Both Citizen and Saint:
Religious Integrity and Liberal Democracy

by

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Dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the Department of Political Science in the Graduate School of Duke University

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In this dissertation, I develop a political liberal ethics of citizenship that reconciles conflicting religious and civic obligations concerning political participation and deliberation—a liberal-democratic ethics of citizenship that is compatible with religious integrity. I begin by canvassing the current state of the debate between political liberals and their religious critics, engaging Rawls’s *Political Liberalism* and the various religious objections Nicholas Wolterstorff, Christopher Eberle, Robert George, John Finnis, Paul Weithman, Jeffrey Stout, and Gerald Gaus and Kevin Vallier develop (Chapter One). I then critically evaluate political liberalism’s requirements of citizens in light of the religious objections and the religious objections in light of political liberal norms of reciprocity, concluding that some religious citizens have legitimate complaints against citizenship requirements that forbid citizens from offering religious arguments alone in public political discussions (Chapter Two). Next, I propose an alternative set of guidelines for public political discussions in constitutional democracies, the phased account of democratic decision-making, that, I argue, addresses the religious citizens’ legitimate complaints without undermining a constitutional democracy’s legitimacy or commitment to public justification (Chapter Three). Then, I argue that a religious practice of political engagement I call prophetic witnessing is compatible with the phased account, can serve as a canonical model to guide religious citizens’ political participation, and can help religious citizens navigate the substantive conflicts between their religious and civic obligations that remain possible even in a society that follows the phased
account (Chapter Four). Finally, I conclude by imagining three different democracies, each adhering to a different set of guidelines for public political discussions, in order to argue for the benefit of adopting norms that balance citizens’ obligations to govern themselves legitimately with citizens’ ability to integrate their deepest moral and religious commitments and their public, political argument and advocacy.
To Ruth and Marty,

examples of political passion and principle
CONTENTS

Abstract........................................................................................................................................ iv

Contents ......................................................................................................................................... vii

List of Tables .................................................................................................................................. x

Acknowledgements....................................................................................................................... xi

Chapter One. Religious Liberty, Religious Integrity, and Democratic Citizenship: Rawls’s Political Liberalism and its Religious Critics ................................................................. 1

I: Political Liberalism .................................................................................................................... 16

II: The Religious Response: Against the Duty of Civility ............................................................ 32

   II.1: The Integrity Objection ........................................................................................................ 34

   II.2: The Natural Law Objection ............................................................................................... 47

   II.3: The Unreasonable Exclusion Objection .......................................................................... 55

III: Next Steps .............................................................................................................................. 60

IV: Methodological Note .............................................................................................................. 65

Chapter 2. Assessing the Reasonableness of Religion: Religious Integrity and Religion in Public Political Discussions ........................................................................................................ 68

   I: The First Definition of Reasonableness ................................................................................ 76

   II: The Second Definition of Reasonableness ........................................................................ 83

   III: The Third Definition of Reasonableness .......................................................................... 89

   IV: The Fourth Definition of Reasonableness ....................................................................... 97

      IV.1: Comprehensive Compatibility and Incompatibility ................................................... 102

      IV.2: Religious Compatibility and Incompatibility ............................................................. 105

      IV.3: Examples of Religious Compatibility and Incompatibility .................................... 111
IV.4: The Fourth Definition of Reasonableness and the First Definition Compared
........................................................................................................................................... 123

V: The Fifth Definition of Reasonableness ................................................................. 129

VI: The Reasonableness of the Religious Objections Assessed ......................... 132
   VI.1: The Natural Law Objections........................................................................... 133
   VI.2: The Integrity Objection ................................................................................ 142
   VI.3: Implications ...................................................................................................... 145

Chapter 3. The Phased Account of Democratic Decision-making ................. 147
   I: The Aim of Articulating Norms to Guide Democratic Decision-making ........ 151
   II: The Phased Account of Democratic Decision-making ..................................... 158
      II.1: Unhelpful Attempts to Specify the Context of the Public Justification
            Requirement ...................................................................................................... 159
      II.2: The Phases of Democratic Decision-making ................................................ 169
      II.3: John Rawls’s Proviso and the Phases of Democratic Decision-making ....... 174
      II.4: Substantive Norms for the Phases of Democratic Decision-making .......... 181
   III: Against Other Extant Alternative Guidelines for Public Political Discussion ...
       III.1: Alternative Ethics of Citizenship ............................................................... 202
       III.2: Convergence ............................................................................................... 212
   IV: The Phased Account of Democratic Decision-making and Revealed Liberals...
       V: Conclusion ......................................................................................................... 228

Chapter 4. Prophetic Witnessing in the Liberal Public Sphere ..................... 230
   I: Holy Crimes in a Well-Ordered Society ........................................................... 234
   II: Religious Practices of Political Engagement ................................................... 241
   III: Prophetic Witnessing ....................................................................................... 245
IV: Prophetic Witnessing and the Obligations of Liberal-Democratic Citizenship . 270
V: Prophetic Witnessing and Holy Crimes ................................................................. 288
Conclusion: A Tale of Three Democracies ................................................................. 299
I: The Argument Thus Far ......................................................................................... 299
II: Democracy A ......................................................................................................... 301
III: Democracy C ......................................................................................................... 304
IV: Democracy B ......................................................................................................... 307
V: The Three Democracies Compared ...................................................................... 310
VI: Conclusion ............................................................................................................ 311
Bibliography ................................................................................................................ 323
Biography ..................................................................................................................... 337
LIST OF TABLES

Table 1: Possible Compatibilities and Incompatibilities Between a Comprehensive Doctrine and a Reasonable Political Conception of Justice......................................................... 104

Table 2: Compatibilities and Incompatibilities Between a Religion and a Reasonable Political Conception of Justice.......................................................................................... 111

Table 3: Examples of Religious Compatibility/Incompatibility with a Reasonable Political Conception of Justice.............................................................................................................. 122
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CHAPTER ONE. RELIGIOUS LIBERTY, RELIGIOUS INTEGRITY, 
AND DEMOCRATIC CITIZENSHIP: RAWLS’S POLITICAL 
LIBERALISM AND ITS RELIGIOUS CRITICS

“Deprived as we heretofore have been of the invaluable 
rights of free citizens, we now...behold a Government 
...which to bigotry gives no sanction, to persecution no 
assistance—but generously [affords] to All liberty of 
conscience, and immunities of Citizenship.”
~Moses Seixas

“Send 2,500 troops here...to make a desolation of this 
people! I have wives enough to whip out the United 
States.”
~Heber C. Kimball

Religious liberty is the first freedom of the liberal political tradition, both 
historically, and, at least for the liberalism of the United States Constitution, in 
importance: it is no accident that the First Amendment forbids the U.S. Government from 
prohibiting the free exercise of religion. But for some—often those who belong to


minority religious groups—meaningful religious liberty is quixotic, even in regimes that constitutionally protect it. And sometimes, restrictions of religious liberty may be justified, even if only to protect religious liberty itself. The two quotes above, both drawn from the American experience, suggest the promise and limits of religious liberty.

