens can also appeal to those types of reasons that are *available* to citizens. And the universe of reasons that are available to citizens is much larger than those that are accepted by citizens; what is more, reasons that are available but not yet accepted by citizens may be novel reasons. Now, Solum puts what to my mind is a rather controversial and in the end counterproductive gloss on the meaning of availability. To that extent, I believe his reply fails.

Solum rests his interpretation of Rawls on a passage in *Political Liberalism* that reads in relevant part that “we are not to appeal to comprehensive religious and philosophical doctrines [in public reasoning] . . . if these are in dispute. . . . As far as possible, the knowledge and ways of reasoning that ground our affirming the principles of justice and their application to the constitutional essentials are to rest on plain truths now widely accepted, *or available*, to citizens in general.” (PL 224-25). What is clear from this passage is that Rawls is putting some light between what is accepted and what is available to citizens. The notion that something must be widely accepted seems to confirm Waldron’s suspicion that we can only reason from shared and agreed upon -- that is, not novel -- premises when we are reasoning publicly together. So here may be the truth in Waldron’s complaint about novelty. Still, this does not account for the idea that public reasoning may also proceed from “available” premises. It may be on these grounds that we can formulate a reply to Waldron.

But Solum’s reading of availability risks not only expanding the content of public reasons, but also eliminating any restrictions on it. Solum says “public reasons are those that *could* be widely shared by those who considered them, and these can be as novel as one likes.”<sup>12</sup> But those who argue that they should be able to assert premises based on their comprehensive doctrines will make precisely the same argument Solum does about availability: they will say that although their arguments are not currently accepted, they may one day be, and so they remain *available*. This is the argument that Ronald Dworkin makes about his (comprehensive) liberalism, viz., that it is at least *available* to those who don’t happen currently to accept it. Here is what Dworkin says in rejecting the Rawlsian version of public reason: “If I believe that a particular controversial moral position is

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<sup>11</sup> Lawrence B. Solum, “Novel Public Reasons,” *Loyola of Los Angeles Law Review*, 29 (1996): 1460.

<sup>12</sup> Solum, “Novel Public Reasons,” 1477. See also *id.* (“Indeed, there is no reason for the inclusive or wide ideal of public reason to exclude a novel argument if the argument is one that could be widely accepted if it were considered by the public at large -- in other words, if it were publicly available.”).

plainly right . . . then how can I not believe that other people in my community can reasonably accept the same view whether or not it is likely that they will accept it?”<sup>13</sup> In other words, someone like Dworkin will simply say that he believes his comprehensive doctrine is available in principle to anyone who considers it, so the availability restriction is not a restriction at all. Robert George -- whom we might call a “right” comprehensivist -- will say the same thing about his arguments from natural law.<sup>14</sup> Even if people do not accept those arguments at present, they can, if they “consider” them. Or at least it is possible that they will. There is no reason why natural law arguments could not be widely shared. They do not rely on secret knowledge, or require some mystical revelation. Nor, certainly, do Dworkin’s arguments. At the extreme we might even say that arguments based on the truth of Christianity are in some sense “available”: we can’t rule out that everyone might convert to Christianity (as Stephen Carter has pointed out).

Solum’s reading seems too expansive: there has to be another interpretation of “available.” There is. Indeed, right before the passage quoted by Solum, Rawls says that in making our public justifications “we are to appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the method and conclusions of science when these are not controversial.” (PL 224) This quote does not use availability as a possible way of expanding public reason, and it is almost relentlessly “presentist” (“presently accepted general beliefs”) in its orientation.

This orientation, in turn, suggests a more modest interpretation of “available” in the passage which follows it. “Available” should not be taken to mean those beliefs which we might yet be persuaded of, were we to consider them, but those beliefs which are available to us to use as premises in our reasoning because they are not at all controversial.<sup>15</sup> This is where we might fit, for instance, those methods and conclusions of science when they are not seriously contested.<sup>16</sup> These conclusions might not be widely accepted simply because they are not known. But that does not mean they are not part of the shared common sense from which we can reason. Availability has to mean something like “accepted but not known to be accepted” *not* “could be accepted if considered.”

I think the availability response in the form Solum gives it shows a dilemma in how to read Rawls’s criterion for reciprocity in *Political Liberalism*. On the one hand, civility demands that we give one another reasons that we can be reasonably expected to accept. But what does this mean? If public reason is going to have any bite, it can’t merely be those reasons we ourselves think are reasonable, given our comprehensive doctrines. This would be the Dworkinian interpretation, and Dworkin indeed finds the reciprocity criterion, taken by itself, to be plausible. But remember that Dworkin -- a comprehensive liberal -- objects to public reason in the form Rawls gives it. If there is to be space between a comprehensivist public reason and one that is merely political, Rawls must mean something else by reciprocity. And what he means ties public reasons to

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<sup>13</sup> *Justice in Robes* (Harvard University Press, 2006): 252.

<sup>14</sup> Robert P. George, “Public Reason and Political Conflict: Abortion and Homosexuality,” *Yale Law Journal*, 106 (1997): 2482-83.

