

Excluding Inclusive Public Reason

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## Abstract

### Jamaal Pitt: Excluding Inclusive Public Reason (Under the direction of Bernard Boxill)

John Rawls is well known for making a distinction in his political philosophical writings between what he calls “ideal” and “non-ideal” theory. In ideal theory, the task is to work out a theory for what constitutes political justice in a liberal democratic society under certain plausible simplifying assumptions. In non-ideal theory, one applies the ideal theory to cases where some of these assumptions are abandoned to see what the theory says when conditions closer to those found in the actual world are present. In this thesis I argue against a particular application of Rawls’s ideal political theory. This application concerns whether or not in certain non-ideal cases the duty of citizens to both be able and willing to offer justifications for their political support in terms that they expect their fellow citizens can understand and accept can be suspended. I will show that this obligation cannot be suspended in these cases.

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To my parents, my brother and my grandfather.

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## Introduction

The following excerpt is from a speech by Dr. Martin Luther King given in front of the state capitol building in Montgomery, Alabama:

Let us march on segregated housing, until every ghetto of social and economic depression dissolves and Negroes and whites live side by side in decent, safe and sanitary housing. Let us march on segregated schools until every vestige of segregated and inferior education becomes a thing of the past... Let us march on ballot boxes, march on ballot boxes until race baiters disappear from the political arena... Let us march on ballot boxes, until we send to our city councils, state legislatures, and the United States Congress men who will not fear to do justice, love mercy, and walk humbly with their God. Let us march on ballot boxes until all over Alabama God's children will be able to walk the earth in decency and honor.<sup>1</sup>

Such rhetoric from Dr. King was thought to be genuinely inspiring and integral to the Civil Rights movement of the 1960s. However, is there something objectionable about using this type of speech in a public political context to advocate political change? Notice that King in this passage invokes religious reasons partly as a justification of why specific political reforms must take place. The appropriateness of using reasons of this sort is a question that has long been a topic of discussion in political philosophy, especially in reference to modern democracies, where one of the prominent features of such societies is the plurality of personal comprehensive doctrines that its citizens hold. The plurality of comprehensive doctrines in democratic societies results in citizens having many different beliefs and values, some of which concern how the society in which they live should operate. The problem in such societies concerns the disagreement among these various belief systems as to which laws should be enacted by a government which presides over all these citizens with different

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<sup>1</sup> Dr. Martin Luther King, Jr. "Our God is Marching On!" *A Testament of Hope* pp. 229

beliefs. These disagreements are often deep and because of some of the tenets of the various belief systems may be irresolvable. This problem is complicated by the fact that those who hold incompatible beliefs nonetheless may well be sincere and well intentioned when arguing with fellow citizens about political matters whose comprehensive doctrines yield opposing ideas; they may try their best to provide honest and fair justifications to convince their fellow citizens of the validity of the positions they hold. Still, they may realize in this instance that while other citizens with conflicting views share these sentiments, their comprehensive doctrines do not allow either side to accept the type of reasons offered to them (given the substantive content of their comprehensive doctrine and their evidence for assenting to this doctrine), especially when it comes to the use of political power in a society. So the natural question that comes up is this: on what grounds may we support coercive political laws that are binding on all citizens under a single democratic government? It seems that allowing citizens to use their own personal belief systems as grounds for supporting this or that coercive law will inevitably lead not only to division among citizens, but also disagreements as to what laws are legitimate that would threaten to break down the political structure of society. What is a viable alternative to approaching citizens' support of coercive laws in this fashion?

John Rawls offers a now famous reply to the above query. His answer comes in the form of his account of public reason. In it, Rawls set up the parameters under which citizens may support coercive laws, either when they themselves are lending direct support to a coercive law (voting in favor of it, for example) or when they are arguing in favor of a law in a public forum. Rawls account seeks to draw on commonalities shared by all citizens, commonalities which can base arguments in a political context for support of coercive laws.



These commonalities give citizens a basis for agreement about which laws should be supported, whereas reasons given by their particular belief systems would not yield such agreement. The commonalities stem from widely shared ideas deeply imbedded in the public political culture of a liberal democratic society. From these ideas Rawls thinks we can work out a political conception of justice which specifies a set of political values that must be honored in order for the laws in the society to be legitimate and for the political establishment in the society to remain stable<sup>2</sup>. Thus, Rawls's account of public reason restricts the reasons that citizens can use in support of coercive laws to those that are founded in these commonalities which seek to endorse or promote political values. In general, this means that citizens cannot use reasons from their personal belief systems as the sole basis for their backing of particular coercive laws. They must use what Rawls calls public reasons in order to be true to the political conception of justice under which their society is governed; that is to say, they must use public reasons to justify their support of coercive laws so that the political establishment they are under is indeed legitimate with respect to all citizens.

Although Rawls's answer to the problem posed by "reasonable pluralism" seems promising, there are some features of it that are puzzling. One in particular is his contention that in certain situations the duty to use public reasons may be suspended in order to bring

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<sup>2</sup> It is important to note that both a political conception of justice and consequently the idea of public reason that accompanies it are moral ideas. Rawls himself says they are moral ideas applied to a specific domain: the political one. As moral ideas the principles that they offer have the same type of normativity that we would expect any moral idea to have. In this paper the main political moral idea that will be addressed is that of respecting citizens are free and equal by offering them public reasons for one's support of binding coercive laws. We must remember, however, that failure to offer such reasons constitutes a failure to fully abide by a moral duty. The duty to use public reasons is not a legal duty such that one can be punished or prosecuted for not living up to it. Rather, the moral idea laid out by the idea of public reason involves respect and reciprocity to foster a society where citizens find that the political power wielded by the government is being used in an appropriate and legitimate manner. When I use phrases such as "not allowed to" or "not permitted to" this tracks the notion that when one uses non-public reasons they are not fully living up to the moral idea set out by the idea of public reason and consequently the principles of the political conception of justice which they affirm. Of course, being an ideal, the degree to which one fulfills the duties set out by the idea of public reason varies from citizen to citizen. However, this point will not be discussed at length in this paper. I was reminded of this distinction in a conversation with Thomas Hill, Jr.

about a more just society. He has in mind a case where non-public reasons (reasons that stem directly from a citizen's personal belief system) can be utilized to help actualize a society that is more just with respect to a political conception of justice. The circumstance that marks such situations is that of a society that is not well-ordered, to use Rawls's term. As historical examples of this he cites abolitionists that fought against slavery and the Civil Rights movement in the 1960s led by Dr. Martin Luther King Jr. In these instances, Rawls argues, with regard to the fact that the societies in question were not well-ordered, non-public reasons were essential in bringing about conditions that would allow the political society in America to support a political conception of justice, and thus fully adhere to his idea of public reason. However, I disagree with Rawls on this point; I do not think that in these situations (or more generally) the use of non-public reasons was necessary or sufficient in order to so move political society for reasons that stem from our desire to adhere to the idea of public reason in the case of a well-ordered society. Moreover, I think that even if these conditions were satisfied in these or hypothetical cases where a society is not well-ordered that we should not grant an exception to the duty to use public reasons and that we do better by sticking to the principles provided for us in the idea of public reason. On both accounts we have little reason to believe that the use of non-public reason will either be integral or even likely to create the type of society prescribed by Rawls's theory.