Moses Seixas, warden of the Congregation Yeshuat Israel of Newport, Rhode Island, expressed the gratitude he and his fellow Rhode Island Jews felt for the constitutional protection of religious freedom in the first quotation above. He penned it in a letter to the newly elected President of the United States, George Washington, in August of 1790. The States had recently ratified the Constitution and with it the Bill of Rights. Seixas and his fellows no doubt spoke with the utmost sincerity: as Jews, either their citizenship or their religious liberty was forbidden across Europe and even in some American states. Not so, however, for the new federal government. Now, at least in principle, the members of the Congregation Yeshuat Israel did not need to choose between being Jews and being citizens. They could be both, and Seixas’s letter conveys the gratitude and indeed, the liberation, this promised to bring him and his fellows.

Though all Americans did not, immediately upon ratification of the Bill of Rights, accept Jews as equal citizens, the Jewish experience in the United States has been, in

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comparison to Jewish history, remarkably positive. Certainly today, being Jewish and being American fit together quite comfortably, even in the minds of Americans who are not Jews.⁵

Heber C. Kimball’s words, in turn, call to mind the inevitable limits of religious liberty. In 1857, Kimball was “First Counselor” to Brigham Young, who was at the time both President of the Church of Jesus Christ of Latter-day Saints (or Mormons) and Governor of Utah Territory. Just one month before Kimball spoke the above in a public sermon, he and Brigham Young learned that U.S. President James Buchanan had ordered 2,500 troops to Utah to put down what Buchanan termed a “Mormon rebellion.” For nineteenth century Mormons, this news stirred all too recent memories: they or their parents had been violently forced out of their homes in Missouri and again in Illinois, and their founder and prophet, Joseph Smith, had been murdered by a vigilante mob. Unwilling to submit to such persecution again, Young, Kimball, and other Mormon leaders were preparing their small, isolated religious community for war.⁶

America’s 19th century “Mormon Question” demonstrates that even in a political system where religious liberty is constitutionally protected and culturally valorized, it only extends so far: some groups and some beliefs are not protected. And sometimes these limits are justified. Nineteenth century Mormons felt that the religious freedom

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⁵ One indication of this is Robert Putnam’s and David Campbell’s finding that Jews are the most well regarded religious group in the United States. See American Grace: How Religion Divides and Unites Us (New York: Simon and Schuster, 2010), 501-515.

⁶ For discussion of the historical context of the 1857 confrontation between the Mormons and the Federal Government (sometimes called the “Utah War”) see Walker et al., Massacre, 6-53.
enshrined in the First Amendment should extend to everything they believed God demanded of them, from the practice of polygamy to the establishment of a theocracy (or “theodemocracy”) in their communities. Some Mormons believed that true religious freedom would eventually demand secession from the United States in order to be free to set up an independent, theocratic religious polity, a Mormon Zion; for others, it meant turning America itself into such a place.\(^7\) As a result of their polygamy and theocracy, for the Mormons, American proclamations of religious liberty rang hollow. American religious liberty repeatedly failed to allow them the freedom to follow the dictates of their consciences; it did not protect them from the hatred and violence of their fellow citizens, even after they fled more than 1,000 miles to Utah. Though Seixas and his fellows could rejoice that the First Amendment promised they could be both Jews and American citizens, this was not the case for the Mormons. They had to choose between their religion and their citizenship, and would have to, over and over again, until the Mormon Church itself gave up the practice of polygamy and began slowly dismantling its most

\(^7\) For an example of early Mormonism’s theocratic tendencies, consider the following words from another prominent early Mormon leader: “Any people attempting to govern themselves by laws of their own making, and by officers of their own appointment, are in direct rebellion against the Kingdom of God.” See Orson Pratt, *A Series of Pamphlets on the Doctrines of the Gospel* (Chattanooga, TN: The Southern States Mission, 1899), 5. At about the same time that Kimball speculated about the military prowess of his wives, Brigham Young wondered if his followers were prepared to “cut” “the thread” between Utah Mormons and the United States, see Walker et al., *Massacre*, 44. For further discussion of the concept of “theodemocracy” and other theocratic elements in early Mormonism, see D. Michael Quinn, *The Mormon Hierarchy: Origins of Power* (Salt Lake City: Signature Books, 1994), 79-141, especially 120-126; and Walker et al., *Massacre*, 20-32. Early Mormonism also contained strong justifications for religious liberty and the separation of Church and State that were in tension with its theocratic aspirations. One early Mormon declaration states: “We do not believe it just to mingle religious influence with civil government, whereby one religious society is fostered and another proscribed in its spiritual privileges, and the individual rights of its members, as citizens, denied.” See *Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints*, 134:9.
theocratic institutions. Given the deep, principled conflicts between early Mormon yearnings for theocracy and the 19th century United State’s developing commitment to the ideals of constitutional democracy, this choice was inevitable. The “Mormon Question” therefore represents the most significant experience of the limits of religious liberty in the history of the United States.

Speaking more abstractly, juxtaposing the experiences of Rhode Island’s Jews with those of 19th century Mormons suggests a helpful framework for discussing questions of religious liberty. First, as Seixas’s letter suggests, religious liberty is intimately connected to democratic citizenship. A polity that protects religious liberty is a polity where citizenship is available to all, without regard to any individual’s religion or lack thereof. Or, to return again to what made the First Amendment in particular so

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8 The federal government required Utah to constitutionally ban polygamy in order to become a state, and federal anti-polygamy laws dismantled some of Utah’s most theocratic institutions, including the Nauvoo Legion (a state militia run by the LDS Church) and several Church-owned cooperatives. For a nice discussion of 19th Century Federal anti-polygamy legislation and the justifications offered for it, see Sarah Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth Century America* (Chapel Hill, NC: The University of North Carolina Press, 2002).

9 My language in this paragraph is vague about whether the limits the United States imposed on Mormon religious liberty were justified. Theocratic political institutions are clearly outside of the legitimate scope of religious exercise in a constitutional democracy. It is understandable, then, why the Mormons would have hoped that a Southern victory in the Civil War would have enabled them to make a states-right argument for the legitimacy of their own peculiar institutions (See Gordon, *The Mormon Question* for detailed discussion of the Mormon’s constitutional arguments). Whether the legitimate scope of religious liberty includes the practice of polygamy, is, however, less clear. It is striking in this regard that J.S. Mill’s argument for tolerating the Mormons in *On Liberty* only discusses Mormon polygamy and not Mormon theocracy (See the final paragraph of Chapter IV, “Of the Limits to the Authority of Society over the Individual”). Assuming that polygamy is within the legitimate scope of religious liberty, the oddity of the 19th Century Mormon question is that Americans’ unjustified antipathy towards polygamy provided the political will that enabled the Federal Government to take the legitimate steps necessary to prize political control of Utah Territory (at least in the *de jure* sense) out of the hands of the institutional Mormon Church.