<sup>15</sup> Solum himself suggests this alternative when he says that a “reason may be available if it is intuitively plausible and does not contradict any of the citizen’s other firmly held beliefs.” Solum at 1477.

<sup>16</sup> Consider a fact I just learned: that the creation of cement is one of the leading causes of greenhouse gas emissions. This may not be a “widely accepted” belief, but that is because it is not known. Nonetheless, it is “available” for use in argument in public, I would assume.

those reasons that are based in widely accepted ideals and beliefs, or ideals and beliefs that are so uncontroversial that they are not widely accepted simply because they are not known. If this latter interpretation of Rawls is correct, as I believe it is, then the problem of novel reasons still remains.

## 2. The “Proviso”

One might think that if there is anything in Rawls that directly addresses the novelty objection, it would be Rawls’s device of the “proviso.” Rawls explicitly introduced the device in his “Idea of Public Reason Revisited,” but it was seemingly implicit in *Political Liberalism* and the “inclusive view” of public reason.<sup>17</sup> By using the proviso, people can, says Rawls, invoke their comprehensive doctrines in public. This would seem to give them license to introduce novel arguments into public debate.

The proviso, as Rawls explains it, is a device that lets people express the deep (i.e., comprehensive) foundations of their beliefs in public, provided that they at some future point in time -- Rawls does not specify when -- they are able to give a fully “public” explanation of those beliefs. So if I subscribe to a certain policy choice because of my religious beliefs, I could, legitimately introduce those religious beliefs as the justification for that policy, *provided that* I in time give a justification that is based in solely public political reasons -- that is, reasons that are accepted in the public political culture. As Rawls presents it, “reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons -- and not reasons given solely by comprehensive doctrines -- are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support.” (IPRR 462)

Now, on a first impression, the proviso may seem to be an antidote to the lack of novelty: it allows, within some constraints, “new” reasons to be offered in public, as part of public political debate. Rawls at one point introduces the abolitionists as ones who may be seen as operating under the proviso. (IPRR 464) They gave religious reasons, but they also, in due course, were able to give reasons supported by the public political conception. They were able to introduce novelty into the debate, but in a way that did not go against the values of public reason. They did not *only* give a justification based in their sectarian religious doctrine, but also were able (at least in theory) to give public reasons.

I should be clear at the outset that I don’t think that the “proviso” is Rawls’s best answer to the problem of novelty. (I turn to this in the next part.) Rawls introduces the proviso as a way to acknowledge, and to appreciate, the fact that many various comprehensive doctrines can affirm a common political conception. Many have had a hard time figuring out how exactly the proviso is supposed to achieve this,<sup>18</sup> and why that good cannot just as easily be had in the “background culture” of society.

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<sup>17</sup> Although I go on to distinguish the inclusive view from the proviso, below.

<sup>18</sup> One might conjecture that asserting our comprehensive doctrines in public might instead suggest that these are the *real* reasons that we support the plan or policy, and that we merely give the public reasons out of a desire to keep up appearances. That is, instead of generating mutual reassurance, the airing of our comprehensive doctrines could instead generate mutual suspicion: are you advocating that policy for public reasons, or are you giving public reasons in order to support something you *really* believe on comprehensive grounds? I see the wider view of public reason sketched by the proviso as possibly cutting

Whatever motivates the proviso, it could still be seen as a possible answer to the problem of novelty. But even here it is insufficient, for reasons much like the reasons which made the availability reply inadequate. For consider the question -- unanswered by Rawls -- about when the proviso would be satisfied. On the one hand, we could put off the satisfaction of the proviso in to the far distant future. In this case, it seems that the values of civility, the “very great values” of public reason would themselves be violated during that time prior to the subsequent publicly acceptable justification. It would simply be as if one just asserted one’s comprehensive doctrine, at least during that time, or held out that hope that *eventually* one’s comprehensive doctrine would become part of the political culture. This would be the same as saying that your reasons were of course “available” because at some unspecified point in the future people could be persuaded to accept them.

On the other hand, we could imagine having to satisfy the proviso very quickly after one gave a novel reason. This would be to show, in fact, that the putatively novel reason was really not all that “novel.” One was simply phrasing in a different way a claim that could have easily have been made in the terms of public reason alone. Asserting one’s comprehensive justification might have an expressive function in that instance, but it would not be doing any real justificatory work. In other words, if the proviso is satisfied only very late, then it is not clear that we have not in fact violated public reason. But if the proviso is satisfied very quickly, then it seems obvious that we don’t really have a substantively novel reason.

This last point needs some elaboration. Isn’t it the case that the proviso allows for novel reasons in public debate, ones based on a citizen’s comprehensive doctrines? Yes, but the type of novelty allowed does not get to the underlying force of the novelty objection. The worry there, as I tried to tease out, was not merely that it was good to have novelty for the sake of novelty. The deeper worry was that there might be some substantive injustice that public reason effectively hid from view, and only the introduction of novel premises (the equality of women or blacks, for instance) could reveal.<sup>19</sup> The proviso does nothing to allow for *this* type of novelty. Indeed, the only comprehensive beliefs we can air in public, given the proviso, are those which we know can be justified by public reasons. The comprehensive reasons we give have only a secondary role, and more importantly, their role is substantively redundant.<sup>20</sup> If we give novel comprehensive reasons that we cannot later “make good” on with public reasons, we have violated the duty of civility, and gone against those “very great values” of public reason. But in this case we are not really reasoning according to the proviso.

