

Rawlsian Public Reason and the Theological Framework of Martin Luther King’s “Letter from Birmingham City Jail”

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Abstract: The ideal of public reason, made prominent by John Rawls, has become a mainstay of discussions about the proper role of religious arguments in a politically liberal society. In particular, Rawls’s theory of public reason requires citizens and public officials to refrain from appealing to comprehensive religious and philosophical doctrines in public deliberation on matters of basic justice and constitutional essentials. In this essay, we review the ways in which the public life of Martin Luther King, Jr. — with its frequent appeals to a comprehensive doctrine to justify disobedience to the law — represents a challenge to the ideal of public reason, and we consider several Rawlsian rejoinders. What is missing from the existing body of scholarship on public reason is a thorough analysis of King’s philosophical and theological arguments, including the examples of legal injustice he offered in his celebrated “Letter from Birmingham Jail.” As we note, King’s specific examples of unjust laws rely on a theological framework that bedevils the attempt to reconcile his Letter with the constructivist underpinnings of Rawls’s theory of public reason. Indeed, Rawls is in something of a bind: either King’s argument is not acceptable under the terms of public reason or public reason simply cannot limit contemporary public discourse in the way Rawls has in mind. We consider several possible Rawlsian arguments for the

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accommodation of King's theological rhetoric, but conclude that the Rawlsian idea of public reason remains deeply problematic.

INTRODUCTION

The 13th century Dominican monk, Thomas Aquinas, is known by contemporary legal and political philosophers for his work on natural law theory, which is explicated primarily in I–II, 90–97 of his *Summa Theologiae*. In contemporary discussions of natural law theory, Aquinas's so-called "Treatise on Law" is often filtered down to his assertion (following Augustine) that "an unjust law seems to be no law at all" (*Summa Theologiae* I–II, 95.2). Throughout history the enigmatic idea that an unjust law is somehow not truly law has indeed been a mainstay of public discourse in diverse communities at disparate times. Civil disobedients and revolutionaries from Sophocles' Antigone to the early Christians to the American Founders have long invoked a law "higher"—or ontologically prior—to the laws of the state in order to justify disobedience to an unjust civic order. Yet, as one of the great modern representatives of the natural law tradition, Martin Luther King, Jr., noted in his celebrated "Letter from Birmingham City Jail," there is a vexing question that endures for every civically minded lawbreaker: "How does one determine whether a law is just or unjust?" The answer, according to the slain civil rights activist, following Aquinas, was that

... a just law is a manmade code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal and natural law (King 1963b, 293).

Under this Thomistic conception, there is a nexus between ethics and rightly ordered human law. When a human authority creates a rule or statute that does damage to the human good, such an unjust law is, as King argued, "no law at all." It is, rather, an act of violence or force that illegitimately usurps the title of "law."

The assertion that an unjust law is somehow not truly law is, however, often met with scorn by contemporary theorists of a more positivist bent, who are unified, at least, in their agreement with Jeremy Bentham (1843) that talk of rights antecedent to the state is "nonsense upon stilts" (Bentham 1843, 2:501). Within the general milieu of contemporary political theory, there has, as well, been a proliferation of various doctrines

seemingly at odds with the natural law tradition regarding *how* we should collectively reason about our legal and political institutions. As the title of Alasdair MacIntyre's (1989) book suggests, the preliminary questions for modern liberal democratic societies turn out to be not "What is just?" and "What is reasonable?" but "Whose Justice?" and "Which Rationality?" John Rawls's *Political Liberalism* constitutes a large-scale attempt to construct a workable liberal political theory capable of navigating among competing theological and philosophical doctrines in a modern pluralistic society. As an element in this political project, Rawls develops a theory of "public reason," which stipulates the types of arguments acceptable in a rightly ordered liberal, democratic regime devoted to a conception of justice as fairness.

According to Rawls (1993), the theory of public reason grows out of the "general fact" that reasonable citizens in democratic societies simultaneously hold a more-or-less comprehensive view about the world rooted in religion, philosophy, or morality, and a restricted, political conception of justice (Rawls 1993, 38). Additionally, the political conception of justice is not in conflict with (and may be congenial to) a broad family of reasonable comprehensive doctrines (Rawls 1999, 168). Although comprehensive religious, moral, or philosophical doctrines are often objects of intractable dispute, Rawls suggests a properly constructed political conception of justice will be acceptable across all reasonable (if otherwise antagonistic) comprehensive doctrines. In other words, a political conception of justice will be the object of an "overlapping consensus" among reasonable citizens and will therefore be detachable from each of the "reasonable opposing religious, philosophical, and moral doctrines likely to persist for generations" (Rawls 1993, 15; see also Rawls 1999, 32–34). In a democratic society, Rawls further suggests, we should bracket our comprehensive doctrines when deliberating about fundamental political questions and resort only to the shared views found in an overlapping consensus.