10 It is striking in this regard that Mormons remain one of the least well-regarded religious groups in America. Americans rank them above only Buddhists and Muslims; see Putnam and Campbell, *American Grace*, 501-515.
potentially liberating to Newport’s Jews (and so farcical to early Mormons), a polity that protects religious liberty is a polity where citizenship is *compatible* with any religion whatsoever or with none at all. And if citizenship is to be so compatible, religious liberty must have limits: it cannot consistently protect the liberty to violate others’ religious liberty. 11 This definition in turn suggests that if religious liberty is to be *meaningful*, the duties associated with citizenship must be compatible, or at least reconcilable, with the religious duties individuals believe themselves to bear and that themselves do not violate others’ liberty. In other words, meaningful religious liberty requires that citizens be able to live lives of religious *integrity*, lives in which they can follow the demands of their religion. Otherwise, proclamations of religious liberty are a sham: if a state offers citizenship to all regardless of religion but requires citizens to do things that are incompatible with their religious beliefs (to eat pork or to drink wine at mandatory civic feasts—to pick examples that would offend Jews and Mormons, respectively), then religious liberty is hollow indeed.

Meaningful religious liberty—the ability of religious people to live lives of religious integrity—exists, then, in the legal and theoretical space where religious obligations and citizenship obligations, ideally, overlap and cohere, or, minimally, do not contradict each other. A society can only lay claim to meaningfully protecting its citizens’ religious liberty when, at least most of the time, it allows its people to be *both*

citizens and saints—when, in other words, there can be saintly citizens who are holy according to each of that society’s various religious traditions’ different definitions of the term. When citizenship obligations do contradict some set of religious obligations or vice versa, then religious liberty is absent for citizens in that situation. There will be times when this is unavoidable, when a legitimate citizenship obligation simply cannot be reconciled with some religious obligation. Religious obligations often deal with transcendental absolutes, while duties of citizenship pertain to the messier, temporal world of politics. One might then sacralize Aristotle’s claim that the good man and the good citizen are two importantly different things and observe that religious and civic obligations will only perfectly cohere in the Kingdom of God. There are also times when conflict between religious and civic obligations is justified, even required by the moral and political principles underlying liberal-democratic cooperation. The difficulty, then, in evaluating the degree to which a society offers its citizens meaningful religious

12 I adapt the term “saint” here from Paul’s use of it to denote adherents of the Christian religion. See, for example, Ephesians 2:19, “So then you are no longer strangers and aliens, but you are citizens with the saints and also members of the household of God.” I intend the term to have the same broad application as Paul’s—all adherents of a given religion—without the specifically Christian connotation. In English, at least, this use is not unheard of, “saint” is sometimes used in English translations of the Hebrew Bible where it could not have had a specifically Christian meaning; see, for example, Psalms 32:23, “Love the Lord, all you his saints.” I do not mean to use it as a term to distinguish exceptionally righteous adherents of a given religion from their less committed fellows. “Saint,” then, denotes a religious adherent, a person considered from the perspective of his or her religious beliefs and obligations. I use “citizen” to denote a person considered from the perspective of his or her obligations to those with which he or she shares social and political institutions; it names the “political conception of the person,” in John Rawls’s words. I will discuss what this phrase means in section (I) below.

13 For Aristotle’s account of the relationship between the good man and the good citizen, see The Politics, Book III, Chapter IV.
liberty is discerning when conflicts between religious and civic obligations fall into one of the two categories above, either unavoidable or justified, and when they do not.

One way to discern and interrogate the proper boundaries of religious liberty, then, is to ask what justified obligations citizens bear as citizens and then to inquire how those civic obligations comport or fail to comport with religious requirements. Determining the proper scope of religious liberty therefore demands that one compare the answers to two different questions: first, the question of liberal-democratic citizens’ duties, and, second, the obligations religions impose on their adherents. It is no accident, then, that in contemporary political theory and philosophy, questions of religious liberty are frequently discussed within the framework of the ethics of citizenship.

This subject—the ethics of citizenship—is currently the focus of renewed interest in political theory and philosophy (though, as with other philosophical questions, it has a long history). Inquiry into the ethics of citizenship seeks to coherently expound the duties that pertain to the social role of citizen, providing answers to questions like: What does it mean to be a citizen? Are citizens morally obligated to obey the law? When? Why? Are they obligated to participate in politics? On what grounds? What sorts of policies should citizens support or oppose? How should citizens support and oppose them? How should they attempt to persuade their fellow citizens to support or oppose them? Today, discussions of the ethics of citizenship are almost always limited to the ethics of democratic citizenship—the question of how citizens should govern themselves. As the brief discussion above makes clear, whatever position one defends in response to these types of questions will have serious implications for the limits of religious integrity.
(meaningful religious liberty), since those boundaries largely depend on the extent of the compatibility between religious and civic obligations, the degree to which saintliness and citizenship do not contradict each other.

It is to contemporary discussion of the ethics of citizenship, then, that those interested in meaningful religious liberty—whether they are religious adherents themselves, civil libertarians, human rights activists, lawyers, judges, political theorists and philosophers, or some combination of the above—should attend. Those tempted to scoff at the relevance of abstruse philosophical discussions about a topic like this would do well to remember the likely long-term causal significance of ethical or political consensus around the obligations of citizenship. Such consensus, if it exists or were it to come about, especially among a society’s elites, would inevitably affect both the social and cultural norms that informally regulate individuals’ political and civil interactions and the actual formal rules and regulations that do so legally. Consensus among intellectual elites, for example, is likely to affect constitutional jurisprudence, which will then shape the law that actually governs religious exercise. The ethics of citizenship is thus an unavoidably high-stakes field, particularly for those whose beliefs or practices are in the minority.

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14 Consider Keynes’s famous words: “The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed the world is ruled by little else…Soon or late, it is ideas, not vested interests, which are dangerous for good or evil.” The General Theory of Employment, Interest, and Money (Orlando, FL: Harcourt, 1967), 383; Hayek defends the same general point in “The Intellectuals and Socialism,” The University of Chicago Law Review 16:3 (Spring 1949), not to mention J.S. Mill’s discussion of the effects of moral consensus in On Liberty.
Unsurprisingly, given such stakes, there is currently deep and ongoing theoretical controversy about the proper specification of the ethics of democratic citizenship. In particular, a growing number of political theorists and philosophers have expressed deep concern that the now-dominant philosophical approach to articulating the norms of liberal democracy and its accompanying requirements of citizens, sometimes called “political liberalism,” “public reason liberalism,” or even “American philosophical liberalism,” profoundly threatens the free exercise of citizens’ religion and their religious integrity and should be rejected as a result. These threats follow, such thinkers argue, from the way in which influential political philosophers have articulated the ideal of “public justification” and the normative implications they draw from this ideal for citizens’ political activities.