The dilemma, then, remains. Either we expand to infinity the time in which the proviso can be satisfied -- expand it to some far off point where our comprehensive doctrine just is the new public reason -- in which case we have violated the values of

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both ways. It may reassure us that our public political conception is well-grounded; but it also may encourage some cynicism about the sincerity of our fellow citizens’ motives.

<sup>19</sup> A contemporary example might be the rights of animals, which public reason -- arguably -- does not give us the resources to defend. In his brief discussion of our duties to animals, Rawls is careful not to phrase any of them in terms of duties we owe directly to animals, but only goods we might lose if we fail to protect animals (e.g., biological and medical knowledge). PL 245.

<sup>20</sup> As Rawls says, the proviso “does not change the nature and content of justification in public reason itself.” (IPRR 463)

public reason in the interim,<sup>21</sup> or we allow only those comprehensive reasons which are merely redundant on the reasons that we can publicly give, and hence disallow any real novelty. This is nearly exactly like the dilemma with the availability response. Either the response in fact goes against public reason, by allowing comprehensive reasons, or it gives us, once again, a conservative public reason. I conclude that both responses fail.

## II. The Mutability of Public Reason

### A. The Idea and the Ideal

It remains possible that the previous Part and the novelty objection that I considered in it represent a fundamental misunderstanding of Rawls on public reason. What I have assumed -- perhaps naively -- is that we can concretely talk about what the constraints of public reason are *now*, and also concretely talk about what the limits of public reason would have been in antebellum America, or prior to the women's rights movement. But this could be a faulty assumption, much along the lines of assuming that we are already in a well-ordered society and so we should straightaway apply the two principles of justice to our institutions. It would be wrong, Rawls could say, to think that the principles of justice that should govern us here and now are the same as those that would govern a well-ordered society. So too might it be wrong to assume that we are obliged to reason according to public reason in our current society. Public reason is a part of "ideal theory," Rawls could say, and we are in non-ideal conditions. Accordingly, we either do not have to abide by public reason, or we have to articulate a non-ideal theory of public reason that applies to us in the imperfect present. Further, it is possible that a non-ideal theory of public reason would more easily accommodate novel reasons of the sort Waldron claims are excluded from public reason.

Rawls sometimes uses the language of an "ideal" of public reason. By this he seems to mean the ideal of judges and legislatures reasoning in accord with the widely accepted beliefs and common sense of the day.<sup>22</sup> It is this ideal, he seems to suggest in places, that we may not always be bound by.

Rawls portrays the abolitionists who invoked God to argue against slavery as in one (narrow) sense violating the duty of public reason. They did not argue in a way that others could reasonably accept, given the prevailing beliefs of the day.<sup>23</sup> Nonetheless, Rawls says that could be seen as comporting with the *ideal* of public reason, for surely (Rawls thinks) the full civil and political equality of blacks would form part of the public reason of a well-ordered society. On this account, Rawls says, the "abolitionists . . . did not go against the ideal of public reason, or rather, they did not provided they thought, or on reflection would have thought (as they certainly could have thought), that the comprehensive reasons they appealed to were required to give sufficient strength to the political conception to be subsequently realized." (PL 251). Because they were arguing

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<sup>21</sup> We also, as David Svolba as pointed out to me, lose any determinate sense of what is or isn't allowed in public debate.

<sup>22</sup> This seems to have a superficial relationship to "ideal theory" in *A Theory of Justice*. In *TJ*, ideal theory, everyone is assumed to comply with the principles of justice -- just as the in the "ideal of public reason" everyone complies with public reason.

<sup>23</sup> I am not sure this is correct, but I will return to this point.

for a world in which public reason *could* be realized, the abolitionists did not violate the “ideal” of public reason.

If we view the abolitionists in this way, we would be taking, in Rawls’s nomenclature, the “inclusive view” of public reason. This is opposed to the “exclusive view,” which would deny the possibility that one could defy public reason if one did so in “ways that strengthen[ed] the ideal of public reason itself.” (PL 247). If we strictly held to the exclusive view, we would always be bound to justify the use of state power in the terms of public reason; we would *always* have to live up to the ideal. But in a non-well-ordered society, we may be wise to take the “inclusive” view, which would allow appeals to novel, comprehensive reasons. (PL 251)

There are three things to note about Rawls’s use of public reason as an “ideal” that I want to note before I go on to criticize it. First, Rawls is often unclear, and rather inconsistent, about whether the abolitionists were in fact bound by public reason and how they might be bound. At times Rawls says that the defenders of slavery were simply unreasonable, meaning that the abolitionists owed no duty of civility to them. At other times he seems to say that the abolitionists were at least bound by an ideal of public reason, even if they did not heed public reason as it was in their own time. At still other times, he suggests that pre-Civil War America had no idea of public reason at all. (PL 251 n.41) More generally, Rawls does not say whether in *any* non-well-ordered society, public reason or its ideal would not apply, or whether public reason applies in degrees. He seems to think that whatever exception applied to the abolitionists does not apply to us in the same way, although our society is certainly not well-ordered (consider, for example, his discussion of the topic of abortion). This raises the question of what made the abolitionists unique, if it wasn’t just the fact that they lived in a non-well-ordered society.