It is therefore vitally important to Rawls's theory of public reason that political arguments can in fact be severed from the comprehensive doctrines they attend and a freestanding political conception of justice accepted by a broad range of reasonable citizens (Rawls 2001, 33). One critical challenge to Rawls's theory of public reason, formulated in this way, is that it cannot accommodate the public arguments put forward by religiously and philosophically motivated civil rights reformers such as King.¹ The thought of Rawls's critics along these lines, as David A.J. Richards (1994) notes, is that if a doctrine of public reason would bar

from public deliberation the arguments put forward by various civil rights reformers in American history, then it is “fundamentally inadequate to its task” of offering guidelines for public discourse in a politically liberal society (Richards 1994, 187). In this article, we review the ways in which this challenge to public reason has been put forward, and we consider several Rawlsian rejoinders.

What is missing from the relevant literature regarding public reason and King’s “Letter from Birmingham City Jail” is a close analysis of the examples of legal injustice King marshaled in support of his natural law argument. As we note, King’s specific examples of unjust laws rely on a Thomistic framework that bedevils the attempt to reconcile his Letter with the constructivist underpinnings of Rawls’s theory of public reason. If King’s Letter is acceptable under the terms of public reason, then public reason simply cannot limit contemporary public discourse in the way Rawls has in mind. In the following sections of this article, we offer a brief review of Rawls’s theory of public reason before turning to the theological framework within which King addressed the problem of legal injustice in his Letter. Finally, we consider several possible Rawlsian arguments for the accommodation of King’s theological rhetoric as it relates to public affairs, and we conclude such Rawlsian arguments would vitiate public reason’s ability to limit contemporary political discourse in a consistent and meaningful way.

RAWLSIAN PUBLIC REASON²

First, then, we need to recall precisely what Rawlsian “public reason” is all about. The idea of public reason is based on the common-sense notion that reasonable people ought to show respect for one another in debate by offering the kinds of arguments and reasons that another person, from the standpoint of a different comprehensive doctrine, might find reasonable. Other liberal theorists have used “public reason” to denote what Rawls thinks is better called “secular reason” or reasons that do not require belief in God or adherence to any particular religious faith. Rawls wants to make clear, and says so in more than one place, that he is departing from that understanding of public reason. Rather, given the fact of reasonable pluralism (Rawls 1993, 36),³ and with a view to fundamental matters of basic justice and constitutional essentials (Rawls 1999, 133, n. 7; Rawls 1993, 227–230) Rawls’s theory of public reason requires public officials (and also citizens, who are to reason about constitutional

fundamentals as though they were public officials) to avoid arguments sustained only by appealing to a comprehensive doctrine, whether religious or secular (Rawls 1999, 55–56 and 132–152). Citizens are, rather, to work up (i.e., construct) arguments for their views on matters of basic justice (as opposed to mere policy) in a purely political way and from an overlapping consensus, i.e., from that part of their own view congruent with the rest of what Rawls calls the “family of reasonable liberal political conceptions of justice” (Rawls 1999, 7; see also Rawls 1999, 57 and 151). Rawls’s treatment of this demand suggests satisfying it will not be a burden too great for anyone to bear and will provide ample philosophical resources for sorting out rival claims on the most fundamental matters of the political order.

Implicitly, he recognizes that many moral and political conclusions are over-determined; i.e., a belief often represents a convergence of one’s political philosophy, faith commitments, personal taste, etc., any one of which might have been decisive on its own. In such cases, it is not only sensible rhetoric, but a political duty (Rawls calls it reciprocity) of recognizing every citizen’s equality to argue from “public reason,” viz. by some standard available to all reasonable people on the basis of an overlapping consensus. Further, that duty will extend, and those cases will include, matters of basic justice and constitutional fundamentals. At his most concise, Rawls argues that the idea of political legitimacy from reciprocity “says: Our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions — were we to state them as government officials — are sufficient, and we would also reasonably think that other citizens might reasonably accept those reasons” (Rawls 1999, 137).

At face value, much with Rawls’s account is cogent and compelling: societies where citizens felt no moral obligation to show respect for the considered views of other citizens would be insufferable and unjust, not to mention illiberal and undemocratic. Public reason is part of a larger project in which Rawls is seeking to construct a just “basic structure” or a proper arrangement of “the main political and social institutions and the way they fit together as one scheme of cooperation” (Rawls 1999, 137). Of course, as a matter of fact in liberal democratic societies there often is a wide convergence of views about *what* to do on fundamental matters, despite a concomitantly wide divergence of views about *why*, a point made first by the 20th-century philosopher Jacques Maritain (1943, Ch. 4). This is to say that the idea of an overlapping consensus might itself be a part of consensus crossing over the gaps between

many reasonable comprehensive doctrines. Some of those doctrines, especially Christian philosophy and theology (including Thomisms of various stripes), have maintained for many centuries that there are differences among the aims, reasons, and justifications for the respective ordering of religious and political communities.