The ideal of public justification is a, if not the, central theme of the last twenty or so years of contemporary Anglo-American political philosophy. The words denote the question of how citizens should justify the coercive power of the state to each other, and what implications for the legitimate scope of such power follow from the answer to that

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15 “Political Liberalism” is the term John Rawls used to describe the revisions he made to his own particular articulation of the norms of liberal-democracy, “justice as fairness,” in the face of internal problems and withering criticisms from communitarians and others. See his “Justice as Fairness: Political not Metaphysical,” *Philosophy and Public Affairs* 14 (1985), 223-251. Charles Larmore also uses the term, see his “Political Liberalism,” *Political Theory* 18:3 (August 1990), 339-360. Jürgen Habermas has also used this term to describe his approach, his earlier criticisms of it notwithstanding. See Habermas, “Religion in the Public Sphere,” *European Journal of Philosophy* 14:1 (2006), 1-25, especially pg. 20. “Public reason liberalism” is Gerald Gaus’s favored term for the same general family of ideas, see his “The Place of Religious Belief in Public Reason Liberalism,” in Maria Dimova-Cookson and Peter Stirk, eds., *Multiculturalism and Moral Conflict* (London: Routledge, 2009), 19-37; while Michael Freeden uses the term “American Philosophical Liberalism,” see *Ideologies and Political Theory: A Conceptual Approach* (New York: Oxford University Press, 1996), ch. 6. Robert Audi’s work on religion and politics, while different in several important respects, also fits into this general family. See his *Religious Commitment and Secular Reason* (New York: Cambridge University Press, 2000).
question. Recent concern with public justification grew out of several political philosophers’ dissatisfaction with the language liberals had been using to describe a liberal democratic state’s “neutrality” or “impartiality” with respect to citizens’ religious and other deep moral commitments. For these philosophers, a state that enjoys the proper sort of public justification is a state that treats its citizens in a properly fair and impartial manner. Furthermore, it is a state, these thinkers believe, that properly respects citizens’ liberties, including their religious liberty.

John Rawls’s later work, from the series of articles that make up Political Liberalism on, is the most famous single example of contemporary political philosophy’s concern with public justification. But Rawls was by no means alone in making this move; other notable thinkers including Thomas Nagel, Gerald Gaus, Robert Audi, Charles Larmore, Stephen Macedo, Amy Gutmann, Dennis Thompson, Martha Nussbaum and, from somewhat different intellectual roots, Jürgen Habermas, made it with him. But Rawls’s work is the best known and, largely because of the intensely

16 The relationship between the questions of public justification and state neutrality are most clear in Thomas Nagel’s “Moral Conflict and Political Legitimacy,” Philosophy and Public Affairs 16:3 (Summer 1987), 215-240.

negative reaction it has generated from many religious thinkers, also the most relevant for the question of religious liberty.

Rawls (in)famously believes that arguments and reasons stemming from “comprehensive doctrines,” including religions, cannot publicly justify the structure or coercive power of a liberal-democratic state under modern conditions of pluralism; comprehensive arguments and reasons are not impartial in manner he argues is necessary. Furthermore, Rawls believes that such arguments have at best a provisional role to play in citizens’ public political discussions—in their collective decision-making. (I will explain Rawls’s positions on these issues in much greater detail below, in section [I]) Both of these positions arise from Rawls’s account of public justification and his deep desire to articulate just how citizens with different and irreconcilable moral and religious commitments should govern themselves in a way that achieves justice and stability. He wishes, in other words, to offer an ideal normative description of how democratic citizens with religious convictions as different as Moses Seixas’s and Heber C. Kimball’s can enjoy their religious liberty and share a democratic form of government with their Catholic, Protestant, Muslim, irreligious, and other neighbors.

Ironically, given his intentions, Rawls’s work and its enormous academic, cultural, and even jurisprudential influence, is central to many scholars’ and observers’ allegations that contemporary liberalism, especially as it is articulated through the

18 The title of one of Stephen Macedo’s essays illustrates the intensity of this controversy; see his “Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?” Ethics 105:3 (April 1995), 468-496.
concern for public justification, is inimical to meaningful religious liberty. Nicholas Wolterstorff (a well-known Christian theologian and philosopher) has, for example, argued that Rawls’s expectations of democratic citizens “infringe, inequitably, on the free exercise of religion,” while Andrew Murphy has argued that Rawls’s position itself represents a step back from the developing, three-hundred year tradition of liberty of conscience and religious freedom. And Jeffrey Stout sees Rawls’s work as directly responsible for the recent anti-liberal, counter-cultural trends in contemporary Christian theology that thinkers like John Milbank, Alisdair MacIntyre, and Stanley Hauerwas represent.¹⁹ This does not by any means exhaust the scope of similar concerns. There is a veritable chorus of critics arguing that Rawls’s account of how democratic citizens should govern themselves unjustifiably restricts meaningful religious liberty—that religious people cannot and should not accept Rawls’s account of their civic obligations, and that his account is one particularly sophisticated manifestation of a deep-seated, secular liberal antipathy to religion. Indeed, in some circles, Rawls himself is seen as a threat to religious liberty.

The first intervention I make in this debate is to assess these criticisms of Rawls. Some of them, I will argue, are based on excessively harsh and ultimately unjustifiable interpretations of Rawls’s positions. This is unfortunate, since many of these views are

then picked up and repeated uncritically by critics of liberalism (and sometimes even its friends), exercising a deeply distorting influence on discussion of liberal theory and politics in many quarters. That said, I also believe that some of these criticisms point out thorny problems in Rawls’s work. I thus agree in part and disagree in part with Rawls’s religious critics. Rawls’s expectations of citizens do infringe without sufficient justification on the exercise of some citizens’ religions, but, as I argue below, that infringement is neither as deep nor as insolvable as Wolterstorff and the many that make similar criticisms claim. It certainly does not offer grounds to reject the norm of public justification or the idea of a political liberalism. Nor is Rawls’s work a step backward in the developing tradition of religious liberty, nor need it alienate religious citizens in the manner Stout fears. In short, I will argue over the course of this dissertation that Rawls’s turn towards a “political” articulation of liberalism (in his specific sense) and towards public justification actually offers the contemporary articulation of democratic citizenship that best respects citizens’ religious liberties and best provides for their religious integrity. Thus a political liberalism is essential to protecting the meaningful religious liberty with which Rawls’s religious critics are so concerned, and with which anyone working on the ethics of citizenship should be concerned. Rawls set off on the right path, even if he took a few wrong turns. Rawls’s own particular articulation of political liberalism—his political liberalism—does need to be revised in order to avoid unnecessarily conflicting with some citizens’ religious integrity. But these revisions are neither as broad nor as fundamental as Rawls’s critics have claimed. (Indeed, many of
their proposals would, perversely, undermine precisely the meaningful sort of religious liberty they intend them to protect.)