Second, I think it is probably questionable whether the abolitionists themselves viewed their own arguments as in service of a liberal political conception that could eventually be realized. Is this right? Did the abolitionists use religious arguments in the service of a liberal political conception, or did they use them because they thought they were true and that they thought *those reasons* should be the basis of political society? It seems that the latter is at least as plausible, if not more plausible than the former. Reading the writings of the abolitionists or the religious leaders of the civil rights movement, one would be hard pressed to say that they viewed their comprehensive doctrines as a means towards developing a properly political (where this is contrasted with comprehensive) conception.<sup>24</sup> Of course, Rawls is right that *we* can view their reasons in this way: as necessary to realizing a liberal utopia. But that does not mean that *they* thought that they were doing this. And if they thought they were trying to realize God’s kingdom on earth, this would certainly be relevant as to whether they were acting in accord with the duty of civility.<sup>25</sup>

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<sup>24</sup> See the passages at n. 38 on p. 249 of PL. I agree with Charles Larmore when he says, of the views of the abolitionists and members of the civil rights movement, “Their aim was to encourage others to take [their] religious view to heart as they dealt with those questions as voters, legislators, officials, and judges.” “Public Reason” in Samuel Freeman, ed., *The Cambridge Companion to Rawls* (Cambridge: 2008): 385.

<sup>25</sup> This seems to be the obverse of the problem where I introduce public reasons to advance my comprehensive doctrine. People may question my sincerity. Here Rawls is saying that violations of public reasons are OK if I use them to advance the ideal of public reason. But this obviously won’t be the case if I am using comprehensive reasons *just to* advance my comprehensive doctrine, which is perhaps what the

The third thing to notice about Rawls's reply is that it differs importantly from his development of the proviso in "The Idea of Public Reason Revisited." The inclusive view of public reason shares many similarities with the proviso, but it is not identical to it, and here is why. The proviso allows one to invoke one's comprehensive conception provided that in due course one can give public reasons to support the same conclusion. This seems to assume that there already exist, present and at hand, public reasons that correspond to your comprehensive doctrine; you *could have* given public reasons alone, but for the purposes of mutual good faith and acknowledgment, you are letting your comprehensive doctrine show (so to speak). This is why the proviso, although it seemed to offer an answer to the problem of novelty, still remained firmly conservative.

In the case of the abolitionists, by contrast, we have comprehensive reasons given when there exist no public reasons that fully correspond to them -- or at least not ones that will do the necessary justificatory work.<sup>26</sup> That remains a hope, something possibly in the far off distance. The abolitionists were working in a sort of contemporary public reason vacuum; they had to appeal to their comprehensive doctrines *precisely because* there were not yet public reasons of the type they needed. They worked within the ideal of public reason, Rawls says, because the reasons they give are in service of a future where the public political conception *will* have the reasons they need.

There is something very appealing about this response. It requires us, as Rawls says, to take the longer view: to see the arc of public reason as one which discloses itself over time and as reaching towards a just public political culture. It also reveals a fundamental tension in the ideal of public reason. At the time of the abolitionists, the only thing that we *did* know from the point of view of the public political conception is that they were being uncivil; that is, they were violating the terms of public reason as that society understood it (or so Rawls seems to assume). What we can see *now* of course is that they were arguing to the right conclusion, viz., that slavery is wrong and should be abolished. And our public political culture surely now supports this conclusion. Rawls says as much when he says that we can "now see" the acts of the abolitionists as in service of an ideal of public reason, because in many ways we are closer to that ideal because of them. But what about the abolitionists *at the time* they were making their arguments? Were they not violating public reason, even if they might eventually be vindicated?

As Micah Lott has pointed out, there is something confusing about the way Rawls uses the concept of an "ideal" here.<sup>27</sup> On Rawls's picture, the notion of a well-ordered society and the ideal of public reason meet up.<sup>28</sup> A well-ordered society will be in one in which no one will need to go outside the constraints of public reason in order to pick out some injustice or another. This is presumably because *either* there are no substantive injustices that remain (the society is well-ordered, after all) *or* because in the well-ordered society, all lingering injustices can be identified and legislated about using the reasons of the public political culture. The ideal of public reason, then, involves both a

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abolitionists thought they were doing (whatever we might say about them -- indeed, why does it matter how we might view them?). That would seem to be a violation of the duty of civility, if anything is. See PL I.

<sup>26</sup> See PL 249-50. Rawls is inconsistent on this point, however. See PL I.

<sup>27</sup> Micah Lott, "Restraint on Reasons and Reasons for Restraint: A Problem for Rawls' Ideal of Public Reason," *Pacific Philosophical Quarterly* 87 (2006): 91-92.

