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SOME PROBLEMS WITH PUBLIC REASON IN JOHN RAWLS'S *POLITICAL LIBERALISM*

Kent Greenawalt*

I. INTRODUCTION

*Political Liberalism*¹ is a major addition to the political theory of John Rawls. In many respects, it develops or alters views expressed in his famous *A Theory of Justice*.² For changes that appeared in various articles Rawls published after the earlier book, *Political Liberalism* tends to offer nuances of difference. The most original chapter is about public reason,³ and my comments are directed to that subject, which has now become a centerpiece of Rawls's theory. I draw in Rawls's other views only as they bear on public reason.

My aim is to present some problems I see with his account. When I am unclear about how he means to deal with a difficulty, I suggest various possibilities. Once I have settled on an interpretation of Rawls, I compare that with the position I find most persuasive. This is not the occasion to provide any full account of my own views, but some readers may be encouraged to read further.⁴

At the outset I want to identify a complicating factor and to explain my treatment of it. Since the publication of *Political Liberalism*, Professor Rawls has presented in various settings a paper entitled *The Idea of Public Reason: Further Considerations*.⁵ This article in progress clarifies and develops some positions he took in *Political Liberalism*. Since relatively few readers will have seen his unpublished

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1. JOHN RAWLS, *POLITICAL LIBERALISM* (1993).

2. JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

3. RAWLS, *supra* note 1, at 212-54.

4. My own perspectives are most fully developed in KENT GREENAWALT, *PRIVATE CONSCIENCES AND PUBLIC REASONS* (1995). That book includes a chapter on Rawls which appeared in somewhat revised form in Kent Greenawalt, *On Public Reason*, 69 *CHI.-KENT L. REV.* 669 (1994). Many of my views are also indicated in KENT GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* (1988).

5. John Rawls, *The Idea of Public Reason: Further Considerations* (Nov. 2, 1993) (unpublished manuscript, on file with *Loyola of Los Angeles Law Review*) [hereinafter Rawls, draft article].

article, and since Rawls's work on the article is not yet complete, I did not think I should comment extensively on what he says there. At the same time, it hardly seems productive to raise questions Rawls has already answered in a convincing way in the draft article. Thus, I focus on problems that I believe are not yet satisfactorily resolved. When I interpret *Political Liberalism*, I do so in accord with my understanding of Rawls's draft article. Occasionally, I refer to the draft when I think it helps clarify Rawls's position.

My comments are mainly critical, but they need to be understood in context. *Political Liberalism* is a work of abstract political philosophy; it presents a contractarian account of liberal democracy that does not rely on a controversial theory of the good. The idea of public reason that forms a crucial part of that account involves some compromise between an ideal of having people resolve political issues on the basis of shared reasons and having them refer to the whole truth as they conceive it. Public reason is conceived primarily as a matter of self-restraint about political decisions⁶ and the bite of its demands varies depending on one's role in political life. Though I put greater emphasis on a society's particular history and culture than does Rawls, I do not doubt the value of either abstract political philosophy or of contractarian analysis that does not depend on any particular theory of the good. I have no "global" doubts about Rawls's work; indeed I share the widespread opinion that it is immensely important. I believe in public reason as self-constraint. I am also in agreement with Rawls that a properly conceived ideal of public reason operates differently according to people's roles and does not exclude all reliance on broader philosophies of life that compete within a society. Thus, my doubts and disagreements emanate from a broad sympathy with what Rawls undertakes. Further, on the wide spectrum of views about public reasons, both our views represent intermediate positions that are not too far apart.

I shall comment on three problems. The first is the distinction Rawls draws between constitutional issues and matters of basic justice on the one hand, and "ordinary" political issues on the other.⁷ The second is the precise relation between one's appropriate reliance on

6. If enough officials or people rely on other than public reasons for the adoption of legislation, courts might declare the legislation unconstitutional—as a violation of the Establishment Clause, for example. A practice of relying on public reasons could have this sort of legal backup. These possible implications are, of course, of great importance for lawyers, but Rawls does not discuss them directly, and I do not consider them here. I treat some of them briefly in *Religious Convictions and Political Choice*, *supra* note 4, at 244-60.