Thus, for the purposes of public debate, Rawls emphasizes drawing on the store of reasonable “political conceptions” (Rawls 1999, 142), which are based in and premised on a family of reasonable comprehensive doctrines. He is quick to note at this point that public reason does not mean simply “secular reason.” Secular reason is an appeal from a nonreligious comprehensive doctrine, but it is of utmost importance to Rawls, as he notes, that public reason is different on two dimensions: first, it is not expressly secular and can countenance views about the common good and the nature of law of adherents of religious doctrines when those views are expressed in political terms (Rawls 1999, 142, n. 29); and second, public reason is not directly tied to a particular comprehensive doctrine but rather is open to a wide range of political conceptions found in a family of reasonable comprehensive doctrines, religious or not (Rawls 1999, 153). Within this schema, distinctively “political” conceptions are marked by three features: (1) their principles apply to the basic structure of society, (2) they are detachable from any comprehensive doctrine, and (3) they can be worked out as implications of a political culture conducive to a constitutional regime (Rawls 1999, 143). Influenced as he himself was by Christian philosophy and theology (Rawls 2009), it is understandable that Rawls might think religious leaders such as Martin Luther King, Jr. would endorse the idea of public reason and make arguments in line with its strictures (Rawls 1999, 154, n. 54).⁴ To investigate whether this might be the case, we first will consider how the Thomistic tradition broadly has conceptualized the nature of legal injustice and how King, in particular, described the injustice of segregation ordinances in his Letter.

LEGAL INJUSTICE IN THE THOMIST TRADITION

Justice, according to Aquinas, is part of the very definition of law, which he described as “nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated” (*Summa Theologiae* I–II, 90.4). Human ordinances that depart from any of these essential characteristics of law, he famously argued, are unjust.

Nevertheless, Aquinas recognized, as an existential reality, the power of the ruler was often beyond the control of the ruled and the pronouncements of the sovereign power may or may not conform to the fixed standards of justice.⁵ Specifically, Aquinas argued a human law could be contrary to the human good — and therefore unjust — in respect of its end (*ex fine*), its author (*ex auctore*), or its form (*ex forma*). A law was contrary to the divine good, however, if it induced someone to actions contrary to the divine law (*lex divina*) (*Summa Theologiae* I–II, 95.2). It may be helpful to pause to show how abstruse scholastic jargon may conceal straightforward distinctions. A law unjust *ex fine* is one that pursues an unjust end or seeks to bring about some unjust state of affairs. For example, a law proposing to confiscate the property of all left-handed people and turn it over to the family members of legislators is patently unjust in its goal or aim, even if the authority who proposes it is otherwise legitimate and even if the methods it uses are otherwise benign. A second form of legal injustice occurs when an illegitimate authority attempts to make law. If a military general seizes power through coup d'état and begins issuing orders to the citizenry, those orders may be genuinely for the common good in both their aim and their methods and yet do not satisfy fully the criteria of just law, for they were created in violation of the prior legal/constitutional order. Third, a law may be unjust in form if it makes use of unjust means, despite aiming at the common good and issuing from the legitimate public authority, e.g., if legislators accomplished the task of building highways by making indentured servants of a disfavored religious group.

The first three formulations above refer to ways for an enactment to be unjust with respect to the basically good things at which ordering society through rules must fundamentally aim. To summarize in Aquinas's words: A human law is contrary to the human good in end if a ruler, instead of making laws for the good of the community, "impose[s] on subjects burdensome laws, conducive, not to the human good, but rather to his own cupidity or vainglory." In the second formulation, a law is unjust by way of its authority if a public official not vested with the proper lawmaking function nevertheless goes "beyond the power committed to him" by issuing a legal decree. In the third formulation, a law is unjust with respect to its form if it imposes burdens "unequally on the community, although with a view to the common good." Additionally, however, there is an important fourth way for a law to be unjust: A human law is unjust, even if these formal and procedural requirements have been met, if it induces one to actions contrary to the divine law

(*lex divina*). “Such are the laws of tyrants inducing to idolatry,” Aquinas explains, “or to anything else contrary to the divine law” (*Summa Theologiae* I–II, 96.4).