<sup>28</sup> "Here I assume that the political conception of justice and the ideal of honoring public reason mutually support one another." PL 252.

formal and a substantive aspect for Rawls. The formal aspect is satisfied when everyone deliberates according to the terms of public reason. The substantive aspect is when we live in a well-ordered society where there is no need to reason outside the bounds of public reason. In other words, Rawls seems to tie the realization of the ideal of public reason with a conception of the well-ordered society, that is, he makes the fulfillment of the *ideal* of public reason partly turn on the *content* of what is being argued for. The ideal of public reason is part of ideal theory, after all.

The focus on abolitionists obscures how controversial Rawls's move here is. Of course we agree with the abolitionists and their substantive vision of justice now. But if we take a contemporary example, it is no longer so clear how we tell whether a person is arguing in accord with an "ideal" of public reason or not. Suppose those who are against abortion base their claim on the metaphysical personhood of the fetus. Would they be violating public reason? Samuel Freeman concludes that they would be, at least if they rested their conclusion on this "comprehensive" reason alone.<sup>29</sup>

But then surely pro-lifers could respond that they are arguing in light of an *ideal* of public reason, even if the violated present-day public reason. The person who believes that human life is sacred and begins at conception may assert (like the abolitionists) that his actions are "the best way to bring about a well-ordered and just society in which the ideal of public reason could eventually be honored" (PL 250) and that the political forces they lead are "among the necessary historical conditions to establish political justice," viz., "freedom and equality for all" persons (PL 250-51). If it is possible that history may yet vindicate the pro-lifers assertions, then how can we say he is not arguing in accord with an ideal of public reason?

Much of the point of public reason is that we should restrain ourselves from arguing in certain ways, even if our comprehensive conception says what we are arguing for is just and part of a well-ordered society. We shouldn't be able to evade the limits of public reason by saying that what we're arguing for is really important. As Lott says, the motivation for public reason is precisely because we *will* disagree on what the best political conception is. There are many different liberal political conceptions; we may not end up with the political conception that we hope to have.<sup>30</sup> We can't violate public reason because we think our conception of the political really is the right one, because it embodies the whole truth as we see it. Public reason asks us to reason in terms that are widely shared. It does not say that we can reason in whatever way we want provided that we are advocating the right conception of justice.

Am I saying, then, that the "inclusive view" of public reason is not, properly speaking, a conception of public reason? Yes. We cannot argue about the shape of our *future* political culture in terms that are not already accepted by the present political culture, without violating public reason. This is not only true in the obvious sense that our present public political culture by hypothesis will not contain those terms (although this is an important point). It is also true because we do not know *now* what our future political culture will actually look like, and whether the terms we want to introduce now will match up with the terms deemed acceptable by our future political culture. The exclusive view of public reason provides for just this possibility, and says that since we

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<sup>29</sup> Samuel Freeman, *Rawls* (Routledge: 2007): 407.

<sup>30</sup> See PL 242: "As institutions and laws are always imperfect, we may view [public reason] as imperfect and in any case falling short of the whole truth set out by our comprehensive doctrine."

do not know what our future public political culture looks like, we cannot violate our *present* public reason by referring to it, even if we have a keen “sense of [public reason’s] imperfection.” (PL 242) That would violate the duty of civility.

## B. How Public Reason is Historical

What emerges finally, from the objection that public reason is conservative is a potentially dispiriting conclusion: it *is* conservative, and to make it not conservative, by allowing that reason that are “in principle available” (but not really available) or by allowing people to give comprehensive reasons (so long as they eventually give public reasons) or by letting them reason according to the ideal of public reason *either* gives up on public reason altogether *or* does not successfully answer the conservatism objection. We saw this dilemma just now with the introduction of the “ideal” of public reason, which might be said to be Rawls’s best answer to the conservatism objection. It is, it seems, his way of letting public reason permit novel public reasons -- reasons which are not widely accepted -- but without letting go of at least the “ideal of public reasons.” But even this runs up against the fundamental dilemma.

So how do we avoid this dilemma? How do we respond to the novelty objection without abandoning public reason? Of the three ways of responding to the objection, the last one (which I articulated as being Rawls’s own) comes the closest because it depends on public reason *changing*, or at least the prospect of change. What may not yet be legitimate now, it says, may yet be legitimate in the future -- should our ideal of public reason be made actual. The trouble with the answer, however, is that it means forsaking the virtues of public reason now, in exchange for some far-flung ideal. Of course, in some instances, this tradeoff may be amply justified. It may be worth it to forsake the very great virtues of public reason in exchange for stopping some present injustice. But presumably this cannot be the case for *every* possible injustice, because then public reason would and could be easily dispensable. The idea, if not the ideal, of public reason has to stand firm at least in some instances. We have to say, at least sometimes, that the virtues of public reason and civility should win out. Otherwise, there is no point to public reason.

But it may be that public reason doesn’t have to change in a top-down way only, that is, through the introduction of novel public reasons *in* public. It may be that public reason can change from the bottom-up: from the *non*-public political culture to the public political culture. I want to proceed to this possibility in two steps. The first step is to acknowledge that public reason has changed and can change (this section); the second step is to explain how it can change without violating public reason by proceeding from the bottom-up (next section). Rawls does not, unfortunately, say much at all about how public reason can change -- and indeed, in some places, he appears to say that political liberalism does not need an account of how it changes, that this is something it can safely ignore. I am not sure this is a wise move, and in the next section I try to see how we can remedy it.