7. See *infra* part II.

comprehensive perspectives and public reasons.⁸ The third is the fundamental assumption that fairness in liberal democracies *in general* requires reliance on public reasons in respect to constitutional issues and matters of basic justice.⁹

Rawls says, rightly I believe, that within any genuine liberal democracy, citizens are bound to have varying perspectives on fundamental subjects of philosophy and religion.¹⁰ There will be a plurality of what he calls comprehensive views.¹¹ If citizens are to enjoy equal respect, they should not be coerced in respect to fundamental political matters on the basis of reasons they cannot reasonably be expected to accept. Coercing people on the basis of the comprehensive views that others hold may well entail coercing them on the basis of reasons they could not reasonably be expected to accept. A Jew cannot be expected to accept reasons that derive from Christian premises; an atheist cannot be expected to accept reasons that derive from theistic premises. The way out of this dilemma is for people to rely on public reasons, reasons that citizens share as members of the same political community.¹² One can base the argument for public reasons on fairness or on harmony and stability, or both; Rawls's main emphasis is now on fairness.¹³

The difficulty with asking people to rely on public reasons is that, if they do so, they may have to forego what they believe are really the best reasons for resolving particular problems. Thus, to take an issue to which I will return, a Roman Catholic who addresses abortion legislation would have to refrain from relying on a confidently held religious belief that from the moment of conception an embryo is entitled to the moral status of a full human being. Does asking people to refrain from relying on what they believe most deeply itself create a kind of unfairness? Rawls's response is that in a liberal democracy most comprehensive views will be reasonable, endorsing the premises of liberal democracy *including* an ideal of public reason.¹⁴ Someone's own comprehensive view will, in effect, indicate that for the resolution

8. See *infra* part III.

9. See *infra* part IV.

10. RAWLS, *supra* note 1, at 216-17.

11. *Id.* at 135, 218-19.

12. In one formulation, Rawls says that "on matters of constitutional essentials and basic justice," justification should "appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial." *Id.* at 224.

13. See *id.* at 225-26.

14. *Id.* at 218-19.

of certain political issues, a person holding that view should not rely on some sources of understanding that would be appropriate for decisions about how to lead her personal life and relate to others outside politics.

Rawls suggests that while judges are constrained to follow public reasons in all their decisions of legal questions, the limits of public reason apply to citizens and legislators only in regard to "constitutional essentials" and questions of basic justice.¹⁵ The constitutional essentials include "fundamental principles that specify the general structure of government and the political process" and "equal basic rights and liberties of citizenship."¹⁶ Questions of basic justice include basic issues regarding social and economic opportunities and distribution of income. Some minimal principle of opportunity and the provision of basic needs for all citizens are themselves constitutional essentials; other claims about opportunities and welfare fall within questions of basic justice although they are not constitutional essentials.¹⁷

II. AN UNEASY DIVISION

Let us postpone for the moment discussing exactly what the constraint of public reasons entails when it does apply. The constraint does not apply when legislators and citizens address "ordinary" issues like the environment, the treatment of animals, and military policy. Thus, legislators and citizens may rely on some sources and make some arguments in respect to ordinary political issues that would be inappropriate if constitutional essentials or questions of basic justice were at stake. For example, they might appropriately argue that the Bible indicates that we should be more respectful of animals, but they could not properly rest an argument for a restrictive abortion law primarily on what the Bible says.

My first point about this division is a simple one. For people to recognize this categorization among issues and to act differently in respect to the two categories requires considerable political sophistication and discipline. People may think it odd that considerations appropriate for one kind of political issue are, in a sense, foreclosed for another. This difficulty casts doubt on the feasibility of a restraint of public reasons formulated in this way. Because a sound normative

15. *Id.* at 214.

16. *Id.* at 227. These could be constitutional essentials even if there were no written constitution guaranteeing them.

17. *Id.* at 228-29.

principle of political philosophy must be one that human beings can observe reasonably well, doubts about feasibility amount to doubts about the wisdom of a proposed principle.