I am, however, getting ahead of myself. Before I can defend political liberalism from its religious critics or revise it to address their justified concerns, I need to explain just what a “political liberalism” is and just what Rawls’s conception of it demands of democratic citizens (Section [I] below). (Getting clear on these specifics does much to allay some of the religious critics’ concerns, as I will elaborate in Chapter Two.) Then (Section [II] below), I explain why so many different readers of Rawls have been concerned that his form of political liberalism does wrong by religious people, surveying the various arguments they use to draw this conclusion. After accomplishing the above in this first chapter, I will be prepared to evaluate the religious critics’ criticisms (Chapter Two) and defend and revise political liberalism to deal with those of them that are trenchant and justified (Chapter Three). These two chapters address the first part of the question of religious integrity: the justified obligations people bear as citizens who share constitutional democratic social and political institutions with each other. With my revisions of liberal-democratic civic obligations in place, I then move on to discuss religious obligations. Rather than evaluating the prohibitively wide range of differing approaches to religious ethics (this would be an enormous task, even if I limited my analysis to one particular religious tradition), I instead analyze the normative structure and presuppositions of one particularly illustrative “religious practice of political engagement:” prophetic witnessing (Chapter Four). Prophetic witnessing, I argue, is fully compatible with my political liberal account of the norms of liberal-democratic
citizenship. That such a religious practice can permissibly be a part of religious citizens’ political activity in a constitutional democracy shows how much more hospitable political liberalism (properly understood) is to religious arguments and perspectives than its critics believe and than is commonly understood.

I: Political Liberalism

I begin by offering a concise definition of political liberalism and the duties it demands of democratic citizens. This definition is my own, but it arises directly from my reading of Rawls’s work. I focus on Rawls instead of the other various advocates of public justification like Robert Audi or Gerald Gaus largely because Rawls’s work is the best known and because it is to him that most of the religious critics respond. Indeed, in some discussions, for good or ill, contemporary liberalism is often equated with Rawls’s work. That said, as I proceed I will note similarities and dissimilarities between Rawls’s particular positions and those of other contemporary political philosophers who articulate conceptions of public justification and political liberalism. I will not, however, address all of these more minor disagreements, as they are intra-family disputes. Some of these disagreements do substantially impact the compatibility of various religious and citizenship obligations; I will address those questions in detail later, in Chapter Three, after the issues at hand are clearer.

A political liberalism, then, is defined as follows: A conception of justice, limited to the political realm, by which democratic citizens divided by reasonable disagreements can govern themselves legitimately. The preceding is political liberalism’s aim: legitimate self-government in conditions of pluralism. Political liberalism implies a
normative ideal of democratic citizenship such that good democratic citizens appeal to and work within such a conception of justice when they act as citizens. This ideal is the means to political liberalism’s aim.

The above is relatively succinct, but, of course, it needs considerable explication. I will begin with political liberalism’s aim: to allow “democratic citizens divided by reasonable disagreements” to “govern themselves legitimately.” There are three relevant terms to explicate here: first, “democratic citizens;” second, “reasonable disagreements;” and third, “legitimacy.” I will explain Rawls’s understanding of these terms in that order, though, the concepts involved in each of the three terms are quite closely related, as will become clear as I proceed.

Rawls uses the term “democratic citizens” to describe the people who make up the constitutional regime he describes in Political Liberalism.20 “Democratic citizens” is apt because Rawls explicitly wishes to conceive of persons as they interact with each other and their governing institutions in public. Indeed, Rawls sees himself as writing as one such citizen, bringing philosophical analysis to bear on the proper interpretation of citizens’ shared constitutional and political principles.21 Democratic citizens are conceived as free and equal. “Free” denotes several related ideas: First, citizens are free

20 All citations to Political Liberalism that follow will be done in text as follows: (PL pg. number). These citations refer to the paperback edition of PL, with a New Introduction and the “Reply to Habermas,” (New York: Columbia University Press, 1996). I will also cite Rawls’s “The Idea of Public Reason Revisited” in the text, as it appears in The Law of Peoples: with “The Idea of Public Reason Revisited” (Cambridge, MA: Harvard University Press, 1999), in the following format: (LP pg. number). In subsequent chapters, citations to these works follow the same format, but appear in the footnotes rather than the text.

21 For helpful explication of this aim of Rawls’s, see Anthony Simon Laden, “The House that Jack Built: Thirty Years of Reading Rawls,” Ethics 113 (January 2003), 379ff.
because they can form and revise their “conception of the good”—their view of the overall aim and purpose of their life—freely and without giving up their identity as citizens (PL 30-31). Moses Seixas is thus free, in a political liberal regime, to be both a Jew and a citizen. And if he chooses to leave his religious community and become an atheist, Christian, or something else, that too does not affect his status as a citizen.

Second, citizens are free in that “they regard themselves as self-authenticating sources of valid claims” (PL 32). They themselves, as citizens and in virtue of their moral capacity to choose and develop a plan of life, are owed respect from other citizens and from their political institutions. They make claims on others that demand to be respected. Third, citizens are free in that they see themselves as responsible for the choices they make concerning their aims, goals, and projects (PL 33-34). “Equal” here denotes simply that all citizens are considered free in the above respects; there is no class of citizens that does not enjoy the same set of freedoms.

For Rawls, that citizens are considered free and equal also denotes that all citizens have a “sense of justice” (PL 19), one of two important psychological/sociological assumptions Rawls builds into his conception of democratic citizens. Claiming that citizens have such a sense is to claim that all citizens have the capacity to live in morally reciprocal relationships—that they can propose and abide by “fair terms of cooperation.” This means that citizens follow the terms they propose even when those terms violate their specific interests, given that their fellows will do the same—Rawls’s particular specification of a morally reciprocal relationship. Here, Rawls uses one of the most vague, but also most important, terms of his late work: when citizens propose and abide
by fair terms of cooperation, Rawls calls them “reasonable” (PL xlv). Claiming that all citizens have a sense of justice is, for Rawls, to claim also that all citizens can be reasonable—they can treat each other in a morally reciprocal way as mutually free and equal in the above respects. Citizens do not always do so, but all citizens have the capacity to do so, and thus citizens are justified in mutually expecting each other to do so.