Yet Rawls does recognize that public reason *can* change, and I want to start with this realization, because it offers us the hope for a better response to the problem the abolitionists present for public reason, and more generally to the novelty objection. It

starts with what Waldron has called Rawls's "Abraham Lincoln exception"<sup>31</sup> to the requirements of public reason, which is not, in fact, an exception at all.

At the end of the chapter on public reason in *Political Liberalism*, Rawls says that whether an understanding of public reason such as the one he is giving is acceptable will mean looking more closely at specific cases, and having to consider "the other ways in which religious beliefs and statements can have a role in public life." (PL 254) To this end, he asks whether some remarks by Abraham Lincoln may have violated the idea of public reason. What about the declaration of a National Fast Day or Lincoln's two Proclamations of Thanksgiving? And what, finally, about the invocations of God in Lincoln's Second Inaugural? Rawls writes that he is disinclined to think that in any of these instances Lincoln violated public reason "as it applied in his day -- whether in ours is another matter -- since what he says has no implications bearing on constitutional essentials or matters of basic justice." (PL 254) Rawls's analysis of Lincoln is hard to parse here. On the one hand, if Lincoln was not saying anything relevant about constitutional essentials and matters of basic justice then it would not be inappropriate, I would think, *in our day* for a president to invoke religious concepts. As Rawls has laid it out in the chapter on public reason, the limits of public reason only apply to reasoning about constitutional essentials and matters of basic justice.

On the other hand, whatever we may think about a National Fast Day or Proclamations of Thanksgiving, Lincoln's second inaugural concerned the Civil War and that would seem to inescapably deal with matters of great and weighty constitutional concern. So Rawls cannot mean this response to apply to all of Lincoln's pronouncements. He has to be saying that public reason, even in matters of constitutional essentials and basic justice, might have been different for Lincoln than it is for us.

Rawls of course goes on to say that he thinks whatever Lincoln said was fully supported by the values of public reason. This resembles the unsatisfactory response I have dealt with earlier: that although Lincoln spoke out of turn, he was not straying far from the ideal of public reason. This may be true. It may also be that there was nothing in what he said that could not also be justified in terms of public reason, so that Lincoln could at least avail himself of the proviso. But it remains the case that in one of his most famous and public speeches Lincoln did not. He spoke in overtly religious terms. And what Rawls seems to say, at least at one point, is that he nonetheless may have been in accord with public reason "as it applied in his day," even though by our lights and in our time, he would have been violating the terms of public reason.

What would affirming such an interpretation give us? The first thing it gives us, which is of great importance, is that it would give us an interpretation of the public political culture which was in fact *truer* to Lincoln's time. He spoke in religious terms, and it does not give him any credit to simply assume that those terms were masked articulations of something he could have just as well spoken of in secular or politically liberal terms. Nor were they merely rhetorical gloss. Or if they were for Lincoln, then we cannot say the same of the abolitionists, who really did take their arguments to be religious in substance and not merely in style.<sup>32</sup> They were speaking in religious terms all

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<sup>31</sup> Jeremy Waldron, "Public Reason and 'Justification' in the Courtroom," *Journal of Law, Philosophy and Culture* 1 (2007): 110.

<sup>32</sup> On the abolitionists' view of Lincoln, see Allen C. Guelzo, "Lincoln and the Abolitionists," *The Wilson Quarterly*, 24 (Autumn 2000): 58.

the way down. And it does them no service to say that they were speaking in terms of an ideal of public reason to which it is doubtful they subscribed. Moreover, and this is the critical point, it does not do any service to what public reason was at the time to say that the public political culture did not include religious arguments and premises. Thus, there is no Abraham Lincoln exception, or if there was one it swallows the rule. Lincoln's use of religious language was not to violate public reason, but to reason in terms of the public reason of his day.

Is there any reason *a priori* why religious ideals and beliefs could not in principle be part of public reason? I do not see one. Thomas Nagel cautions that religious ideas may clash<sup>33</sup> -- there were certainly religious arguments for slavery at the time -- but this is no less true of political ideas generally. Further, it would be simply false to ignore the religious arguments of Lincoln, and before him, those at the founding period. To say that religious arguments would not be part of their public reason, that they would violate public reason by using them, is to commit a serious anachronism. From our point of view, we might say that what for prior times was a matter of religious belief (the wrongness of slavery) is now a matter of our common non-religious political beliefs. This is fine. But to say that it was not part of their common *political* culture seems to me to be both false and something we do not need to say about public reason. Rawls will frequently say that public reason is not secular, that it excludes all comprehensive doctrines, not just religious ones. I think a corollary to this, not expressed by Rawls, is that if religious ideas are part of the public political culture, then religious ideas *may be included* in public reason. The only motivation to exclude them, it seems to me, is if they are not widely shared. This leaves it open that they may have been widely shared -- and could again be widely shared in the future. To get this perspective on public reason is to see it as having a history, and those things that have a history can change.