Nevertheless, in Rawls later work entitled "The Idea of Public Reason Revisited" Rawls seems to expand his account of public reason to allow non-public reasons, even in a well ordered society. Here Rawls offers a "proviso" that says in effect that citizens may initially use non-public reasons in the public forum to support a coercive law so long as they at some point provide public reasons for this support. I find this later idea to be just as

detrimental to the goal of regulating public political disagreement on terms acceptable to the citizens of a modern democratic society. In this paper, I will first lay out the salient features of Rawls idea of public reason. Next, I will discuss in more detail Rawls argument for thinking that in some conditions non-public reasons are preferable to public reasons. After that, I will try to point out some difficulties with this argument and try to show how the strict use of public reasons is preferable to the use of non-public reasons even under the conditions where a society is not well-ordered. Then I will present Rawls's proviso that he introduced in later work and sketch a way to handle difficulties raised by it based on the previous discussion concerning inclusive public reason.

### **Rawls's Account of Public Reason**

Rawls begins his account by describing the ways in which his idea of public reason is public. These ways are as follows<sup>3</sup>: 1) the subject matter with which public reasons are applicable is the good of the society. 2) the reason used is that of the citizens that make up the body politic and 3) the content of public reason is given by the society's political conception of justice. The first way makes it so the topic of public reason is the welfare of the citizenry, and as such all citizens have a stake in how this matter is sorted out. The second way ensures that the arguments constituted by public reasons are accessible to all citizens. Controversial claims from comprehensive doctrines are not permitted to be used as a part of the public reason. The third way establishes that within public reason all citizens are concerned with the same political values, rights and obligations that are specified by their shared conception of political justice. Their arguments within public reason should be concerned about the specific ways in which to achieve a society in accordance with what this political conception of justice prescribes. These three ways make public reason available for use by all citizens as its methods and grounds make the reasoning conducted through its practice available to all people in their capacity as members of a political society. Public reason should, according to Rawls, be used by citizens whenever they advocate coercive laws, such as in political or public forums and exercised by political officials whenever they are operating as such. Non-public reasons, however, are to be used exclusively in what Rawls calls "the background culture". The background culture includes private institutions such as

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<sup>3</sup> John Rawls *Political Liberalism* pp. 213

churches as well as normal interactions between citizens in non-political contexts. Moreover, non-public reasons do not share the publicity conditions that public reason possesses. Non-public reasons may stem from moral, philosophical and religious doctrines which may cover a wide range of issues, going far beyond the realm of the political. In addition, the reasoning employed by one of these comprehensive doctrines may not take up the perspective of people in their capacity as citizens in a democratic society. Finally, the content of these non-public reasons may stem from comprehensive moral, philosophical and religious doctrines that include substantive ideas of the good. Such ideas may be widely different and sometimes incompatible or incommensurable among citizens.

The resort to an idea of public reason for Rawls is an extension of the idea that coercive laws need to be justifiable to citizens with regard to some common ground that they share in this capacity. Basing coercive laws on non-public reasons violates such an idea. This leads Rawls to posit the liberal principle of legitimacy which says that

...our exercise of political power is proper and hence justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideas acceptable to them as reasonable and rational.<sup>4</sup>

Here Rawls is claiming that coercive laws are only fully legitimate when they are consistent with a political conception of justice that citizens, given their ability to abide by such a political conception and to alter their personal beliefs about the good, can accept. This particular view of political legitimacy commits citizens in a Rawlsian society to a further moral duty, called the duty of civility, in which Rawls says that citizens abiding by this duty must

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<sup>4</sup> Ibid. pp. 217

...be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason.<sup>5</sup>

The duty of civility requires citizens to provide support for their favored coercive laws in terms that stem from the common ground that all citizens share, i.e. from the political conception of justice that they have adopted in their society and the political values that are promoted by such a conception. Any support for coercive laws that falls outside of this realm into one where the reasons for support for a coercive law come directly from a citizen's personal comprehensive moral, philosophical, or religious doctrine does not enjoy this common ground among citizens and so violates the duty of civility and derivatively is in opposition to the liberal principle of legitimacy. Rawls concedes that non-public reasons from one's comprehensive doctrines may provide additional support for the public reasons that he employs to defend his advocacy of a coercive law; that is to say that the coercive law that one wishes to support may not only receive backing from the political values promoted by the political conception of justice that he affirms, but also may have transcendent backing rooted in the values honored in his personal comprehensive doctrine. However, these non-public reasons cannot stand in place of public reasons which a citizen must be prepared to offer to his fellow citizens when he is supporting a coercive law.

One feature of Rawls account of public reason that must be noted is that the retreat to political common ground that it recommends asks citizens *not* to resort to deciding what coercive laws they should support by appealing to their own personal version of the truth, i.e. their own personal beliefs about the way the world is and what should and should not be promoted or advocated in a political society. Rawls is adamant about the fact that the way to foster a just and enduring political society is to abide by the constraints imposed by public

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<sup>5</sup> Ibid. pp. 217

reason when it comes to public political deliberation. The introduction of specific comprehensive doctrines into public political discussion in support of coercive laws is not only divisive; it fails to respect others, who as citizens, are subject to an overarching political authority which has the power to enforce compliance with such laws. We do right by our fellow citizens, according to Rawls, by being able to explain our favoring some coercive laws in a language that we reasonably expect them to accept given that they hold certain political ideas, not by addressing them through our own personal beliefs, which may have little or no grip on them. However, this would seem to at times give rise to a conflict within individual citizens. What are they to do when their personal views conflict with the demands of public reason? In other words, what are citizens to do when their non-public reasons call for laws that cannot be supported by the political values that support the society's political conception of justice? In this case Rawls calls on citizens to refrain from supporting such laws. Those who understand their role as citizens are keenly aware of the consequences of insisting on binding coercive laws without providing a proper basis for this support to other citizens. While their comprehensive moral, philosophical and religious doctrines might not call explicitly for the political conception of justice that governs the society and its associated idea of public reason, in order for citizens to be considered as participating in a scheme of fair cooperation among the members of their society their comprehensive doctrines must at least be consistent with the political conception. And since the political conception of justice calls on them to conduct political discussion in a certain way, namely in concert with the idea of public reason, they must realize that they are not permitted to press specific personal claims with reasons that are not acceptable to the other members of the body politic.

Does this mean that we expect political disagreement to be resolved once and for all if we use public reason? Of course not. Rawls fully expects that even those who honor and abide by the idea of public reason will disagree about the specific ordering of political values that supports a particular coercive law. There still will be much discussion and deliberation by both citizens and political officials about what legislation can genuinely be justified by public reasons. However, the idea of public reason is meant to provide a framework within which public political discussion can be conducted in a civil and fair manner. This includes making the reasoning used by citizens and political officials accessible to all by not presupposing any controversial premises of the kind found in comprehensive doctrines. Even if one public reason argument trumps another and the coercive laws that the former supported is implemented in the society, the citizens who did not support this law know that they were treated in a politically fair manner and can understand their fellow citizen's reasoning behind advocating this particular law. Following the idea of public reason in this way also helps to maintain a stable political establishment, as citizens know that the coercive laws that are passed in their society are aimed at preserving the political justice of their society and so are for the good of all citizens.



### **Exclusive and Inclusive Public Reason**

Rawls thinks that his idea of public reason operates in the way described above in what he calls a “well-ordered” society<sup>6</sup>. A well-ordered society according to Rawls is marked by three conditions. These are that 1) the citizens of the society recognize and accept the same political conception of justice 2) the main political institutions in the society are generally regulated in accordance with this political conception of justice and 3) the citizens in the society act on a “sense of justice” which causes them to comply with this political conception. In such a society citizens are prepared to abide by the fair terms of social cooperation specified by the particular political conception of justice that everyone accepts. This commitment entails an obligation to conduct political discourse in a certain way. This way is the through the idea of public reason. Citizens in a well-ordered society realize that when engaging in political debate they can only use certain reasons that draw on the political conception of justice to support laws. To do otherwise would be to use reasons that others have no reason, from their personal point of view, to accept. Because this fact does not make these citizens unreasonable, to insist on advocating coercive political laws based on non-public reasons in a well-ordered society is illegitimate. Thus, citizens know that in order to appropriately press their claims in society, and so to uphold the duty of civility, they must resolve to use public reasons which draw on the political values expressed by the political conception of justice that regulates their society. Moreover, since citizens enjoy all the rights and opportunities described by the principles given by their political conception of justice

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<sup>6</sup> Ibid p. 35

they are not concerned to try to press any fundamental claims by other means. This is a case of what Rawls calls “exclusive” public reason.