The second essential psychological/sociological assumption Rawls makes is that free and equal, reasonable democratic citizens so characterized, who live in an open society with the standard set of liberal freedoms, will inevitably disagree about the ultimate aim and purpose of their lives, the deep moral and other commitments that give it shape, and even the principles of justice by which they should order their collective life (though Rawls does believe, for reasons I will explain shortly, that reasonable citizens will disagree less about the principles of justice than they will about their aims and purposes or other moral commitments). This is because of the “burdens of judgment,” the various reasons why a complete, honest, and impartial consideration of moral and political issues often does not lead to agreement, even among citizens that pursue their inquiries in good faith. For Rawls, these reasons include the complexity of the evidence involved, disagreements over the best weighing of relevant considerations, the vagueness of moral and political concepts, the effects of differing life experiences, the problem of competing normative considerations, and the possibility of tragic conflicts in our moral and political values (PL 56-57). Because of the burdens of judgment, Rawls labels citizens’ disagreements about the ultimate aims and purposes of their lives, and, to a degree, about the proper principles of justice, “reasonable.” They are, in other words,
disagreements that free and equal citizens who seek to propose and abide by fair terms of social cooperation with other such citizens should expect. Thus, the terms of cooperation citizens propose and abide by must account for these reasonable disagreements—for the “fact of reasonable pluralism”—the unavoidable reality that free and equal democratic citizens will reasonably hold a plurality of differing and incompatible moral, political, and religious commitments.22

The two facets of reasonableness above (proposing and abiding by fair terms of cooperation and accounting for reasonable disagreements) lead directly to Rawls’s conception of political legitimacy, the “liberal principle of legitimacy.” Terms of cooperation that are both fair and sensitive to reasonable disagreements, Rawls argues, are terms that all citizens, understood as free and equal, “may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason” (PL 137). Reasonable citizens are thus those citizens who propose terms of cooperation that other citizens who may disagree drastically with the proposing citizens’ own ideas of the purpose of life, with their deep moral commitments, and even with the specific

principles of justice they affirm can be expected to endorse. For Rawls, treating those with whom one disagrees fairly and as free and equal citizens requires articulating a reason in support of the terms of cooperation one proposes that one “reasonably expects” the other will be able to endorse. Another formulation of the same requirement is to say that the terms of cooperation reasonable citizens propose must be consistent with other reasonable, free and equal citizens affirming them. In summary, then, the aim of a political liberalism is to articulate just such a conception of justice—one that reasonable free and equal democratic citizens divided by reasonable disagreements can endorse and use to govern themselves.

Rawls importantly focuses on the question of legitimacy in Political Liberalism rather than on the question of justice exclusively, as he did in A Theory of Justice. This by itself is an acknowledgement that reasonable disagreements reach all the way from conceptions of the good to principles of justice, because Rawls believes that legitimacy, as a concept, is weaker than the concept of justice. For Rawls, legitimacy specifies the minimal conditions that must be satisfied for citizens to have an obligation to accept the authority of their constitution and the laws enacted in accordance with it. It enables a

23 Just how this concept of “reasonable endorsability” is cashed out has considerable implications, then, for the class of reasons that can justify legitimate policies—the types of arguments that make coercion legitimate. I will explain Rawls’s particular conception of reasonable endorsability below.

24 For a defense of this specification of justifying reasons and a criticism of the alternate formulation, “mutually acceptable,” see James Bohman and Henry Richardson, “Liberalism, Deliberative Democracy, and ‘Reasons that All Can Accept,’ Journal of Political Philosophy 17:3 (2009), 253-274.

25 This is an alternative formulation of Rawls’s, see PL 218. James W. Boettcher nicely expounds it in “Respect, Recognition, and Public Reason,” Social Theory and Practice 33:2 (April 2007), 231, as does Paul Weithman, Religion and the Obligations of Citizenship (New York: Cambridge University Press, 2002), 200-206.
constitutional democratic regime to endure stably. It is thus a “weaker idea than justice”
(PL 428), and citizens who live in a polity legitimate according to Rawls’s liberal
principle may quite consistently hold that certain aspects of their polity, perhaps many,
are unjust. They may even disagree with the specific principles of justice on which the
polity’s institutions are founded, or with the most prevalent ways in which those
principles are articulated. Nevertheless, because those principles are consistent with their
status as free and equal citizens—because they can “reasonably be expected to endorse”
them—they still have reasons to accept the polity and its institutions as legitimate and to
obey the laws they generate. Indeed, in a polity where citizens are divided by reasonable
disagreements about justice, this will be the typical situation for many, even for most,
citizens. Thus, in Political Liberalism, Rawls speaks of justice as fairness as being one in
a “family” of reasonable conceptions of justice; it is a conception of justice, and not the
only one, that citizens may use to govern themselves legitimately (LP 140-144, PL 223,
227, 243).27

The above, then, is the aim of political liberalism—to allow democratic citizens
divided by reasonable disagreements to govern themselves legitimately, or, more
specifically, to elucidate the characteristics of a conception of justice that will allow citizens to do so. (Rawls also wishes to show that justice as fairness qualifies as one such conception). What remains to be clarified are the means by which political liberalism accomplishes this aim and the specific demands those means make of democratic citizens.

Rawls’s political liberalism accomplishes its aim of describing how democratic citizens govern themselves legitimately by specifying the characteristics of acceptable conceptions of justice citizens may refer to when acting as citizens. Acceptable conceptions of justice have two specific constraints: they must be “reasonable” and “political.” They also have two specific components: their principles of justice and their guidelines for “inquiry.”

First, conceptions of justice must be “reasonable.” Reasonable conceptions of justice have roughly the same characteristics as reasonable citizens; they propose principles of cooperation that are fair, and they demand that citizens adhere to such principles so long as their fellows do as well. On this score, then, any conception of justice that, say, differentiates citizens into specific classes and assigns rights and privileges based on those classes is excluded as unreasonable. Conceptions that treat citizens as politically free and equal, as specified above or in some similar way, are acceptable. Second, a conception of justice must also accept and account for the reasonable pluralism resulting from the burdens of judgment. It must not, then, authorize the use of coercive political power to compel those who do not accept its particular principles or values into accepting them. It must endorse and protect citizens’ freedom of
thought and liberty of conscience (PL xlix, 54, 61). Reasonable conceptions of justice, on Rawls’s account, endorse some version of Rawls’s three liberal principles of justice, principles that specify citizens’ basic rights, liberties, and opportunities, that assign special priority to those rights, liberties, and opportunities, and that provide measures that ensure all citizens have adequate means to enjoy their rights, liberties, and opportunities (PL 223). Any conception that demands violations of citizens’ political, civil, or religious liberties as a matter of justice (or, indeed, for any other reason), does not qualify as reasonable.

Second, a reasonable conception of justice must be “political,” or, what Rawls calls “freestanding.” These terms outline two different conditions. First, an acceptable conception of justice pertains only to, first, the governing institutions of a society as specified by its constitution and second, the “basic structure” of that society, its economic and other more-or-less inescapable institutions of social cooperation (PL 156, see full discussion 154ff.). Second, an acceptable conception of justice must be able to be “presented independently of comprehensive doctrines of any kind” (LP 143). A political conception of justice may be grounded by, grow out of, or be otherwise related to a more “comprehensive” conception, and this is likely to be the case (PL 168-170), but these comprehensive conceptions cannot be necessary in order to make the political

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28 In Rawls’s own explication, he adds a third condition: political conceptions “can be worked out from fundamental ideas seen as implicit in the public political culture of a constitutional regime” (LP 143). The way that Rawls explicated those ideas, however, is that they demand conceiving of citizens as free and equal and society as a fair system of cooperation. Since I have already covered these ideas above, this third condition is superfluous to my explanation.
conception coherent or to justify it. Rawls does not mean here that a political conception of justice must be without any grounding in a comprehensive doctrine. Rather, he means that a political conception must be coherently presentable and justifiable without relying on such grounds. Another way to state this same requirement: For a conception to be political, one must be able to consistently affirm it without adhering to any one specific comprehensive doctrine, indeed, without adhering to any comprehensive doctrine at all. Political conceptions of justice must be compatible with all such views (PL xlvii-xlviii).