My second point on this subject is more complex; it concerns the interrelationship between ordinary issues on the one hand, and constitutional essentials and questions of basic justice on the other. Rawls understandably treats a right to abortion as a constitutional essential because it involves a fundamental right of women.¹⁸ I begin from this assumption in order to illustrate my point, but the general point would survive even if one disagreed with Rawls about where abortion stands. In past years, the use of fetal tissue for medical research and treatment has been highly controversial; a recent variation on this issue involves the artificial creation of human embryos for research and medical purposes. These issues appear to be in the realm of ordinary politics—especially if the resolution of the constitutional essential establishes that a pregnant woman should have a right to an early abortion.

When considering legal restraint of abortion, the constitutional essential, legislators and citizens cannot rely on the authority of the Bible or the Roman Catholic Church as primary support for a restrictive law—or for a constitutional amendment permitting restrictive laws. They may not mainly assert, “We should treat the newly conceived embryo as a human being because the Bible or the Church says that we should.” That reliance would violate the constraint of public reason for constitutional essentials because the reliance would be upon a comprehensive view.

What now of issues of medical use of fetal tissue and the creation of human embryos? The status of embryos again seems highly relevant, but because the issue is only an ordinary one, reliance on the Bible or the Church may be all right. We see that exactly the same question—the moral status of embryos and early fetuses—can arise in regard to constitutional essentials and ordinary issues. It seems artificial to suppose that techniques of reasoning from comprehensive views may be used to answer the same question in one context but not the other.

In respect to use of fetal tissue obtained from abortions, the connection of questions may be even closer. One argument against such use is that it will encourage women to have abortions. Would it be appropriate to argue that medical use of fetal tissue should be forbid-

18. *Id.* at 243 n.32.

den or discouraged because it will encourage abortions, which themselves are wrong according to the Bible or the Church? Since the permissibility of abortion itself is not at stake, no constitutional essential is involved and the argument may not seem out of bounds. Yet it seems strange to suppose that on the very same question of the acceptability of abortion as it relates to political decisions, reasons that are in bounds for one context are out of bounds for another. The alternative approach here is hardly more appealing.

The alternative approach is that questions crucial to a constitutional essential must be addressed predominantly by public reasons *whenever* they are relevant to a political decision, whether or not the decision involves a constitutional essential. The problem with this approach is that one could then use various religious arguments on the fetal tissue question *unless* these arguments wandered too close to questions that mattered for constitutional essentials. That limitation on permitted grounds seems arbitrary when one asks whether use of fetal tissue should be allowed.

I am not going to explore the further refinements that might be necessary to elaborate how the distinction between ordinary issues and fundamental issues might work because I believe it is misconceived. I do not think there is a crucial dividing line for public reason that depends on the kind of issue that is involved. *Some* of what Rawls says in *Political Liberalism* could fit with this thought relatively comfortably. He seems to suggest that the constraint of public reasons is most important for the essentials, but may well be extended further.¹⁹ If one inclines to the view that the constraints are desirable on a broader scale but most important for the essentials, the difficulty I have posed is not very serious. The problem with this view is that it happily sacrifices the freedom to rely on comprehensive views for ordinary issues—a freedom that citizens should feel. I would regard that as a serious loss, so I am disinclined simply to extend the constraint of public reasons to all issues and all citizens. In summary, I reject one important division that Rawls advances.

III. HOW COMPREHENSIVE PERSPECTIVES RELATE TO PUBLIC REASONS

It is time now to turn to a more complex and troubling problem: Precisely what is the relationship between public reasons and comprehensive views in respect to circumstances when the constraint of pub-

19. See RAWLS, *supra* note 1, at 215.

lic reasons applies? If a judge or legislator or citizen is supposed to rely on public reasons, what is he *not* to rely on that he otherwise might? Rawls says that "in discussing constitutional essentials . . . we are not to appeal to comprehensive religious and philosophical doctrines."²⁰ I have assumed that in addressing political issues directly involving the practice of abortion, someone is not to rely on biblical or church authority to the effect that an embryo is entitled to the moral respect of a full human being. I now explore this problem in more depth.

Let us imagine a member of Congress, Carol, who believes on religious grounds that the embryo is entitled to such respect. She is considering whether to vote for a constitutional amendment allowing much stricter abortion regulation than is permissible under *Roe v. Wade*²¹ and is wondering how to defend her choice on the floor of Congress. Since Rawls thinks a right to abortion falls within the constitutional essentials,²² her choices are definitely subject to the constraint of public reasons.