However, Rawls thinks that a very different view of public reason is needed for a society that is not well-ordered. As examples of such societies Rawls cites America in the 1830s during the time of slavery and in the 1960s during the Civil Rights movement. In the former case Rawls considers the abolitionists who advocated for the elimination of the practice of slavery. These citizens, he claims, argued for this political reform solely on the basis of religious reasons. Although they did not use reasons that all citizens could be expected to accept, Rawls says that the arguments constituted by these non-public reasons for the abolishment of slavery “supported the clear conclusions of public reason” (Political Liberalism 250). Furthermore, the abolitionists might have viewed their protestations as the only way to move the society to a point where slavery was no longer tolerated, thus making the society more just. Rawls seems to think that since public reason would endorse the conclusions that the abolitionists reached using non-public reasons that it was possible for the abolitionists to take up the former standpoint when opposing this political evil. He says

...take for granted that their political agitation was necessary political force leading to the Civil War and so to the destruction of the great evil and curse of slavery. Surely they [the abolitionists] hoped for that result and they *could* have seen their actions at the best way to bring about a well-ordered and just society in which the ideal of public reason could eventually be honored.<sup>7</sup> (my emphasis)

Rawls goes on to say that this same line of reasoning could be applied to Dr. Martin Luther King Jr. during the Civil Rights Movement. Although Dr. King may have used non-public reasons in support of securing the civil rights of African Americans, Rawls thinks that securing civil rights for these citizens would be supported by public reason arguments.

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<sup>7</sup> Ibid p.250

However, Rawls does draw a distinction between the cases of the abolitionists and that of Dr. King. The difference is that in King's case it was much more feasible for King to make direct reference to arguments grounded in public reasons due to the fact that at the time of the Civil Rights Movement the political values expressed by the constitution were more correctly understood. Nevertheless, both King and the abolitionists probably thought that arguing in the ways that they did was essential to achieving the end of moving the society that they found themselves in toward being more just, at least politically speaking. On this basis, Rawls asserts that the use of non-public reasons in these cases does not go against the ideal of public reason, or rather more exactly King and the abolitionists did not violate the ideal of public reason

...provided they thought, or on reflection would have thought (as they certainly could have thought), that the comprehensive reasons that they appealed to were required to give sufficient strength to the political conception [of justice] to be subsequently realized.<sup>8</sup>

The main thought here seems to be that since the conclusions that the abolitionists and King made could be supported by public reasons that it was possible for both parties to take up these public reasons in defense of their advocacy for the particular political reforms they endorsed. This idea on how to proceed in cases of societies that are not well-ordered Rawls calls the "inclusive" view of public reason.

Rawls introduces the distinction between inclusive and exclusive public reason because he reasons that the exclusive view of public reason will not be capable of providing a stable basis for the ideal of public reason in a society under all conditions. Thus, he thinks that the inclusive view is superior to the exclusive view, since even in cases where the society is not well-ordered the inclusive view allows the society to be able to move forward

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<sup>8</sup> Ibid. p. 251

toward becoming politically just in accordance with a political conception of justice. This political conception of justice of course must have with it an accompanying ideal of public reason that provides the proper basis on which citizens may advocate the use of coercive political power. According to Rawls, the inclusive view is better than its counterpart at cultivating the conditions under which a society not well-ordered can become well-ordered and embrace the ideal of public reason. Since the inclusive view can handle a wider variation of cases and is more flexible than the exclusive view, Rawls thinks that the inclusive view is best suited to serve his idea of public reason.

## **Problems with Inclusive Public Reason**

I think there are some serious problems with Rawls's explanation of why inclusive public reason is better suited to complete his account of public reason than exclusive public reason. The first thing that I want to draw our attention to are comments made by Michael Sandel concerning the section on inclusive public reason in his review of *Political Liberalism*. He says:

There is little reason to suppose...that the abolitionists opposed slavery on secular political grounds and simply used religious arguments to win popular support. Nor is there reason to think that the abolitionists sought by their agitation to make a world safe for secular political discourse. Nor can it be assumed that, even in retrospect, the abolitionists would take pride in having contributed, by their religious arguments against slavery, to the emergence of a society inhospitable to the religious argument in political debate. If anything the opposite is more likely the case, that by advancing religious arguments against so conspicuous an injustice as slavery, the evangelicals who inspired the abolitionist movement were hoping to encourage Americans to view other political questions in moral and religious terms as well.<sup>9</sup>

We can help Rawls out here by claiming that he does not have to be committed to stand by the *actual* intentions of either the abolitionists or Dr. King in order for his treatment of inclusive public reason to be valid. Indeed, Rawls himself says that either party would not have violated the idea of public reasons if only they satisfied certain conditions, which they may or may not have. However, it is worth noting that if Sandel's comments are historically supported, this may mean that the examples that Rawls points to are not capable of lending support to the point he wants to make. Of course it would be open to him to find other examples that do fit more consistently with what he is trying to say, but I suspect something

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<sup>9</sup> Michael Sandel "Political Liberalism" (Book Review)

would be lost in having to abandon *these* two particular examples. Both seem to be very powerful, eliciting just the intuitions that Rawls wants us to have about fighting for political justice under unfavorable conditions. As I said before, Sandel's comments may not have any direct bearing on Rawls's reasoning in the section concerning inclusive public reason, but there may be presentation costs if the examples given by Rawls can be criticized as being historically inaccurate.

With that said let us, with Rawls, assert that the abolitionists, Dr. King, or others in prospective situations do not violate the ideal of public reason if they use non-public reasons in their not well-ordered society with the *aim* of bringing about a society run by a political conception of justice acceptable to everyone.

## **Hypocrisy**

Given this assumption one thing that should be noted is the hypocrisy exhibited by the abolitionists and Dr. King. They themselves knew that there were sufficient public reasons to eliminate the political evils that they faced, but these are not the reasons that they offered their fellow citizens. Instead they gave reasons that they thought would motivate their fellow citizens to the same conclusions that are legitimately supported through public reasons. This at least seems to be a form of some sort of insincerity, using non-public reasons in order to move toward a society in which these reasons are no longer allowed in public political discussion. Moreover, there seems to be a bit of deception going on as well. As Sandel noted, those who are indeed swayed by the use of non-public reasons may be disheartened later to learn that these types of reasons are now off limits in a politically just society. Rawls himself seems to be concerned with hypocrisy creeping up in a politically just society. He brings up the issue as it regards to applying the constraints of the idea of public reason not only to how public political debate is regulated, but also in how citizens materially choose to support or not support certain coercive political laws. One should abide by the ideal of public reason both in arguing for one's favored coercive laws and in voting for this favored law. Rawls does not want citizens applying the ideal of public reasons when discussing political issues in public forums, yet voting on these same issues based on reasons that are only supported by their personal comprehensive doctrines. In this case, citizens are talking one way, but acting in another and this is not a suitable practice in a politically liberal society where both the principle of legitimacy and the duty of civility are to be honored.