John Finnis (1980) notes that the divine law, according to Aquinas, is, in its primary sense, “the law which supplements the natural law and is promulgated by God for the regulation of the community or communities (Israel and then the universal Church) constituted through God’s public self-revelation and offer of friendship.” These revealed truths, far from being opposed to reason and thus inaccessible by way of the natural law, “incorporate truths accessible to reason and answer questions raised, pressed, but found insoluble by reason. Correspondingly, the divine (i.e., revealed) law, for Aquinas, incorporates and re-promulgates many elements of natural law.” (Finnis 1980, 398; cf. *Summa Theologiae* I–II, 100.1, 100.3, and 99.2). After offering a similar formulation, Russell Hittinger (2003) summarizes: an enactment contrary to the divine law is one that “commands the people in the moral order of things to do what they must not do, or perhaps not to do what they must do” (*Summa Theologiae* I–II, 110–11). Quite independent of its end, author, or form, such a law is substantively unjust and, as Aquinas insists, “must nowise be obeyed” (*Summa Theologiae* I–II, 96.4).

This is bracing candor from Aquinas, but we should not be quick to judge it subversive, for he counsels great prudence and forbearance with respect to many forms of injustice. While laws unjust in end, author, or form do not bind in conscience, one may still choose rightly in obeying such an unjust law in order to avoid scandal or disturbance in the community. For such a reason, prudence may even dictate that one willingly suffer injustice in order to preserve the rule of law (*Summa Theologiae* I–II, 96.4). However, if a law induces one to act contrary to the divine law — that is, to God’s direct commands to human beings — persons are morally obligated to disobey that law, because such a law can never be oriented toward the good of the community. Within this framework, the classification of an unjust law as contrary to the divine law has certain profound implications in the realm of moral obligation, which are not present in the other procedural and formal types of injustice. It is particularly important, then, to consider King’s arguments regarding the nature of the legal injustice he fought because the arguments indicate, in fact, that King’s nonviolent resistance to segregation ordinances was carried out because he concluded the laws were contrary to the divine law.

KING ON LEGAL INJUSTICE AND CIVIL DISOBEDIENCE

After eight white Alabama clergymen published “An Appeal for Law and Order and Common Sense” in the *Birmingham News* criticizing King for leading an “unwise and untimely” campaign against segregation ordinances in Birmingham, King offered a defense of his actions in the form of a letter scribbled on the margins of his newspaper. During a non-violent, direct action campaign, King had been arrested for marching without a permit, and, from the confines of his cell, he penned a response to his more moderate critics, which synthesized the theoretical foundation of and motivation for his political activism.

One of the more serious criticisms leveled at King’s campaign of civil disobedience was that it disrupted the legal order in Birmingham. King’s willingness to break the law, the clergymen argued, created a tension in the community and demonstrated a disregard for legal institutions antithetical to a just and stable political order. King even conceded the initial plausibility of such criticism. If individuals could arbitrarily choose which laws to obey and to disobey, the legitimacy of the state and the rule of law itself would be imperiled. One might therefore ask, as King acknowledged, how he could urge people to obey the Supreme Court’s recent decision in *Brown v. Board of Education* (1954), which ordered the desegregation of public schools, while simultaneously advocating disobedience to duly passed segregation ordinances related to public accommodations. Why did the law have moral force in one instance and not in the other? Was King not exhibiting a callous disregard for public authority that would ultimately undermine his own efforts at reform?

In an elaboration and commentary on Aquinas’s natural law theory, King responded “there are two types of laws: There are *just* and *unjust* laws.” For obvious reasons, King had in mind segregation ordinances, yet the examples of legal injustice he gave tracked the general contours of Aquinas’s discussion of legal injustice. King’s first example of an unjust law was “a code that a majority inflicts on a minority that is not binding on itself.” Insofar as segregation laws were ordained to some private good, King indicated, such ordinances were unjust in end. King’s second example of an unjust law was a “code inflicted upon a minority which that minority had no part in enacting or creating because they did not have the unhampered right to vote.” In a democratic polity, such a law was not the product of legitimate public authority, and, therefore, it was unjust by way of its author. King’s third example of an unjust

law — and perhaps the most obvious considering the circumstances surrounding his arrest — was “a law just on its face and unjust in its application.” King had been imprisoned for marching without a permit, which, although not unjust in itself, was unjust in form because it was used unfairly to deny permits to civil rights protesters (King 1963b, 293–294).

Finally, King offered an example of injustice that seemed to imply segregation statutes were not merely contrary to the human good in end, author, and form, but were, in fact, contrary to the divine law. Had the ordinances met the formal and procedural requirements of justice, racial segregation in the community would have remained substantively unjust in a much more fundamental sense. “Any law that uplifts human personality is just,” King wrote. “Any law that degrades human personality is unjust. All segregation statutes are unjust because segregation distorts the soul and damages the personality.” At first, King’s emphasis on human personality as the measure of justice seems an odd formulation — in what sense do segregation ordinances damage human personality and why would such damage be “morally wrong and sinful”? (King 1963b, 293).