There are three different issues about the relationship between public reasons and comprehensive views in such circumstances: May comprehensive views override the constraint of public reasons? May they supplement public reasons? How far do they intermingle with and infect public reasons? I am going to address the third issue, but I shall say just enough about the first two to avoid confusion. It is conceivable that discussions carried on in terms of public reasons may lead to a result that a person finds abhorrent from the standpoint of her own comprehensive view.²³ Since a person's comprehensive view is overarching for that person, it is always possible that the grounds for reaching a correct result according to the comprehensive position will override the grounds for observing the constraints of public reason. In this sense, the constraints of public reason are provisional, not conclusive, determinants of how one should act. Rawls recognizes this, and I agree.

Suppose Carol thinks her position is called for by public reasons *and* that it is also called for by the comprehensive views of herself and others. As a supplement to decision and argument grounded primar-

20. *Id.* at 224-25.

21. 410 U.S. 113 (1973).

22. RAWLS, *supra* note 1, at 243 n.32.

23. Rawls mentions pacifist Quakers as an example in his draft article. Rawls, draft article, *supra* note 5, at 22. While the Quaker pacifists may refuse to serve in a war, they can still support the constitutional regime and democratic institutions that choose to wage one. *Id.*

ily on public reasons, may Carol, consistent with the constraint of public reasons, appeal to her own comprehensive views and to comprehensive views of others that she does not share? In *Political Liberalism*, Rawls indicates that for some highly contested political issues, people might introduce comprehensive views to explain to opponents how their views support the values of public reason.²⁴ He also indicates that comprehensive views could be used directly to support conclusions in an unjust society, referring to abolitionists and Martin Luther King, Jr. as examples.²⁵ In his draft article, Rawls approves much wider use of comprehensive views to supplement positions that are primarily defended in terms of public reasons.²⁶

How far may Carol's comprehensive view figure in the development of Carol's primary reliance on public reasons? This is the question on which I wish to concentrate, partly because I do not yet have a precise sense of how Rawls sees this relationship. I start with two relatively straightforward conceptual possibilities. The first is that a person can rely internally on her comprehensive view; all she needs to do is to make sure that what she says publicly does not explicitly rely on other than public reasons. Since self-censorship about stated grounds is much simpler than self-censorship of one's process of decision, I believe that the constraints of public reason apply more stringently to public justifications than to internal grounds of decision. Rawls certainly claims that the constraints cover both public justifications and internal grounds of decision to a substantial degree,²⁷ so he plainly rejects this first conceptual possibility.

A second possibility is that someone subject to the constraints of public reason should try to decide without respect to what she believes on comprehensive grounds, relying exclusively on public reasons. Of course, no one is fully capable of making decisions without being influenced by what they believe on comprehensive grounds, but no one is fully capable of making decisions completely free of personal resentments and prejudices either. Since people *should* try to decide political issues free of personal prejudices, *perhaps* they *should* try to decide independent of what they believe on comprehensive grounds. In an earlier book, criticizing such a position, I wrote of asking people to "pluck out their religious convictions" and to think about questions as if "they started from scratch, disregarding what they pres-

24. RAWLS, *supra* note 1, at 248-49.

25. *Id.* at 249-51.

26. Rawls, draft article, *supra* note 5, at 10-15.

27. RAWLS, *supra* note 1, at 215-16.

ently take as basic premises of moral thought.'²⁸ In *Political Liberalism*, Rawls explicitly says that this is not what he intends with his ideal of public reason.²⁹ In the draft article, Rawls addresses Michael Perry's claim that his theory requires people to bracket their particular moral convictions and memberships in moral communities.³⁰ Again, Rawls says that his ideal of public reason requires no such bracketing.³¹ What exactly does Rawls see as the relationship between comprehensive views and public reasons in the development of positions that rely on public reasons?