I will explore how public reason changes in the next part, but now I want to stress how the fact that religious ideas might have been part of public reason at the time of the abolitionists importantly blunts the force of the novelty objection at least at it applies to the abolitionists. If the problem with the lack of novelty at the time of slavery was that we could not formulate in the terms of public reason good arguments about why slavery was wrong, the answer is that there *were* such arguments ready at hand. They were religious ones, but because religious invocations were part of the public political culture, they were also *public* ones. The abolitionists did not violate the terms of public reason because they were arguing within the limits of public reason given their "historical and social conditions." (PL 251) The problem with *our* -- and I include Rawls in this -- analysis of the abolitionists is that it is too presentist: it assumes that our standards for public reason (which are, we may assume, for the most part secular) should apply at all times. But if public reason is historical, then this is in error. We should see what were the widely accepted beliefs and ideals of the time under review, and only then should we make a judgment about whether public reason has been violated.

### C. How Public Reason is Mutable

What the historicity of public reason shows us is that public reason can be different at different times. There is no one set of shared beliefs or shared ideals that

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<sup>33</sup> Thomas Nagel, *Secular Philosophy and the Religious Temperament* (Oxford: 2010): 119 n.7.

constitute public reason for all time. Nor do I think it is right to think that there is an ideal of public reason so that so long as we reason in accord with the ideal we are *by that fact* reasoning in accord with public reason. There has to be a difference between the widely shared beliefs of citizens here and now and what public reason may become, but is not yet. We cannot cheat and say that some far off culture, very different than our own still shares a common public reason with us -- that we share an “ideal” of public reason -- for this is effectively to abandon public reason. We are better off admitting that public reason will change over time, that we do not know a priori what shape that change will take, and that we cannot force change by reasoning in accord with an *ideal* of public reason without violating the actual terms of public reason.

What we need, though, is an explanation of how public reason changes, and so can adapt to allow novel reasons, but in a way that does not itself violate the strictures of public reason. The importance of Rawls’s claim about an *ideal* of public reason, is that it provides for the fact that we might one day adopt a form of public reason that fits with what, substantively, is just. The abolitionists possibly violated the terms of public reason of their time (although in the previous section I suggested that they probably did not), but they might have been looking to a time when public reason might be different, where the belief that slavery was wrong might be a shared and common belief. Rawls’s argument was that by arguing in terms of their ideal, they might still be considered to be honoring public reason, broadly construed. But this is wrong: we do not honor public reason by breaching it (although we may honor a substantive vision of justice; that is another matter<sup>34</sup>). What we need is a way that public reason can change without violating public reason itself, and this means exploring change that happens through the “background culture” of society, that is, the “culture of churches and associations of all kinds, and institutions of learning at all levels, especially universities and professional schools, scientific and other societies.” (IPRR 443 n.13).<sup>35</sup>

Where Rawls goes wrong is in seeing change in public reason as happening mostly *within* public reason. We use our comprehensive doctrine in public as a way of nudging (or forcing) the public political culture to change. Of course, this could be a way public reason would change. It may be that much of our present-day public reason was once a comprehensive doctrine that had illegitimately been foisted upon the public. It could even be that the constitutional values of the life, liberty, and the pursuit of happiness were based in a comprehensive doctrine, namely, a Lockean version of natural rights. In putting those words in our basic documents, the founding fathers were in fact trying to base America on a certain comprehensive doctrine, one with certain (controversial) metaphysical commitments. As time went on, though, it no longer became clear that those values could *only* be associated with those metaphysical commitments, and indeed, as time wore on, an interpretation of those values that was consistent with many comprehensive doctrines came into favor. Although those values may have started out as comprehensive, they became watered down, and acceptable as purely political values.

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<sup>34</sup> More generally, nothing I say here eliminates the possibility that the best course of action in a given instance will just be to violate public reason, because the underlying injustice is so grave.

<sup>35</sup> Cf. Solum at 1482 (explaining how a “nonpublic reason could be introduced outside of public political debate, in the background culture” and come “over time, to be viewed” as a public reason).

So there is this (plausible) story about how novel and controversial ideas become part of public reason: they force their way onto the public, and are eventually accepted *qua* public reasons. But isn't the only story, because it bypasses the possibility that changes in the background culture of society may eventually lead to changes in the public reason of society too. In other words, Rawls overemphasizes how change happens *politically* through and through, but ignores how politics can change *culturally*. Rawls's view, even in his analysis of the abolitionists, is one that is too restricted to the public political culture itself, viewing it as isolated from the non-political culture. Changes that occur to public reason need not always happen in public; they need not always be from the top-down.

How might such a bottom-up account proceed? Rawls discusses in IPRR the possibility of reasoning by conjecture, which he says in the process by which we show some comprehensive doctrines have the resources within themselves to affirm political liberalism. Something similar may happen in the other direction. Certain comprehensive doctrines may -- as a form of conjecture -- try to show how the public political culture can support something like what is affirmed in their comprehensive doctrines. This would be the end point, or near the end point, of a process of cultural change. We would show, by a process of "reverse" reasoning by conjecture, that, e.g., the equal status of women could be supported by beliefs that are widely accepted and by ideals that are widely shared. This would not be in the manner of asserting that the culture should adopt one's comprehensive doctrine. Rather, it would be in the manner of showing that the public political culture *already accepts* something like one's comprehensive doctrine.<sup>36</sup> The way the culture reached this point may not necessarily be a story of how people were reasoned into the conclusions of your comprehensive doctrine. It might be a story of economic changes, social movements, or conversion. It might be a story of persuasion by non-rational means. But there is nothing in Rawls that says that the only way beliefs or ideas can be adopted by the political culture is through a process of reasoning. Were we *reasoned* into a belief in equality or liberty? It seems unlikely. Yet these are the very foundations of our public political culture, and at the root of public reason.