Some may object to this claim of hypocrisy by stating that given the situations that the abolitionists and Dr. King found themselves in, risking hypocrisy should have been the least of their concerns. Given the extreme wrongness of both slavery and the absence of civil rights for African-Americans, it was better for these political evils to be eliminated as soon as possible using the best available means to achieve this end. If Dr. King and the abolitionists had worried about being hypocrites, the evils that they fought against might have lasted intolerably longer. Asking the abolitionists and Dr. King to try to avoid being hypocrites when there was so much at stake in the society is surely an overly restrictive requirement<sup>10</sup>.

Such a requirement is reminiscent of the kind made by Kant in his now infamous lying case.<sup>11</sup> This example goes as follows: suppose that one of your friends comes to seek refuge in your home to escape a killer that is after her. Being a good friend of course you agree to hide your friend from this extreme danger. However, later on the killer shows up at your door asking for the whereabouts of your friend. Many think intuitively in this case that you are permitted to lie to save your friend's life. Nevertheless, Kant asserted that lying to the murderer who is after your friend is morally impermissible. Kant reached this conclusion on the grounds that to allow lying in certain cases would be in violation of a duty of

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<sup>10</sup> We might distinguish between two types of hypocrites here. In one case we have a citizen, aiming to create a more politically just society, holds certain public reasons for changing the political sphere of the society in accordance with this end and only affirms these reasons as justifying such action. He then proceeds to observe the society in which he finds himself and decides that based on certain aspects of the citizenry, non-public reasons are the most effective way to move the society toward being more politically just. Contrast this case with another citizen who holds both public reasons that are capable of justifying political change and non-public reasons that further support the conclusions arrived at by the public reasons. As with the former, she offers her non-public reasons thinking they will be more successful in garnering support of the desired political change from her fellow citizens. It seems to me in this case that the first citizen is more of a hypocrite than the second. Although both use non-public reasons to try to bring about a society where non-public reasons prove to be problematic in public political discourse, the second citizen at least believes that the non-public reasons that she offers her fellow citizens *actually do* support the particular course of political action she is recommending. The first student has no such belief about the non-public reasons that he employs and merely uses them and consequently his fellow citizens as means to his desired end.

<sup>11</sup> Immanuel Kant "On A Supposed Right To Tell Lies From Benevolent Motives"



truthfulness that all rational beings have. Kant further claims that a maxim permitting people to lie in certain cases could not be universalized as a principle of moral action. The reason for this is that "...truthfulness is a duty that must be regarded as the basis of all duties founded on contract, the laws of which would be rendered uncertain and useless if even the least exception to them were admitted." Because a maxim allowing people to lie in certain cases when universalized threatens the entire practice of entering into honest agreements, Kant rejects any principles that sanction lying under any circumstances. Kant then tries to assuage his readers by drawing a distinction. He claims that if you were to tell the truth in the above case then any occurrence that transpires subsequent to your act is an *accident*; that is to say, if you tell the killer the whereabouts of your friend and she searches your house, finds and kills your friend, then you have not *done* anything to your friend. While it is true that by telling the truth to the murderer you have "caused" your friend to endure grave harm (in fact she is killed), you have not *wronged* your friend. Here the idea is that since telling the truth is an unconditional principle of morality, you have no choice but to tell the truth in situations where it is not an option to simply say nothing. Moreover, it is a mere coincidence that in this particular case, the content of the truthful statement that you make is related to enabling the killer to catch your friend. Such a contingency cannot tell against the duty to be truthful. It is simply an unfortunate consequence of the principle. For Kant, the alternative, that is to allow people to lie in certain situations, is far worse.

Many have found Kant's discussion on this issue to be wildly implausible. To deny that there may be exceptions in the application of principles of morality or justice does not respect the complexity of circumstances that we encounter in real life. Moreover, there seem to be overriding considerations that have not been taken account of in Kant's discussion,

such as the life of a human being, and the value of your friendship with the person you are protecting. These sentiments seem to deny that in cases where a person lies the focus should be only on the intrinsic value (or disvalue) of not telling the truth. In this and similar cases the emphasis is put on why the person is lying and what the person can expect to accomplish towards this end by lying. Continuing on this line of thought one might think that the fact that you are lying to the murderer should be the last thing that is on your mind when you are confronted by her seeing as how the value of saving your friend's life (or more basically an agent's life) far outweighs that of being an honest person under the circumstances. Kant was wrong to place the value of truth telling on par with the loss of life in all situations. Similarly, one might say, in the case of inclusive public reason, the notion of hypocrisy is far outweighed by the injustice present in each of the respective societies. I agree that a restriction on the use of non-public reasons in the situations under examination solely on the grounds of hypocrisy seems to be unwarranted. The threat of being a hypocrite surely could not carry all of the justificatory weight concerning whether or not the abolitionists or Dr. King were permitted to use non-public reasons. Although my main argument against inclusive reason does involve arguing as Kant did that no principled exception to the idea of exclusive public reason should be countenanced, this claim cannot be founded on the idea that those who use non-public reasons in societies that are not well-ordered, with the intent of establishing a society that is just according to a shared political conception of justice, risk being hypocrites by doing so. Still, there are some important differences between Kant's case and the cases offered by Rawls. First of all, it is not clear that the hypocrisy involved in inclusive public reason will not cancel out its intended effect. Arguing for political reform one way before a society is well-ordered may make it very difficult to switch to another way

of conducting the same type of debate in a more just society. Let us examine this in the Kantian case first. Suppose that while intending to help your friend by lying to the murderer your lie actually ends up directing the murderer right to her. Surely the point of lying in the first place has gone unfulfilled. Although intuitively it seems that you are not blamable for this turn of events, this is indeed directly contradictory to your original intentions. If lying tended to have this effect in a majority of such cases, we might take more time to consider the viability of principles that allowed this practice. The same I think holds when parties act as hypocrites in cases where inclusive public reason is embraced. However, the stakes in these cases are even higher; if hypocrisy in these cases leads to a society where justice is defined by a particular comprehensive doctrine that a great number of the citizens have no reason to accept, then such a society will be marked by instability and illegitimate coercive laws. This is totally opposed to the type of society that Rawls thinks is to be established by the account of inclusive public reason. Taking into account the complexities of a given society embarking on any sort of political change, it seems safe to say that the chances that establishing a society capable of supporting a political conception of justice in which political discussion is constrained by the use of public reasons by using non-public reasons are much lower than that of you successfully helping your friend by lying the murderer. The chance of success for your actions does appear to be a salient factor in prescribing principles for either people or citizens to act on given the aim that they have taken up.

Additionally, being hypocritical with regard to the idea of public reason threatens to be an enduring condition. Having been so successful in the society that was not well-ordered, citizens may continue to think that the best way to affect political change is by appeal to non-public reasons. Although they themselves want a society that embraces a political

conception of justice, their previous success using non-public reasons makes this tactic seem like a viable way of effecting political change. Moreover, some citizens themselves may not be convinced based on the earlier persuasiveness of non-public reasons that a refusal to let these types of reasons decide which political views to support is the right thing to do. They may either openly question this particular aspect of the well-ordered society or they may act in the way that Rawls feared. They may superficially conduct their public political discussion according to the constraints imposed by the idea of public reason, but resort only to their private comprehensive doctrines to decide which policies they will vote for. Also, they may decide on whether to support a political issue based on their comprehensive doctrine as a result of the precedent set in cases where inclusive public reason was honored, and from there attempt to construct ad hoc public justifications to support the positions they decided on in a non-public way. This last case may not seem to be as worrisome, since if they are successful in finding good public reason arguments for their position it seems that they are permitted to support whatever coercive law this public reason argument supports. Nonetheless, we must remember the idea of public reason falls within the context of an idea about political morality. And in this idea of political morality we are to honor a condition of reciprocity in which everyone agrees in the public political arena to retreat to a common political conception of justice with its associated political values in order to be justified in giving our backing to laws that bind all citizens. Given this, making decisions about laws based on one's personal comprehensive doctrine and *then* searching for a public reason argument to support this decision is an inappropriate way to proceed as a responsible citizen. The important thing to take from this discussion is that the hypocritical nature of inclusive public reasons threatens to ingratiate itself in the future political workings of society.