We have already touched on *three relationships*. First, Rawls supposes that in most liberal democracies, most comprehensive views will endorse an ideal of public reason. Thus, Carol's own comprehensive view will probably encourage her not to rely on certain comprehensive grounds for the resolution of fundamental political issues. Observance of an ideal of public reason will in a full sense be an application of Carol's comprehensive view, not a rejection or disregard of it. Second, the comprehensive view may be used to supplement decisions and arguments based on public reason. Third, a comprehensive view stands in the background as a possible source to override the constraints of public reason if the results seem egregious enough. In all these three senses, Rawls clearly does not expect people to abandon their comprehensive views, but these connections do not go to the heart of Perry's concern or my more general concern about Rawls.³² We are thinking primarily of the reasoning by which one arrives at a particular political decision. If Carol is going to arrive at a decision based on public reasons, how far may her comprehensive view count for the decision? *That* is my concern here.

We can imagine Carol's comprehensive view supplying background premises or narrower links in a chain of argument. We can imagine her relying on the premises when she thinks public reasons themselves point in the same direction, or when public reasons are radically inconclusive, or even when she thinks public reasons standing alone point in the opposite direction.

In this hardly precise categorization, I mean by background premises such beliefs as "human life should be highly respected" and

28. *Id.* at 244 n.33 (quoting KENT GREENAWALT, *RELIGIOUS CONVICTIONS AND POLITICAL CHOICE* 155 (1988)).

29. *Id.*

30. Rawls, draft article, *supra* note 5, at 5 & n.8 (citing MICHAEL PERRY, *MORALITY, POLITICS AND LAW* (1988)).

31. *Id.* at 5-6.

32. See *supra* note 30 and accompanying text.

“caring for the poor is a high priority.” When a person has such beliefs based on her comprehensive view, disregarding them is difficult when she approaches political issues. I believe, without full confidence, that Rawls thinks a person may appropriately employ her comprehensive view in this way, at least when the background premises are not *at odds* with generally shared beliefs in the society.

The more troubling problem for his theory is that of narrower links in a chain of argument. The specific case on which I want to focus is one in which a person thinks a *plausible* argument, based on public reasons, can be made for the position that fits with that person’s comprehensive view but that the competing argument is stronger if one looks exclusively to public reasons. This formulation is abstract, and I shall illustrate the question with the abortion problem. Since there are various features of the example with which one might take issue, I want to emphasize strongly that the point of the example is to serve as an illustration, not to stand by itself against possible challenges.³³

Here is some of what Rawls says about abortion:

Suppose . . . that we consider the question in terms of these three important political values: the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens. (There are, of course, other important political values besides these.) Now I believe any reasonable balance of these three values will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester. The reason for this is that at this early stage of pregnancy the political value of the equality of women is overriding, and this right is required to give it substance and force.³⁴

Carol is a recent convert to Roman Catholicism. Prior to her conversion, she was strongly persuaded that public reasons supported a liberal right to abortion. She has now paid much more attention to the “natural” genetic argument that an embryo has a moral status like that of a developed person and to authoritative church statements that abortion is a terrible wrong. She presently believes that the fetus has the moral status of a full person. Carol also believes that *if* that point is taken as a premise, the balance of public reasons favors a regime of

33. Of course, if I could not come up with *any realistic examples*, that would suggest that the problem as I pose it is not a genuine one.

34. RAWLS, *supra* note 1, at 243 n.32.

regulation of abortion that is substantially more restrictive than the constitutional rules of *Roe v. Wade*.³⁵ She further believes that a plausible argument *limited entirely to public reasons* can be made for the high moral status of the fetus, but she finds the argument of public reasons against that status to be more persuasive than the argument in favor. Carol recognizes that it is her confidence in the Church's authority that causes her to believe in the high moral status of the fetus. Were she to act upon her full view, a crucial link in the complete chain of her reasoning about abortion would be supplied by her comprehensive view. Yet she could state a fairly powerful argument limited to terms of public reasons, advancing a plausible case based on public reasons alone even for the link that her comprehensive view supplies for her. My own view is that in a situation like this, legislators or citizens, but not ordinarily judges, may appropriately rely on their comprehensive views to reach their judgment. Legislators and what I call "quasi-public" citizens,³⁶ however, should cast their public arguments in terms of public reasons.