King, however, did quite literally mean that a law may either degrade or uplift human personality and a law’s relationship to human personality determines its proportionality with the requirements of justice. While studying philosophical theology at Boston University, King was profoundly shaped by a group of scholars who traced their intellectual heritage to the 19th century German idealist philosopher Hermann Lotze. According to Lotzean idealism, which developed as something of a polemic against modern scientism, selfhood or personality was, as King’s teacher Edgar Sheffield Brightman (1920) described it, “an ultimate fact of fundamental significance” (Brightman 1920, 539). In particular, Lotze argued that over-mechanizing the mind without reference to human personality led to strict materialism and ultimately nihilism. The solution, for Lotze, was found in a dichotomy between personality and material substance. Matter existed, but it was nothing other than the vehicle through which personality operated. Personality, in turn, was the only thing that was ultimately real. The material world, then, was merely the medium through which human personalities interacted with one another. Additionally, as the ultimate reality in the universe, God was necessarily personal.

In America, Lotze’s student Border Parker Bowne further developed a theory of philosophical personalism against the backdrop of modern utilitarianism, relativism, and materialism. Bowne attempted to show that the

world had meaning, the world's meaning could be articulated and defended, and ultimate reality was personal rather than material. By depicting ultimate reality as immaterial and personal, Bowne attempted to render modern materialistic and evolutionary theories irrelevant to ethics. Some of King's teachers at Boston University, including Brightman and Harold DeWolf, were among the second generation of American personalists, and, while at Boston, King embraced philosophical personalism as the moral foundation for his fight against racial injustice. As Lewis Baldwin counsels, however, we should be careful not to give too much weight to the intellectual influence of King's graduate school mentors. Although King did embrace a "metaphysical and philosophical grounding for the idea of a personal God" during his time at Boston University, "his conviction about the reality of a personal God was instilled in him by the black church long before he heard of Brightman, DeWolf, and the philosophy of personalism" (Baldwin 1984–1985, 99). The two "greatest formative influences on King's thought and action," David Garrow similarly notes, were "the biblical inheritance of the story of Jesus Christ, and the black southern Baptist church heritage into which King was born" (Garrow 1986, 5). King's study of personalism and his engagement with the major works of Western philosophy and theology supplemented, but did not supplant, the beliefs and convictions formed during his early experiences with the black Christian community in the segregated south. King's early experiential and cultural influences thus fortified his commitment to a philosophy of personalism, which, in turn, provided the theoretical basis for his campaigns of nonviolent, direct-action protests against segregation ordinances.

Nonviolence, King taught, was directed against evil itself rather than persons. Violent retaliation for evil, on the other hand, was destructive of persons and therefore unjust. Within this philosophical context, King argued segregation ordinances degraded the personality of *both* the oppressor and the oppressed. Nonviolence, however, sought neither to defeat nor to humiliate the oppressor but, rather, kept the dignity of his personality in mind. Nonviolence, then, was oriented toward the common good (i.e., the good of the oppressor and the oppressed), and this respect for the human good, bound up with the idea of human personality, led King to insist that the means used in protesting injustice must be as pure as the ends sought (see generally Steinkraus 1973; King 1960). The sharp dichotomy drawn by King between human personality and the material world was certainly a departure from traditional Thomistic metaphysics; nonetheless, King's description of segregation ordinances

as destructive of human personality and therefore “morally wrong and sinful” occurred within a Thomistic framework, which, while not dogmatic in the pejorative sense of the term, was deeply theological.

More importantly to the case at hand, whereas both King’s personalism and the first three desiderata of his Thomistic analysis would indicate the injustice of segregation laws, neither would be sufficient to justify disobedience. His argument requires for its cogency and persuasiveness recurrence to the fourth mode of legal injustice, viz. a law contrary to the divine law must not in any way be obeyed. In all other cases, the prudential burden heavily favors obedience while seeking change from within the system. King does not, in his letter, address that prudential burden, as he might if he thought the injustice of the segregation ordinances in end, author, or form enough to warrant protest and disobedience. To miss this point is to misunderstand King. But to understand it is to be confronted with a serious challenge to Rawls’s doctrine of public reason. King takes seriously his interlocutors’ arguments that direct and intentional disobedience of law is inherently a threat to order and cannot easily be justified. He says, “You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern” (King 1963b, 293). He reminds his interlocutors that the Alabama Christian Movement for Human Rights, like all arms of the Southern Christian Leadership Conference, entered into negotiation as a first step, and he further endorsed a return to genuine civil negotiation, dialogue rather than monologue, as soon as possible. The heavy burden against disobedience is met, he thinks, because abiding by the law in question would be an offense against the divine law and thus disobedience to God. The implication is that those forms of injustice not involving one’s duty in conscience to God, though real and profound, are not enough to warrant disobedience. That implication is clear because on the Thomistic terms King himself claims, it is not automatically permissible to disobey other forms of unjust enactment (even though they are not fully law). Furthermore, justifying disobedience under one of those forms of injustice would have required a further argument as to the prudence of disobedience, and giving that sort of argument would have been a direct response to the claims of his interlocutors. But King does not argue violating the law was simply the next prudent move; rather, he says it was the lone option. Simply put, the only way King’s argument (1) makes sense as a response and (2) is compelling is if one accepts the key premise that laws that violate divine law not only fail to be fully authoritative laws and binding on the conscience but should not be obeyed. The absolute

priority of divine law for the conscience of a person is the *sine qua non* of King's argument in the Letter.