Proceeding in the way that inclusive public reason prescribes seems to sow seeds that will undermine the type of society that it is meant to preserve. Again, let us return to the Kantian case to perhaps see this point a little clearer. Suppose that when you are confronted by the murderer you cannot help your friend by only telling the murderer one lie. Suppose further that you must weave an intricate web of deceit in order to keep him off balance and unable to locate your friend. Notice first that this imposes a greater burden on you. In addition, each lie that you are forced to tell has more of a chance to unravel the whole deception that you have perpetrated. While some will undoubtedly be inclined to assert that lying should still be permitted as the life of your friend is surely worth all the trouble you have to go through to preserve it (and I think the analogy between the two cases breaks down here), the point is that much needs to be done to work out what value lying has in connection to the consequences that it brings about. The same holds true for hypocrisy in the Rawlsian case.

In addition, I think there is another feature specific to the case of inclusive public reason that also separates it from the Kantian example in an important way. Remember that in the case of inclusive public reason, those who use non-public reasons in a society that is not well-ordered, yet who intend for their use of such reasons to provide a suitable ground for establishing a politically just society consistent with a widely accepted political conception of justice do not, Rawls thinks, violate the idea of public reason. However, there seems to be something intrinsically wrong with using a means to an end which denounces or discourages the very means used to get there. This is precisely what Rawls is prescribing for those who find themselves in a situation where he thinks inclusive public reason is applicable. Both the abolitionists and King, if they were to fully honor the idea of public reason according to Rawls, needed to be able to view themselves as using non-public reasons instrumentally in

order to bring about a more politically just society. Nonetheless, such a tactic seems very problematic, at least from a personal integrity standpoint. Of all the means available to the abolitionists or Dr. King (or persons in any prospective example that we may encounter), one might think that had they had in view securing a Rawlsian well-ordered society they would not be eager to try to employ non-public reasons in pursuit of this goal, knowing that their use would be discouraged in this society as being opposed to the spirit and principles found in the idea of public reason. This notion seems to be similar to Kant's sentiments regarding the lying case. He thought that lying to achieve an end, no matter how good, ultimately was contradictory to the moral duties required of rational agents. As such the rational agent was not permitted to achieve an end (even a morally good one) using means that the idea of morality expressly forbid. Of course objectors doubted that the dictates of morality would put lying on par with other things of moral worth (like other people's lives), but if Rawls is right about the value of the idea of public reason, then the case of inclusive public reason is a case where this kind of tension between the means to an end and the end arises. The political moral agent here, if he is truly looking to make his society more politically just, must in this case avoid the use of non-public reasons if he is to fully the politically moral principles that he claims to endorse.

A final closely related point concerning the issue of hypocrisy. The justification for using public reasons as opposed to non-public reasons in the idea of public reason is closely tied to respecting an idea of reciprocity; this idea entails a willingness of citizens to not impose coercive political power on those to whom we cannot give reasons that we can reasonably expect they will find acceptable. This is the way in which we show proper respect for our fellow citizens as free and equal. Essentially this is what is conveyed by the

previously mentioned liberal principle of legitimacy and the duty of civility. This enduring respect that citizens show for each other is one of the primary safeguards of the type of political atmosphere found in a well-ordered society. From this it seems rather intuitive that the same kind of respect for other citizens should be shown in cases where inclusive public reason is alleged to be appropriate. Supporting political changes in this instance using reasons that are not widely accessible to citizens in general is in direct conflict with the duty of civility, a cornerstone of the idea of public reason. Those who use non-public reasons in cases of inclusive public reason are not demonstrating a willingness to explain their support for political reform in terms that properly appreciate the capacities of their fellow citizens. Thus, the grounds for fostering this type of respect among citizens is surely harder to bring about, since political change in the instance of inclusive public reason rests on reasons whose foundation requires beliefs that many from their own point of view have no reason to accept. Even if citizens with dissenting beliefs agree with the conclusions that are reached by arguments employing non-public reasons, they may be wary of other implications of the comprehensive views that they come from, while not finding adequate evidence available for embracing the particular doctrine. Surely the person who insists on bringing about political change in this way does something both hypocritical and antithetical concerning the essence of the idea of public reason.

## Conditions of Necessity and Sufficiency

Above I have tried to provide some support for the claim that, although it by itself seems unable to support a general ban on using non-public reasons to support political reform in a not well-ordered society, the disvalue of being a hypocrite under such circumstances cannot be simply dismissed as being completely outweighed by the circumstances that characterize the society a person finds himself in. A further point to explore relates to claims of necessity inherent in the cases we have been discussing. The idea at work here is this: use of non-public reasons in societies that are not well-ordered can at least some times be the *only* way to move the society towards being more well-ordered and thus more politically just. The examples of the abolitionists and the Civil Rights movements are intended to be instances of this<sup>12</sup>. Yet apart from this it appears to be conceptually plausible that we might imagine an instance where there is no other possible way to eliminate a political evil other than to resort to the use of non-public reasons. However, I wish to challenge this claim. As before, I hope to gain some illumination for my claims through the use of the Kantian example we have been using throughout our discussion. In that case we (rightly) are inclined

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<sup>12</sup> Even though Rawls is not simply arguing a historical point when he takes up the question of whether or not it was necessary for either the abolitionists or Dr. King to use non-public reasons in their respective circumstances, it is worth noting that elements of both cases seem to contain factors that initially suggest otherwise. In conversations with Bernie Boxill, he introduced that as a matter of historical record there was split between abolitionists as to which was the best way to proceed advocating the elimination of slavery. Some did indeed think that use of religious (non-public) reasons were the sole means of effecting a more just society. However, another contingent argued vigorously that this end would be better served by using something like public reasons to move the society in a more positive direction. Such a division throws a little doubt on the claim that there was only one (or that it seemed to the abolitionists that this was the case) viable avenue of action capable of bringing about a more just society. Rawls himself acknowledges that in the King case that the use of public reasons were available given that a proper interpretation of the constitution was available during the Civil Rights movement.



to assert that, given the circumstances, lying is the only way to ensure the safety of our friend. It does not take much to imagine such circumstances coming about. For instance, the murderer could be physically much bigger than you are and so fighting him would not be a viable option; or perhaps you left your trusty handgun under your bed and so you are not in a position to use it against the murderer, and so on. In the lying case it is easy to construct the appropriate conditions where lying is necessary to save your friend, or it is at least highly reasonable to draw this conclusion. The same cannot be said of prospective cases of inclusive public reason, however. The dynamics of political society are not such that we would be in a position to ground a claim as strong as that of necessity. There are simply too many factors that come into play when talking about how political change takes place to be able with the requisite amount of precision assert that this or that action was *necessary* in order to bring about this or that result. We should be skeptical of articulating the several conditions under which such a claim of necessity would be true, and even more so of our ability to recognize at a particular time when all of these conditions, if they could be given, were fulfilled. This is especially true when the means that one wants to say are necessary are such that they are in conflict with the end that they are meant to bring about, as we have seen is the case with inclusive public reason in the earlier discussion about hypocrisy. While there certainly is no guarantee that the use of public reasons in a society that is not well-ordered is the only way to bring about a society that is more politically just and is capable of supporting in the long run the idea of public reason, it seems implausible to suggest that means *other* than this would be *necessary* to achieve this type of society.