What does Rawls think? He writes that the ideal of citizenship imposes a "duty of civility—to be able to explain to one another on those fundamental questions how the principles and policies they advocate . . . can be supported by the political values of public reason."³⁷ He says that "[w]hat public reason asks is that citizens be able to explain their vote to one another in terms of a reasonable balance of public political values."³⁸

I believe Rawls means to require a sincere justification. I also believe that explicit reliance on the Church's authority, even for one link in an argument that is generally cast in terms of public reasons, would violate the constraints of public reason. I conclude that, for Rawls, Carol should not rely explicitly on the Church's authority, nor should she rely publicly on "public reason" arguments—for the high moral status of the fetus—in which she does not really believe. Thus, if she constrains herself according to public reason, Carol should not support a constitutional amendment to allow more restrictive rules about abortion.

35. 410 U.S. 113 (1973).

36. Quasi-public citizens include presidents of major corporations and universities and writers of national columns—people who consistently occupy public, nongovernmental positions.

37. RAWLS, *supra* note 1, at 217.

38. *Id.* at 243; *see id.* at 226-27, 246.

I am not sure Rawls has considered any example quite like this; possibly he does not believe any such example is soundly conceived. Objection might be taken to the example on the ground that abortion is a highly unusual problem. At the New Orleans conference,³⁹ Rawls indicated that for constitutional essentials he mainly had in mind more basic political structures and traditional liberties. I shall offer another example that is less stark but falls closer to the core of political liberties. It involves freedom of religion.

In *Corporation of the Presiding Bishop v. Amos*,⁴⁰ the Supreme Court considered a constitutional challenge to an exception to Title VII that allows religious organizations to discriminate on religious grounds.⁴¹ Appellee Mayson had been fired from his job as a building engineer at the Deseret Gymnasium, a nonprofit facility owned and run by organizations of the Church of Jesus Christ of Latter-day Saints.⁴² He was fired because he had failed to qualify for a "temple recommend," certifying that he was a member of the Church in good standing, eligible to attend its temples.⁴³ Mayson's constitutional claim was that the existing exemption for religious organizations from antidiscrimination rules was an unconstitutional establishment of religion because it exempted nonreligious as well as religious activities.⁴⁴ The Supreme Court sustained the law on the basis that there was good reason to avoid having courts decide which activities are religious and which are not.⁴⁵

Concurring opinions emphasized that nonprofit organizations were involved and that the validity of such a broad exemption for profit-making activities remained open.⁴⁶ As Justice Brennan recognized most explicitly, two competing aspects of religious liberty were at stake.⁴⁷ The coercion that the provision permits—a religious organization can effectively tell an employee he must conform or lose his job—"is in serious tension with our commitment to individual freedom of conscience in matters of religious belief."⁴⁸ However,

39. Jurisprudence Section Program, Association of American Law Schools Annual Meeting, New Orleans, La. (Jan. 8, 1995).

40. 483 U.S. 327 (1987).

41. *Id.* at 329-30.

42. *Id.* at 330.

43. *Id.*

44. *Id.* at 331.

45. *See id.* at 339.

46. *See id.* at 340 (Brennan, J., concurring); *id.* at 346 (Blackmun, J., concurring); *id.* at 349 (O'Connor, J., concurring).

47. *Id.* at 340 (Brennan, J., concurring).

48. *Id.* at 341 (Brennan, J., concurring).

“religious organizations have an interest in autonomy in ordering their internal affairs.”⁴⁹

What I want to discuss is not the Court’s decision of the constitutional issue, but the legislative choice that preceded it. Congress could have provided no exemption, exempted only religious activities, or exempted all activities. It could have provided a broader exemption for nonprofit activities than profit-making activities. I believe public reasons firmly establish that religious organizations should be able to discriminate on religious grounds for jobs with serious religious significance. Thus, *some exemption* is definitely called for. Whether for nonprofit activities the exemption should be full or limited to religious jobs is a hard question. Suppose Carl must decide which position to support. Carl believes that public reasons can plausibly support either position. He thinks, on balance, the public reasons favor the full exemption, which acknowledges church autonomy and obviates the problem of judicial categorization at the edges. But Carl’s comprehensive view leads him to think organized religion has had, and will continue to have, a devastating effect on genuine human autonomy. Can Carl, subject to the constraint of public reasons, properly support restricting the exemption in the manner that would be regarded as desirable according to his comprehensive view? Carl’s choice closely resembles Carol’s about the abortion amendment. My sense of Rawls is that Carl should stick to public reasons in deciding what to do unless the result is so offensive that his comprehensive view overrides the grounds for adhering to public reason.⁵⁰

This illustration shows that even though public reasons may render overwhelming support for the concept of certain liberties and the core of their application, there will be at the edges close questions where public reasons are fairly evenly balanced. Why, in such circumstances, should legislators and citizens need to focus on public reasons alone rather than introducing comprehensive perspectives into their assessments? If the implications of Rawls’s view are as I have indicated, his constraints of public reason do impose somewhat sharper limits on the use of comprehensive views than I believe are appropriate.