Rawls believes that restricting acceptable conceptions of justice to those that are political in this way preserves their reasonable endorsability to a wide variety of people who disagree about their comprehensive commitments. Thus, the condition that conceptions of justice must be “political” is partly an elaboration of how to make them “reasonable.”

In *Political Liberalism*, Rawls casts justice as fairness as one such political conception and hopes that by so doing it will appeal to citizens who are not “comprehensive” Kantians (or comprehensive Rawlsians). Thus Rawls hopes justice as fairness can appeal to those who may have religious or philosophical commitments that would conflict with a conception of justice grounded in a fully Kantian conception of autonomy, for example. Rawls also believes that other ethical doctrines can be made political in this same way, without losing their own coherence or justification. He points to Habermas’s discourse ethics and Catholic social teaching as examples (LP 142), though there is no reason why there could not be others: a utilitarian political conception of justice, for example, or one associated with Protestant political thought or with Judaism.29

29 Not all contemporary liberals accept Rawls’s distinction between political and comprehensive doctrines.
Consider the following example as a way of explaining what Rawls means by his requirement that a conception of justice is “political”: Suppose that Moses Seixas, the warden of Newport’s Jewish congregation discussed above, lives in a polity whose institutions reflect and are justified by a reasonable political conception of justice, as Rawls describes it. Suppose also that Seixas himself, and the variety of Judaism he affirms, are reasonable in Rawls’s sense. If both of these conditions hold, then Seixas will be able to consistently endorse, or at least to reconcile, his Jewish religious beliefs and principles and the reasonable political conception(s) of justice that justifies his polity. Thus, even at the level of principle, and after due consideration, in a Rawlsian, politically liberal polity, Seixas will not have to choose between the political conception(s) of justice associated with his citizenship and his religious beliefs. He will be able to conscientiously and consistently affirm both. Rawls’s desire to make conceptions of justice political, then, ensures that Seixas can affirm such a conception while maintaining his own religious integrity, provided that Seixas and his religion are reasonable.

Furthermore, a properly political conception of justice will be reconcilable with all such reasonable comprehensive doctrines, whether they are Seixas’s Judaism or something else. This is what Rawls means when he says that he has sought to “apply the principle

Gerald Gaus, for example argues that the distinction is ultimately unsustainable; no one can articulate a reasonable and non-controversial definition of the political. However, Gaus also feels that the idea of public justification can be coherent without such a distinction. See his argument in “Rawls’s Political Liberalism: Public Reason as the Domain of the Political” in Contemporary Theories of Liberalism: Public Reason as a Post-Enlightenment Project (Thousand Oaks, CA: SAGE Publications, 2003), 177-204.
of toleration to philosophy itself,” and this grounds his claim to “complete and extend the movement of thought that began three centuries ago with the gradual acceptance of the principle of toleration” (PL 9-10, 154). Rawls believes himself to have shown how the underlying moral and political principles of a constitutional democratic polity can be articulated such that they are compatible in principle with all reasonable moral, philosophic, and religious commitments. As a result, a constitutional democracy justified by a properly political, reasonable conception of justice is one in which all reasonable adherents of reasonable moral, philosophic, and religious views can live their various, respective lives of moral, philosophic, or religious integrity.

So, acceptable conceptions of justice must be reasonable and political, as explained above. For Rawls, these conceptions of justice (indeed, any conception of justice) have two different components: they specify the substantive principles of justice by which political, social, and economic institutions are to be regulated and they specify the guidelines for public “inquiry” by which citizens are to determine how to apply the principles of justice and which laws and policies best further or comport with them. As discussed above, reasonable political conceptions of justice will demand equal basic rights, liberties, and opportunities for all citizens, as specified by Rawls’s liberal principles of justice. There will be, Rawls believes, considerably more disagreement over the proper principles by which to regulate social and economic institutions and opportunities—the terrain covered by Rawls’s second principle of justice (PL 228-230). Nevertheless, these are the areas to which the principles of a political conception of justice apply.
The second component of a political conception of justice is its guidelines for public “inquiry,” or its account of “public reason.” For Rawls, a conception of justice must specify the guidelines for public inquiry by which citizens are to collectively determine how the principles of justice they endorse apply in specific cases and thus specify the norms by which democratic citizens’ are to make collective decisions. In a reasonable political conception, these guidelines serve to make collective decision-making “free and public” and enable “reasoned public discussion of political questions” (PL 224). The necessity of free and public inquiry arises from citizens’ status as free and equal. Just like the principles of justice themselves, then, guidelines for public inquiry must be fair and account for the burdens of judgment—they too must be reasonable. Thus guidelines that do not enable free and public discussion of political questions are ruled out. So-called “government house utilitarianism,” where expert technocrats decide how to apply the maxim the greatest good for the greatest number in each specific circumstance and implement their decisions, is thus ruled out, as are other esoteric decision-making guidelines.30 Guidelines that rely on comprehensive views (say, the authority of a religious hierarchy or tradition) to specify the implementation of the principles of justice are likewise unacceptable. Rawls’s own conception of public reason specifies that, in applying the principles of justice, citizens may appeal to “presently

accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial” (PL 224). This, Rawls believes, will enable free, public, and reasoned discussions of political questions in a way that treats all citizens fairly.

(Rawls also holds that justice as fairness’s own principles of justice and mode of inquiry have the same ground—the original position. Rawls believes that the representatives in the original position would choose the boundaries and methods of public reasoning Rawls specifies in addition to the two principles of justice. He further claims that “many other liberal views” share this feature: their principles of justice and modes of inquiry have the “same basis” as well (PL 225). Rawls does not, however, argue that this has to be the case for all reasonable political conceptions of justice. It is possible that there is a reasonable political conception of justice for which the principles of justice and the mode of inquiry have a different basis, though obviously these two components could not be in conflict without making that conception incoherent.)