A Rawlsian Rejoinder

In defending the Rawlsian treatment of King as an exemplar of public reason, David A.J. Richards recognizes King had the authority he did because of his roots in what Richards calls "Judeo-Christian" religion, but says, "At no point in the argument is there any appeal to anything that would conventionally be understood as religious dogma, ritual, or theology" (Richards (2003, 21–40). For all the reasons given above, we must protest that this view is simply mistaken and fails adequately to take the measure of the deep and sophisticated argument King offers.⁶ If the only possible way for Rawls to make adequate space for King is to deny King appealed to a comprehensive doctrine, then it is a quixotic errand. Much to his credit, Rawls does directly address the complexity of the King case in both *Political Liberalism* and (a somewhat passing reference) in *Law of Peoples* (Rawls 1993, 250–251 and Rawls 1999, 154, n. 54 and 174). In doing so, he must for the integrity and distinctiveness of his theory try to avoid two extremes. On the one hand, Rawls has taken some pains to distinguish his theory from other theories of liberalism by (*inter alia*) an account of public reason which, far from requiring a secular comprehensive doctrine, forbids direct appeals to any comprehensive doctrine, secular or otherwise, as the basis for fundamental matters of justice and the constitution. If his theories were strictly to rule out all such appeals, and with them the sorts of arguments made by Martin Luther King, Jr. and the abolitionists before him, it would be ruling out the very arguments that brought about the advances in equality, decency, and reciprocity Rawls wants to protect. He would be sawing off the very branch upon which his theory sits. On the other hand, simply permitting King's arguments threatens to vitiate entirely the idea of public reason. Richards grasps tightly to one horn of the dilemma, fully embracing prohibition on appeals to comprehensive doctrines, while trying to keep King within the boundaries by asserting he did not make arguments containing any such appeals. Rawls, on the other hand, attempts to go between the horns of this dilemma by reconsidering public reason itself, trying at once to carve out a doctrine that is both distinctively liberal and broadly tolerant.⁷

In treating the idea of public reason in *Political Liberalism*, Rawls begins his discussion of the limits of public reason by outlining what he

calls the “exclusive view” of public reason. Proponents of the exclusive view maintain that departures from public reason are never permissible. They argue, as a matter of principle, it is unjust to subject people to coercion unless justified by appeal to reasons acceptable to all reasonable agents as such. They are not saying, of course, the arguments must be unanimously endorsed, but rather more simply that no argument in the public square about matters of basic justice and constitutional essentials can include reasons that the speaker sincerely thinks might be unacceptable to some reasonable persons, given the fact of reasonable pluralism about comprehensive doctrines. Rawls, one suspects, sees that a rigorist approach to public reason will have the effect of precluding the actual arguments of those in American history who opposed, among other things, chattel slavery and Jim Crow laws. He offers an alternative in the form of a qualified, “inclusive” view of public reason. On the inclusive view, public reason is an ideal to be striven for, but one which must not become the enemy of the good. Rawls states his account of political liberalism takes the inclusive view of public reason, which allows into public discourse reasons from comprehensive doctrines, provided (1) they support political values and (2) the purpose of the argument is to explain those values to other citizens.⁸ In such circumstances, the arguments from comprehensive doctrines are permitted because they help establish and support the conditions necessary for the ideal of public reason to become actual and flourish.

At first glance, it is a plausible solution, a common-sense adjustment to historical realities that initially cut against the theory. On reflection, however, several grave worries emerge and leave one wondering how well this *ad hoc* adjustment really works.

First, for reasons entirely in keeping with his theory, Rawls does not specify the content of public reason. Rather, the content of what any one reasonable person understands public reason to be is determined by whether that person thinks the claims could reasonably be accepted by citizens in every other reasonable comprehensive doctrine. Two problems seem obvious: (1) an iteration problem has been introduced, for what is to count as a premise reasonably acceptable to other reasonable people is one of the intractable arguments of contemporary society and (2) public reason will be very unstable because of this dissensus on what counts as public reason. King and the abolitionists are once again instructive. They might argue that God’s existence is knowable by unaided human reason and, *eo ipso*, acceptable to all reasonable people and thus ripe for inclusion in any reasonable political conception.