49. *Id.* (Brennan, J., concurring).

50. Perhaps it takes less to override a modest departure from public reasons than a gross one.

IV. GENERAL CONCLUSIONS ABOUT LIBERAL DEMOCRACIES, OR
SOME MORE LIMITED REACH

I turn now to my third problem, which involves doubts about how much may be said concerning public reason for liberal democracies in general. More particularly, I have doubts that respect for citizens as equals requires the precise understanding of public reasons that Rawls presents or any other precise understanding. The discussion so far strongly supports these doubts.

Constraints of public reason involve reciprocal self-restraint. I, as a legislator or citizen, do not rely directly on my comprehensive view to resolve particular issues like abortion; you, in turn, do not rely on your comprehensive view. People give up something in return for protection from impositions by other people. Why should we suppose that reflective, reasonable people in a liberal democracy will believe that such an exchange of restraints is called for? This is a tremendously complicated question. First, we may agree with Rawls that people will want to protect their own right to practice their religion or other comprehensive view.⁵¹ For this reason, they will agree on substantial liberty to believe and practice comprehensive views. But not every reliance on one comprehensive view involves an imposition on other comprehensive views. Decisions about environmental protection based on comprehensive perspectives, for example, will not typically impinge on the beliefs and practices of those with other comprehensive perspectives. Why might people agree on restraints of public reason that reach beyond instances of imposition?

Rawls stresses the plurality of comprehensive perspectives that will exist in liberal democracies.⁵² But, I think one cannot easily move from this proposition to a standard of public reasons. One needs to address the degree of mutual trust of political judgments based on comprehensive perspectives, and people's sense of the constellations of various views. Very briefly, one might have a high degree of trust that people with other comprehensive views will, when they rely on them, reach conclusions that are acceptable. For example, I consider myself a liberal Christian. My comprehensive view is far removed from that of law faculty colleagues who are atheists, yet I would feel considerable confidence in being governed according to political decisions they made that fit with their comprehensive views. Also, if one believes that comprehensive views themselves are so diverse that one

51. See RAWLS, *supra* note 1, at 220-22.

52. *Id.* at 243-44 & n.33.

has little to fear if decisions are reached by individual citizens and legislators in accord with comprehensive views, one might not worry much about their employment. Of course, some people might fear their use even if most people did not, but these people *might* equally fear decisions based on public reasons. What I am driving at is that cultural factors peculiar to individual societies will largely determine *whether* constraints of reason will seem required by fairness and stability. These factors will also largely determine *what* the appropriate constraints are. We should be suspicious of the idea that analysis of the conditions of liberal democracy in general will yield any fairly precise line between constitutional essentials and ordinary issues and will also yield some subtle demarcation of how far comprehensive views can figure in the development of positions based on public reasons. Perhaps on these points all liberal democracies are sufficiently similar, but I do not suppose that the constraints appropriate for a homogeneous society like Sweden will necessarily be the same as those appropriate for a country as diverse and contentious as the United States.

Let me state more specifically the way in which the earlier analysis bears on this problem. If one understands how complicated and disputable some of the distinctions proposed or implied by Rawls are, one must doubt that any constraints with such degree of precision can be drawn from general conditions of liberal democracy.

My doubts on this score illustrate how I differ from Rawls in thinking that more depends on particular cultures and stages of history and less on general propositions about forms of government. I believe the subject of public reason needs to be addressed retail, rather than wholesale. My own conclusions about public reason in the United States do not rely on any distinction between constitutional essentials and other issues. The result is that ordinary citizens should regard themselves as much less constrained and legislators somewhat less constrained than Rawls asserts with respect to constitutional essentials; but legislators and quasi-public citizens should consider themselves more constrained than Rawls suggests for ordinary issues.