Apart from the claim of necessity we can consider separately one of sufficiency. Suppose we grant that those who want to say that non-public reason, in the situations that

Rawls outlines, is necessary to bring about the political society that is desired are correct. Still we can ask the question whether, given that the means are necessary to achieve a certain goal, they will, or are likely to, in fact, achieve the goal in question.<sup>13</sup> In other words, how confident can we be that using non-public reasons, though they are seemingly the only way to move the society towards being more just, will be successful in bringing about this end? As with the claim of necessity, I think that one of sufficiency turns out ultimately to be unsustainable. We do not have good reason, as Rawls seems to think we do, to believe that the use of non-public reasons will be likely to bring about a society that is well-ordered in the way that he describes this particular term. We might come to this conclusion by again citing some inconsistencies that we noted earlier in the discussion. For one thing, using non-public reasons successfully to get rid of some political evil seems to provide grounds for people to encourage its use in society, rather than to discourage it. Moreover, those who advocated the use of non-public reasons in the not well-ordered society who do not wish to continue this practice will be hard pressed to explain to their fellow citizens why such a practice should no longer be allowed. Furthermore, a different aspect of the case of inclusive public reason that might cause us to lose confidence in the sufficiency of using non-public reasons again rests on our ability to know certain things about the efficacy of actions concerning political change. Returning to the Kantian case, it seems safe to say that you, in lying to the murderer about your friend's whereabouts, can be reasonably sure that your deception will be enough to throw the murderer off of your friend's trail (assuming that you are not horrible at lying or that the murderer does not already know the whereabouts of your friend). Contrastingly, the numerous factors involved in moving a society towards embracing political justice do not avail themselves to us with anything close to this type of certainty. We can be modestly

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<sup>13</sup> I owe this point to a conversation with Thomas Hill, Jr.

confident that our earnest efforts to bring out change consistent with certain principles will make our political society better, but not so much so that we think that we have mastered all of the different variables involved in effecting such a change. Using non-public reasons in a case where the society is not well-ordered seems to offer itself to many unpredictable effects, some that will almost surely make the move toward a society capable of sustaining the idea of public reasons much more difficult. To those who say that the use of public reasons gives way to the same sort of uncertainty at a threshold of epistemological humility, I think we may respond by saying that in this instance what recommends to us the use of strictly public reasons are the consistency concerns that we noted earlier concerning the duties prescribed to us by the political conception of justice which we have in view when engaging in action to alter the society in which we find ourselves.

### **No Exceptions for Necessity**

Having disputed the assertion that in prospective cases of inclusive public reason we can readily say that the use of non-public reasons are necessary to achieve our goal of securing a more politically just society, I am now prepared to claim that even if we *could* establish that these cases did admit of a kind of necessity for the use of non-public reasons that we should not make exceptions based on this fact to the principles put forth by the idea of public reason. In other words, we should not bend the rules laid down by the idea of public reason for particular cases of this kind. The reasons for this that I offer here again, taken separately, do not, I think, hold enough justificatory power to support this conclusion; however, taken in tandem, however, I think they build a strong case for accepting my position.

The first of these reasons is that the cases where we might initially think that inclusive public reason might be applied are very rare. Take for example the cases that Rawls presents to us as instances where inclusive public reason is needed. Without questioning whether or not it was necessary to use non-public reasons in the service of bringing about a more politically just society, we can notice that, as a matter of fact, these incidents occurred roughly 100 years apart. Only given this information it hardly seems as if this is a case that happens often enough to incorporate a provision for it in the idea of public reason (unless, perhaps, we knew it was *guaranteed* to happen once every 100 years). Nonetheless, what if we abstract from the historical record and think of possible cases of societies that are not well-ordered? Do we think that, given what it would take for us to say

for sure that such a society necessarily needed the use of non-public reasons to advance toward political justice, that such an occurrence would be likely to come to pass regularly enough for us to be concerned about how to deal with such situations? I think the answer to this question is no. The specific alignment of factors that would cause us to declare a case of this kind of necessity is such that I think we can be confident that its occasion would not be one that we would encounter with sufficient regularity to incorporate a notion like inclusive public reason into the idea of public reason. We might gain more insight here from the Kantian case. One thing that may bother us about the injunction *never* to lie is that we encounter situations all of the time where we think that it is morally permissible to lie; so much so that it seems counterintuitive to suggest that a moral principle requiring us not to lie in any situation can be right. In contrast, the situations where using non-public reasons are necessary for political change are so intricate that we should not feel compelled to think that these conditions present themselves with anything approaching the regularity with which people find themselves in situations where a morally viable option to take is to lie. This becomes even clearer when we reflect on the fact that Rawls's theory is specifically tailored to liberal democratic societies, which imports further conditions to be satisfied in order to call forth the duties and obligations associated with his political theory.

The next reason related to denying that cases where it is necessary to use non-public reasons merit an exception from the rules of conduct in the political realm of society specified by the idea of public reason has to do with our limited ability to know what conditions constitute this kind of necessity. This particular reason has been hinted at throughout much of the discussion in the previous sections. As before, the main idea here is that given our limited ability to know all of the variables involved in moving a political

society in the direction towards being more just, we should follow the principles that we derive in an acceptable way from premises that we all can reasonably be expected to affirm and not grant exceptions to these principles based on claims of purported necessity. I have talked at length about the complexities involved in changing the political culture of a society and why we have good reason to be skeptical that we could ever approach anything approaching the kind of certainty about the factors that would be involved in making a claim of what is absolutely necessary to achieving a particular political goal. The best we can do, I think, is to proceed in the manner that Rawls lays out for us, assuming that he does indeed provide the sorts of reasons that citizens, interpreted in a thin, but plausible way, can accept. We must not forget that Rawls implores us when following his political theory to employ the notion of reflective equilibrium, where we test the theory that he offers against our intuitions and vice versa. This method of guiding our conduct related to the theory takes into account an epistemic modesty that we must be honest with ourselves about. Reflective equilibrium allows us to factor in empirical evidence as best we can gather it about how different variables affect political processes, while at the same time preserving an ideal that we think has the justification in favor of it requisite for us to continue pursuing it as a worthy goal to achieve. Using reflective equilibrium we can inform both our intuitions from the dictates of the theory, or conversely alter the theory in light of new facts that we think should be accounted for. We are not bound by the use of reflective equilibrium to strive to know things that would be very difficult or near impossible for us to be able to know with any measure of conclusiveness. When thinking about how to act in order to effect political change we must not attempt to take up the perspective of an all knowing ideal observer, who may be able to say with complete certainty that circumstances in a particular situation necessarily call for the

use of non-public reasons. We should instead understand that by accepting Rawls idea of public reason, we thereby have accepted certain constraints on what we can view as acting in accordance with this idea both in general and in particular situations. Though it may seem that in a particular situation adherence to these principles is not advantageous, and indeed may have tragic results, that we have affirmed these principles prevents us from attempting to take up an all-knowing viewpoint in a case by case basis. Refraining from trying to take up an omniscient perspective fits in better with how we actually make decisions as to what the best course of action is both in the political arena and beyond.

The last, and perhaps most important of the reasons for my position against granting an exception to cases of necessity involving the use non-public reasons is the potential for this provision to be abused. To gain a proper footing on the issues involved with this claim let us turn to another example of a case where at least there seems to be a prima facie case for granting exceptions for a case of necessity. I have in mind the idea of a Supreme Emergency which has been widely discussed in the literature concerning Just War theory. In his book, *The Morality of War*, Brian Orend describes a supreme emergency as a situation where a state engaged in war with another state may abandon *jus in bello* (justice during war). This means that one state can disregard moral (and international) rules that are to govern conduct during warfare provided three conditions are met. These three conditions are as follows:<sup>14</sup>

1. The state making use of the supreme emergency exemption is one that is the victim of (physical) aggression from another state.
2. The state making use of the supreme emergency exemption is on the verge or is already experience a military collapse.
3. The state making use of the supreme emergency exemption has good reason to believe that defeat by the aggressor will lead to massive suffering imposed on the citizenry of the victim state, including but not limited to widespread massacre and/or slavery.