Second, Rawls significantly vitiates the force of, and thus motivation for, the doctrine of public reason in admitting that for much of our own recent history it is an ideal often to be honored more in the breach than the observance. He's willing to accept it as the price for believing that, once established, public reason will be a core part of a stable politically liberal society. But we worry, because of humanity's checkered history, that it is naive to take hard-won gains in liberty and equality too much for granted.⁸ The inclusive view of public reason might be said to act as a kind of bulwark against the vicissitudes of history, allowing more latitude on the part of public figures and citizens in times when liberty and equality are insecure. But those conditions characterize most of human history. Furthermore, human nature is such that even in times when liberty and equality are firmly established in law, the human memory is short and spotty, and the arguments must constantly be re-made and reinforced. Rawls himself seems not to acknowledge this, and we think it is perhaps because his political psychology takes inadequate notice of human frailty. The levers of power are always tempting, emergencies always arising, exigencies demanding this or that group be targeted for discrimination or harsh treatment. In defending a just order against threats, it cannot be thought wise or even reasonable to deprive public officials and citizens of the very reasons and arguments their own forebears needed in order to get a foothold (however tenuous) on justice.

Still, another option remains for Rawls: the Proviso. Very late in the development of Rawls's thought, and indicative of his own awareness of just how problematic the doctrine of public reason continues to be, he adds what he calls "the proviso," which is even more permissive in stating that appeals to comprehensive doctrines within politics are permitted by the ideal of public reason so long as sufficient properly public reasons are given in due course (Rawls 1999, 144 and 152–156). Rawls is attempting to recognize and address the concern that a strict application of the norm of public reason would mute 19th-century abolitionists and 20th-century civil rights leaders (many of whom were religiously motivated laypeople and clergy). King, for example, is most famous for declaring that he had a dream, but we often forget that his dream was of a world in which "every valley shall be exalted, and every hill and mountain shall be made low, the rough places will be made plain, and the crooked places will be made straight; 'and the glory of the Lord shall be revealed and all flesh shall see it together'" (King 1963a, 219). It can hardly escape notice that this is a verbatim quotation from the 40th chapter of Isaiah, and the original context for the

quote is a prophetic vision, the “voice of one calling” people to make themselves ready for the political rule of God. As Timothy Jackson (2006) notes, King indeed often “cross-fertilized Christian doctrines and democratic principles” (Jackson 2006, 439).

Rawls thus rightly puts his doctrine to the test with King; if one tried to design a hypothetical test case to apply maximum force to the pressure points of the ideal of public reason, one could do no better than King’s arguments and speeches. The key question (the answer to which is crucial in deciding what to make of Rawls’s doctrine of public reason) is whether King’s appeals to scripture and divine law are merely rhetorical flourishes, one among many possibly good arguments for his case, or whether his arguments depend upon a comprehensive doctrine not just for their rhetorical force (which no one questions) but for their very coherence. The horns of the dilemma are clear: no doctrine of public reason that excludes the signal achievements in justice of the past two centuries would be desirable, but those very achievements were accomplished, in part, through publicly persuasive arguments seated firmly (and maybe inextricably) in controversial comprehensive doctrines. It is not at all obvious that such arguments hold and that their corresponding achievements remain possible without the comprehensive doctrine that both gave rise to and supports them.

Far from an *a priori* commitment, by the time one gets to the end of the dialectical development of the ideal of public reason, viz. the Proviso, it appears reflective adjustments have transformed the pursuit of the ideal of public reason into an entirely contingent, *a posteriori* matter of who wins a debate. From the standpoint of officials or citizens pursuing a conception of justice, they are bound (rationally) to regard the *sine qua non*, fundamental principles of their arguments as candidates for any resulting overlapping consensus. If the arguments are compelling, and the principles accepted into the consensus, then it is obvious how the Proviso is satisfied. If the very same arguments, however, do not win public support, and the gambit fails, then the ideal of public reason has been violated. One would need to know *ex ante* what can only be known *ex post*, which disqualifies the ideal as a guide to action here and now.

Such a conclusion is borne out by Rawls’s own examples, namely King’s most famous letter and his most famous speech. Of the civil rights movement, Rawls says, “The proviso was fulfilled in their cases, however much they emphasized the religious roots of their doctrines, because these doctrines supported basic constitutional values — as they themselves asserted — and so supported reasonable conceptions of

political justice” (Rawls 1999, 154–155). But consider a hypothetical atheist friendly to King; someone possessing what Rawls calls a “reasonable comprehensive doctrine” and a political conception of justice already disposed favorably towards equal civil rights. Could that person endorse King’s argument even in a limited political way? The answer must be no, because, as we have shown, the existence and providence of God is the point of departure and arrival for King. His argument for civil rights begins with a theologically rich conception of the person; his argument about civil disobedience to law depends crucially on the existence of divine law; and the goal he is working for is born of a prophetic vision of the Kingdom of God nurtured by his experience as the pastor of a Christian church.