Rawls says that "while a conception of public reason must recognize the significance of [the] social roots of constitutional democracy and note how they strengthen its vital institutions, it need not itself undertake a study of these matters." (IPRR 464). I think this is a mistake. For if a worry we have about public reason is that it is too conservative (not open to novelty), the way we can allay this worry is to show how the background culture can over time change the content of the public political culture and through that change the content of public reason. This requires a study of the social roots of our public political culture. Indeed, because part of the content of public reason is fixed by those beliefs that are widely shared, we *have* to know the content of the "social roots" of democracy. Thus we need to know the social roots of democracy even if we are to have any sense of the beliefs that constitute public reason, to know what public reason is now. Public reason without social content is empty. So, too, might we say that public reason without a story of how the social roots might change over time is

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<sup>36</sup> See IPRR 452: "[N]ew variations [of public reason] may be proposed from time to time and older ones may cease to be represented. It is important that this be so; otherwise the claims of groups or interests arising from social change might be repressed and fail to gain their appropriate political voice."

blind -- blind to the possibility that public reason may accommodate new forms of reasoning via the transformative power of social movements.<sup>37</sup>

Interestingly, legal academics have begun taking a longer view of how constitutional change takes place over time, how social movements are able to gain wide acceptance in the public political culture, and eventually be validated by the Supreme Court, which, recall, Rawls himself has called the “exemplar of public reason.” Here they prove to be more interested in the social roots of democracy than Rawls was.<sup>38</sup> For example, they may help us in explaining how sexual harassment came to be seen as a violation of the civil rights of women, rather than just a private matter of personal sensibilities. Or how a failure to pay disability leave for pregnant women came to count as sex discrimination, rather than a gender neutral determination that doesn’t unfairly burden women.<sup>39</sup> To put the point in a Rawlsian way, what a study of the background culture can show is how a norm once thought to be *comprehensive* or at least *controversial* and *not widely accepted* comes to be part of a *political* liberalism, and so part of the public political culture and not outside of it. Legal academics will do this by showing how social movements change our understanding of the Constitution, which is part of our public political culture. More generally, what the law’s study of social movements shows is that movements can change the public political culture from the bottom up, and that change does not merely come from the top down.

## Conclusion

Viewed from a certain angle, the objection from conservatism seems unanswerable. If public reason relies on the widely shared beliefs of the public, how can it change; how can it ever depart from those widely shared beliefs? Any novel reason almost by definition would appear to be a departure from the terms of public reason. Many responses to the objection fall into a dilemma. Either the belief is genuinely novel, and so violates public reason, or the belief is really part of the public political culture and so is not genuinely novel. We only can get away from this dilemma if we look at how public reason changes over time and not just this, but how changes in the background culture eventually lead to changes in public reason itself.

This requires that we look not merely at public reason in isolation from its social roots. Public reason needs an account not just of changes in public reason itself but in changes in society. To this extent, it is simply wrong to draw the line between public reason and the background culture too starkly. To be sure, we can draw an artificial line between those beliefs that are widely shared and those are not shared and rest on controversial presuppositions. But there can be no fixed boundary between those institutions and persons who are in the background culture and who are in the public

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<sup>37</sup> I take this to be a better response to the worry expressed by Seyla Benhabib, as discussed by Rawls in IPRR 451 n. 28.

<sup>38</sup> For a good introduction, see Jack Balkin, “How Social Movements Change (or Fail to Change) the Constitution: The Case of the New Departure,” *Suffolk University Law Review*, 34 (2005): 28 (social movements “reshape constitutional common sense, moving the boundaries of what is plausible and implausible in the world of constitutional interpretation, what is a thinkable legal argument and what is constitutionally ‘off the wall.’”).

<sup>39</sup> See Reva Siegel, “Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de facto ERA,” *California Law Review* 94 (2006).

political culture (churches, for instance, may at various times be part of either, or of both). The reasons available to the “public” at any time will be constantly in flux.<sup>40</sup> This can mean both that they can change in a comprehensive liberal direction, and also in the opposite direction.

If this is true, then I think the novelty objection does lose much of its force. There is no bar to public reason changing, although we have to be careful in specifying the mechanism of that change. Public reason does not always change through efforts to “force” it to change, by asking others to accept one’s comprehensive doctrine prior to that doctrine being widely accepted. But public reason can and has changed through shifts in what is widely accepted by the public at large. These shifts happen not through public reason itself, but through sometimes slow and sometimes sudden alterations in the background culture. If we want to change public reason while at the same time honoring it, we must first make our case there.

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<sup>40</sup> But not all beliefs at the same time, and not *most* beliefs. If this were true, then public reason would be impossible.