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<sup>14</sup> Brian Orend *The Morality of War*. Broadview Press pp.145

This definition of a supreme emergency draws on others views concerning this idea, most notably from the views espoused by Michael Walzer. The intuitive idea behind a supreme emergency is this. *Jus in bello* rules are supposed to be designed to respect the rights of citizens and soldiers from both the victim state and the aggressive state as much as possible while still allowing the victim state to defend itself from unwarranted aggression from other states. However, it seems as if sometimes the aggressive state's intentions in starting a war with another state go far beyond paltry concerns about economic or state interest. Sometimes the aggressive state is so terrible that to concede victory to it will be to put one's state at the mercy of a state who intends to commit heinous atrocities on the citizens of the victim state. They publicly demonstrate that their sole goal is to subject the victim country to the most extreme pain and suffering should it be victorious in the war. At this point the supreme emergency allows the victim state to take off the kid gloves, so to speak. In this instance, the victim state can abandon strictly following the dictates of international law for conduct during warfare and moral theory concerning warfare and use *whatever* means they deem necessary in order to properly defend its citizens from so horrible a threat.

The clearest example of a supreme emergency in the just war theory literature occurs during the early stages of World War II<sup>15</sup>. This case involves the attempted German invasion of Britain. Germany, having already been successful in invading other European countries up to this point, turned its attention to Britain and began bombing attacks to weaken British defenses and terrorize its citizens. Winston Churchill, appearing to know full well the scope of Germany's ambitions and intentions, decided to attack the German mainland in an attempt to deter a German offensive on Britain. The British attack included bombing raids on German civilian targets; targeting civilians during warfare is expressly forbid in just war

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<sup>15</sup> Ibid. p. 141



theory and international law under normal war conditions. However, due to the type of threat that the German military and their state presented, it has been widely accepted that Britain was definitely in a situation of supreme emergency.

The case of a supreme emergency is one where theorists have wanted to make an exception for cases of necessity. The necessity involved in these particular cases involves providing states with the ability to be able to properly defend and protect their citizens against the gravest threats to their existence. It would be wrong, these theorists want to say, to hold that states that find themselves under the conditions listed above should refrain from doing what is necessary to preserve the rights of their citizens by insisting that they continue to strictly adhere to either the principles of a just war theory or the statutes contained in international law. However, there has been opposition to allowing for the idea of a supreme emergency exemption within just war doctrine on the basis that such an exemption is liable to be abused. Two examples of this also take place during World War II. One example of this occurs when Allied forces continued bombing attacks on German cities towards the end of the war<sup>16</sup>. The other concerns the atomic bombing of the Japanese cities of Hiroshima and Nagasaki perpetrated by the United States at the end of World War II. Although those in favor of the atomic bombings have hinted at something like a defense using the supreme emergency exemption, many critics, including Rawls himself<sup>17</sup>, have denounced the bombings and shown that all three conditions mentioned above were not fulfilled when the United States engaged in this action against the Japanese (in fact Rawls argues that they were

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<sup>16</sup> Ibid. p. 142

<sup>17</sup> Ibid. p. 142

far from being fulfilled<sup>18</sup>). What should draw our attention here is the flawed use of this exemption as grounds for engaging in unjust behavior in these situations.

Now we are in a position to relate this example to the case that we are interested in. Like the supreme emergency exemption, the case of inclusive public reason is asking us to grant an exception to the principles given by the idea of public reason because of the purported necessity of using non-public reasons in societies that are not well-ordered in order to achieve a more politically just society. And, also like the supreme emergency exemption, inclusive public reason is very liable to be abused in ways that have disastrous results. In the supreme emergency case these results were the illegitimate loss of life of both German and Japanese citizens. In the case of a political society the results would be a society incapable of living up to the political moral ideas specified in the idea of public reason and in Rawls's wider political theory. Rawls envisions cases of inclusive public reason where constitutional essentials are at stake as eliciting the necessary use of non-public reasons. However, it does not take much to see that such a provision has great potential to be abused. Take the contemporary issues of abortion and same sex marriage. At least one side of either issue has claimed that key constitutional issues are at stake in the resolving of these issues. If Rawls were to incorporate inclusive public reason into his overall theory, what is to prevent these citizens from employing their non-public reasons concerning these issues in the public political culture? Could they not argue that the society which they find themselves in is not well-ordered because the constitution that presides over it is incomplete in a serious way and therefore they should be able to use their best non-public reasons in order to convince others of their positions and win the day? While it is hard to know if the claims about how these

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<sup>18</sup> For more on Rawls discussion discussing the atomic bombings on Japan see "Fifty Years After Hiroshima" in *John Rawls: Collected Papers* Harvard University Press, 1995 pp. 565-572 and also *The Law of Peoples* Harvard University press, 1999 pp. 99-103

issues connect with constitutional essentials are plausible, the existence of such a link is more easily discerned by discussing these issues in a framework called for by the idea of public reason. It has been well documented that both sides of these issues affirm different comprehensive doctrines and so resorting to reasons stemming from these doctrines when trying to decide whether or not we can legitimately coerce others into acting one way or another has been extremely difficult and largely unsuccessful. Rawls's idea of public reason offers a way in which we do not simply bully our fellow citizens into acting through the power of binding laws by being part of a majority who happens to affirm one comprehensive doctrine over another, but instead we embrace them and their capacities as free and equal citizens by giving them arguments based on key political ideas that we are reasonably sure that they accept. We push the realization of this idea further out of reach by setting a precedent of using non-public reasons as a legitimate basis for political change. The opportunities to use such an exemption erroneously are far too numerous in our current political culture; allowing the kind of exemption called for by inclusive public reason gives too frequent occasion for the use of non-public reasons, so much so that the political culture would be ill equipped to develop fully the ideal of public reason and its accompanying duties and obligations.

Some might argue against this point that, although it may be true that the supreme emergency exemption has been abused as evidenced in historical record, and has the potential to be abused again, it still seems irresponsible to forbid its application entirely. Should the very existence of citizens as human beings be threatened, surely we need to be able to grant a state whose primary duty is the protection of its citizens and their rights the ability to enact the means necessary to do their best to avert a horrible future from coming to

pass. At this point all other concerns must be subordinate to that of maintaining the rights of the citizens and this responsibility falls squarely on the shoulders of the state in this case. Similarly, the potential for inclusive public reason to be abused, no matter how great, cannot be used to argue in favor of dismissing this idea totally. However, there is an important difference between the two cases which preserves the intuition in the former case, but not in the latter. The difference is this: as previously stated, the state's primary concern is to protect the rights of its citizens. The supreme emergency exemption fits in with this as an extreme case where this duty is to be fulfilled. While in normal conditions it is incumbent on the state in general just war theory to not only be cognizant of the rights of its *own* citizens, but also to conduct themselves in a way that does not flagrantly violate the rights of other citizens that may be either involved or affected in the armed conflict, at the limit of a range of cases where the supreme emergency exemption arises, the central duty of the state to protect its citizens remains prominent. Contrastingly, in the case of inclusive public reason the strong link between the reasoning behind the proposed exemption and the duties given by the idea of public reason is does not exist. At its core the idea of public reason implores us to show due respect to our fellow citizens by restricting ourselves to arguing from ideas that we are not unreasonable in expecting them to affirm. This is not what is evident in cases of inclusive public reason, however. In these cases, while there may be a hope that the use of non-public reasons will bring the society ever closer to a point where citizens can accept a political conception of justice and within this conception an idea of public reason, the focus is given to using non-public reasons as a legitimate justification to change the political society. As I have claimed in numerous places throughout our discussion, this is at odds with fulfilling the end that is being strived for. This is the basis for granting an exemption to just

war theory in cases of supreme emergencies, but not for cases of necessity where it would be appropriate according to Rawls to employ the idea of inclusive public reason. The adherence to the provision allowing the supreme emergency exemption comes directly from the primary duty of the state; however, the use of non-public reasons in a not well-ordered society does not seem to spring forth from the idea of public reason.