If one takes King’s argument and life’s work seriously, Rawls’s statement is either mistaken, in which case he (like Richards) fails to appreciate how thoroughly theological King’s argument against racial injustice is, or the doctrine of public reason has been hollowed out so that very little remains. Even so, the driving intuition behind Rawls’s ideal of public reason is that citizens have a duty of respect to their fellow citizens, as far as possible, to refrain from using controversial sectarian claims in the public square. Yet probity demands that we acknowledge the impossibility of fully separating freestanding political conceptions from overall conceptions of the good life.⁹ Not only is this view inadequate conceptually, but (more to the point) it belies the centrality of foundational arguments in the historical development of reform movements such as the non-violent civil rights protests led by King.

NOTES

1. In the voluminous secondary literature, there are several objections to Rawls’s idea of public reason. Liberal communitarians such as Michael Sandel have argued that, from a normative perspective, political actors ought to be forthcoming about the theoretical foundation of their own political commitments (Sandel 1982; 1994). Others, such as Robert George, have argued that the project to remove references to comprehensive doctrines is practically futile in addition to being normatively unjustifiable (George 2001). Our essay is concerned with a separate but related challenge, which Rawls himself acknowledges several times; namely, the historical question whether Rawls’s theory of public reason is consistent with, and can accommodate, some of the theological arguments that were partially constitutive of the broader liberal tradition in American politics. For a representative of this kind of inquiry, see Schaefer (2007).

2. We will take the version of public reason presented in *Political Liberalism* and *The Law of Peoples* with “*The Idea of Public Reason Revisited*” to represent Rawls’s mature view and the latter his last definitive word on the subject, as the treatment in the later *Justice as Fairness* is but brief.

3. As Rawls notes, one fact that characterizes the “political culture of democratic society” is “the diversity of reasonable comprehensive religious, philosophical, and moral doctrines.” This Rawls deems to be the “fact of reasonable pluralism” — a condition that “is a permanent feature of the public culture of democracy” (Rawls 1993, 36; see also Rawls 1999, 11–12). Citizens are “reasonable

when, viewing one another as free and equal in a system of social cooperation over generations, they are prepared to offer one another fair terms of cooperation according to what they consider the most reasonable conception of political justice; and when they agree to act on those terms, even at the cost of their own interests in particular situations, provided that other citizens also accept those terms" (Rawls 1999, 136). One might think these reasonable people will readily arrive at consensus, but Rawls thinks not. He says, rather, that because of a set of burdens upon our judgment (including difficulties marshalling and weighing evidence, problems of indeterminacy, the influence of formative life experiences on our general disposition, and competing normative considerations) dissensus ever remains a possibility even among fully reasonable people (Rawls 2001, 35–36). For a general discussion and critique of Rawlsian reasonableness, see Young (2006).

4. See Rawls (1999, 154, n. 54). Rawls asserts: "I do not know whether the Abolitionists and King thought of themselves as fulfilling the purpose of the proviso. But whether they did or not, they could have. And had they known and accepted the idea of public reason, they would have" (italics added). For an elaboration and defense of this argument, see Freeman (2007, 413–414).

5. John Finnis's discussion of legal injustice is helpful for understanding Aquinas's assertion that an unjust law is not a law. "For the statement is either pure nonsense, flatly self-contradictory," Finnis explains, "or else is a dramatization of the point more literally made by Aquinas when he says that an unjust law is not law in the focal sense of the term 'law' [i.e., *simpliciter*] notwithstanding that it is law in a secondary sense of that term [i.e., *secundum quid*]" (Finnis 1980, 363–366).

6. Charles Larmore (2003) correctly notes that King "argued against racial segregation by appealing to the belief that all human beings are equally God's creatures." His aim in doing so, moreover, was "to encourage others to take this religious view to heart as they dealt with those questions in their capacities as voters, legislators, officials, and judges" (Larmore 2003, 385–386).

7. The procedure here is in keeping with Rawls's philosophy, in that it represents an instance of the attempt to arrive at a reflective equilibrium — working on, and then thinking back through, one's convictions at all levels until an equilibrium is reached (see Rawls (1993, 8)).

8. "Political values" are limited in their scope to the institutional and public identity of a person, i.e., how someone is treated by political institutions (or the basic structure of society) and are the intended objects of the overlapping consensus limited by what Rawls calls the "burdens of judgment" (see Rawls (1993, 30–31 and 54–58)).

9. For similar discussions of the historical development of liberalism, see Shklar (1989) and Klosko (2000). On the impossibility of separating freestanding political conceptions of justice from comprehensive religious, philosophical, or moral doctrines, see Young (2001).

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