## The Proviso

In his later work “The Idea of Public Reason Revisited” Rawls expands on the idea of public reason that he introduced in *Political Liberalism*. One important difference that Rawls makes in this discussion of the idea of public reason is his presentation of what he calls *the proviso*. Rawls statement of the proviso is given below. He says that

...reasonable comprehensive doctrines, religious or nonreligious, may be introduced into 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 are said to support.<sup>19</sup> (my emphasis)

The proviso is basically an extension of the earlier idea conveyed by inclusive public reason, except that now we are applying this idea to a well-ordered society, whereas before we were only applying it to a society that was not well-ordered. This move, which by Rawls has been said to constitute a “widening” of his view of public reason, seems to have been largely motivated by criticisms that Rawls, in his initial presentation of his idea of public reason, did not take seriously enough the role that citizen’s comprehensive doctrines played in influencing their views in political discourse and that his earlier idea stripped citizens of something that they feel is vitally essential when fulfilling their political duties as they are laid out by the idea of public reason and other parts of Rawls’s political theory. The proviso is offered as a way to allow comprehensive doctrines their place in political discussion without abandoning the core principles detailed by the former presentation of the idea of public reason. We can see this when we pay attention to the fact that in the passage above

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<sup>19</sup> John Rawls “The Idea of Public Reason Revisited”, *The Law of Peoples* pp. 152

Rawls asserts that even though comprehensive doctrines may be introduced into public political discussion, ultimately public reasons must be given to justify their introduction into this discussion as providing the real grounding for advocating the political action that is at issue in the foregoing political debate. Another interesting feature of the above passage is Rawls's use of the phrase "in due course". Here he seems to want to allow citizens to introduce their comprehensive doctrines in the public political domain when necessary (for example, imagine a citizen must cast their vote for a law and has not had the requisite time to reflect on a proper public reason(s) for either advocating or not advocating the law) without immediately after engaging in such political action having to produce public reasons for it. However, at some point they must be able to provide their fellow citizens with appropriate public reasons that justify their political advocacy in order to show that they have not abandoned the duty of civility. Rawls leaves the intricate details of exactly how we should interpret "due course" up to the particular conditions present in our liberal democratic political community. He is clear, however, that the requirement to give one's fellow citizens public reasons in the future is made in "good faith", meaning that to fail to do so violates the duty of civility and thus that the citizen in question is not fully living up the duties and obligations she has to her fellow citizens as prescribed by the ideal of public reason. He assumes that we can commonsensically determine when citizens have abused this good faith, and so not offered in due course public reasons, or public reasons sufficiently acceptable to justify the political action that was taken by the citizen.

## **Evaluating the Proviso**

Rawls imagines that the proviso is most plausibly applied in the situation hinted at above when a citizen must vote on some piece of legislation, which, at the time they are voting, do not possess a public reason in support or against their advocacy of the law. The case for the proviso is made even more compelling if we add the condition, as Rawls does, that the legislation concerns a new sort of issue which has not been subject at length to any large amount of political discourse within the accepted political conception of justice. Since one is not sure exactly how the issue that they are voting on connects with the political conception of justice and the political values that it promotes, the idea is that one may vote based on her intuitions provided by the comprehensive doctrine that she affirms. Here we have a case where it is practically necessary for a citizen to act even though her political action can not at the present time be clearly sanctioned by the principles provided by the idea of public reason. For this reason, Rawls thinks the introduction of the proviso provides a good way to deal with such cases. While I will not discuss at length whether or not I think the proviso is capable of ultimately consistent with the rest of the idea of public reason, I will sketch some thoughts on how I think this question can be addressed.

First of all, I think whether or not we should be able to introduce our comprehensive (non-public) doctrines into political discourse in accordance with the proviso turns on the conditions I earlier outlined for answering the similar question with inclusive public reason. That is to say we should ask ourselves how often will such a scenario come up in a well-ordered society?; can we expect to know when our previous knowledge concerning the



political conception of justice runs out so that we have to, when deciding on a political matter in a particular situation, rely on our comprehensive doctrine to make a decision?; and finally, will the proviso be liable to being abused? Concerning the last point, at first glance it seems as if making decisions on political issues at first according to our comprehensive doctrine and *then* searching for public reason arguments with which to support these decisions is opposed to the spirit of the idea of public reason. This spirit asks us not to pay special attention to our personal comprehensive doctrines, but to look for ideas shared by our fellow citizens in the wider public political culture. Once we find such ideas, we are to confine ourselves to their use to be more or less sure that the arguments that we offer to them will be acceptable to them. However, beginning from one's comprehensive doctrine to make a political decisions and then searching for public reasons to support this decision seems to me to be a problematic way to try to honor the condition of reciprocity implied by the previous statement. The spirit behind the idea of public reason asks us to prioritize resorting to common ground with our fellow citizens (the right) over looking to honor specific values promoting by our comprehensive doctrines (the good). However, in the case described where Rawls wants to allow citizens to employ the proviso, this priority seems to get switched. Now the citizen has made a decision based on some personal idea of the good, and now it is plausible to think that her intention will be to find a public reason argument capable of supporting the comprehensive values that she used in making her initial political decision. Of course Rawls would probably object that the citizen should be prepared to think that she voted incorrectly if her subsequent search for public reasons arguments in support of her political advocacy revealed that the political conception that she accepts can provide no such justification. Perhaps this is all we can reasonably ask for in this case. Nevertheless, as I

stated above, I only wish here to gesture at what it would take to give a full answer concerning the viability of the proviso within the greater framework provided by the idea of public reason.

## **Conclusion**

As has probably been evident throughout this paper, my worry with Rawls's work has nothing to do with his theoretical framework. It has primarily to do with a particular application of this framework. I have attempted in this paper to offer a convincing presumptive case against including inclusive public reason within the wider idea of public reason. I do not think that given the constraints that we find in Rawls political theory, especially the discussion of the idea of public reason that his theory yields the result that he thinks it does. The idea of public reason is best secured in the long run by conforming to its principles as best one can even in a society that is not well-ordered. By doing this we lay down the foundation of respect and feelings of reciprocity that will be key as the society moves forward to being more political just to implement fully the idea of public reason. This is not to insinuate that it will be easy, especially in non-ideal conditions to accomplish this task. Nonetheless, if what we have in view as our destination is a just society where reasonable citizens affirm a political conception of justice, then this is the way that we must proceed in order to give ourselves the best opportunity of realizing this worthy end.

Another point that I want to make before ending my discussion of these issues is that my arguments in this paper are not meant to denounce the actions of either the abolitionists or Dr. King. I admire both for trying as best they could to rid their respective societies of great injustices; in the former case, the scourge of slavery and in the latter case the appalling lack of Civil Rights for minorities in the United States. However, it does not seem to me that some of the methods they used in fighting these social evils can aid us in doing our best to

bring about the kind of society that Rawls's theory describes for us. This claim concerns both historical references that Rawls offers as well as any prospective case where a society is not well-ordered. This is the main point of the paper, and I hope I have not been too confusing in trying to make it.

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