As per the definition of political liberalism above, Rawls’s aim is to specify how democratic citizens should govern themselves legitimately. The final aspect of political liberalism to explicate, then, is its implications for the conduct of democratic citizens—its ethics of citizenship. Rawls argues that, when citizens propose some coercive use of state power (that, he adds, impacts constitutional essentials and matters of basic justice [PL 227-230]) those citizens should be prepared to show how their preferred, reasonable political conception of justice, with its principles and public mode of inquiry, justifies that use of state power. They thus have a responsibility to show how their political
preferences are publicly justifiable. This is Rawls’s “duty of civility” (PL 10, 215, 217, 252; LP 140). It implies that other plausible justifications of citizens’ preferred laws or policies, particularly those arising from a comprehensive view unfiltered through some reasonable political conception of justice, have at best a provisional role in citizens’ public political discussions. Those discussions, Rawls argues, should not primarily be about citizens’ comprehensive doctrines and the policies those doctrines may or may not demand. As a result, religious reasoning and arguments, as well as comprehensive secular commitments, need to be supported by arguments arising from reasonable political conceptions. This does not mean that arguments from comprehensive doctrines may never be mentioned in public political discussions; it does mean, though, that citizens have violated the duty of civility if those are the only justifications provided for their proposals—this is what Rawls calls “the proviso” (LP 152-156).31 Furthermore, citizens should not support proposals that lack a justification stemming from a reasonable political conception of justice. In Rawls’s view, such policies are themselves illegitimate, and reasonable citizens should not support them (PL lv, 240-241).

Finally, Rawls specifies the extent to which the duty of civility applies. As mentioned above, that duty only applies to proposed uses of state power that pertain to constitutional essentials and matters of basic justice. This suggests that there are some coercive uses of state power, whatever they may be, that do not pertain to those areas.

31 The proviso was not Rawls’s original view; Rawls first endorsed a much more restrictive understanding of the proper role of arguments from comprehensive commitments in public political discussions, which then evolved to the view expressed above.
Specifying those uses, however, is a contentious proposition I will not attempt here, and so I will operate under the assumption that a large enough proportion of laws do affect (or, more minimally, could reasonably be thought to affect) constitutional essentials and matters of basic justice that most citizens who engage in public political discussions deal with them and thereby will be expected to adhere to the duty of civility. Rawls is also careful to argue that the duty of civility is a moral, not a legal requirement—it is designed to influence citizen’s public discussions through *de facto* cultural norms, not through *de jure* regulations (LP 136). Further, the duty of civility does not apply to discussions of proposed uses of state power in the “background culture” of a liberal democracy, within churches, universities, and other associations of civil society, for example. It is only required for political discussion in the public sphere—though the precise boundary between these two areas is not clear. Finally, Rawls believes that the duty of civility applies to citizens when they act in their public capacity as citizens. This directly impacts the behavior of members of the legislative and executive branches when they propose policies, politicians running for office, their campaign managers, political parties, and public pronouncements, and especially to justices on the supreme court, who Rawls sees as exemplifying the practice of public reasoning described above (LP 132-136; PL 231-

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32 For example, Abraham Heschel attempted to persuade President Kennedy that Kennedy ought to support an expensive program to aid African Americans by claiming that Americans “forfeit the right to worship God as long as we continue to humiliate Negroes.” Martha Nussbaum feels that since expensive minority aid programs are not “constitutional essentials,” Heschel did not need to follow the duty of civility and as a result his religious appeal was appropriate (“Rawls’s *Political Liberalism*: A Reassessment,” *Ratio Juris* 24:1 [March 2011], 16). However, if one considers Rawls’s claim that the duty of civility does apply to matters of “basic justice,” then it seems much more difficult to exonerate Heschel’s argument, for surely aid programs to historically oppressed minority groups qualify as matters of basic justice.
It also impacts normal citizens, when they vote, for example, or themselves publicly propose coercive uses of state power impacting constitutional essentials and matters of basic justice. In these cases, they should supply public reasons for their actions and hold their representatives accountable to the same standard (LP 135-136).

The principle behind the scope of the duty of civility is the same as that driving political liberalism itself: enabling democratic citizens divided by reasonable disagreements to govern themselves legitimately. And Rawls believes that citizens’ adherence to the duty of civility is necessary to achieving that aim. If, he suggests, citizens were to propose a coercive use of state power that could not be publicly supported by one of the reasonable political conceptions of justice, then citizens would be coerced on the basis of a rationale that they could not reasonably endorse; they would thus be treated disrespectfully, not as free and equal democratic citizens but as subjects, governed by another’s will and pleasure (PL lv). If, however, citizens do follow the duty of civility, then a given states’ constitution and basic structure, along with the most important coercive uses of its power, would be justifiable to all citizens on a basis each could be expected to endorse (LP 137). Such a state would then be publicly justified and its use of coercion legitimate.

II: The Religious Response: Against the Duty of Civility

As I mentioned in the introduction, the allegation that Rawls’s expectations of democratic citizens I just explicated unfairly restrict religious liberty and should therefore be rejected is one of the most common and persistent criticisms of Rawls’s later work—and of contemporary liberal political philosophy’s ideal of public justification. There is,
however, great variety in the reasons why different critics of Rawls reach this conclusion. These different reasons can be divided into three different objections. Some critics (II.1) argue that Rawls’s requirements conflict with the religious obligations of some reasonable citizens—they prevent them from living lives of religious integrity—and should be rejected as a result. I call this position the “integrity objection” to political liberalism. Others argue (II.2) that Rawls’s requirements prevent citizens from acting on the demands of natural law in politics and should be rejected on those grounds. This is the “natural law objection.” Finally, a last set of critics (II.3) argue that Rawls’s requirements are not necessary for legitimate democratic self-government. As a result, his requirements unreasonably exclude the contributions of some religious and other citizens to democratic public life. Those requirements should therefore be rejected. This is the “unreasonable exclusion objection.”

Below, I lay out, in broad terms, the analysis that leads each of these sets of critics to their conclusions, noting the similarities, differences, and logical relationships between each of their views. I will not, however, consider the merit or persuasiveness of their criticisms here (I do this in Chapter Two for the integrity and natural law objections, and in Chapter Three for the unreasonable exclusion objection). Many of these critics also propose alternative accounts of the duties of democratic citizenship; I do not address these views here unless they are necessary to explain the grounds of the relevant criticism. (I will evaluate these alternatives in Chapter Three.) Instead, as an introduction to the issues at hand, I simply present their various criticisms and their reasons for them, as clearly and objectively as possible. This presentation lays the
necessary groundwork for assessing these objections, which itself must be done before wading into the various alternative ethics of democratic citizenship they propose.

II.1: The Integrity Objection

The first objection to political liberalism, which I will call the “integrity” objection, is the most prevalent of the three objections; critics have articulated several versions of it. It resembles broader religious objections to liberalism in general (not political liberalism specifically) that argue that it requires an unjustifiable and detrimental privatization of religion, or that it is oppressively secular. The integrity objection holds that requiring citizens to provide reasons drawn from a reasonable political conception of justice in support of the laws and policies they prefer is to require citizens to violate their religious obligations. Proponents of the integrity objection vary in the arguments they make to demonstrate this sort of conflict, but they all agree that there is some conflict between Rawls’s requirements and adherence to religion, and that this conflict is a reason to reject Rawls’s requirements. Citizens, they argue, bear no obligation to follow them.

Michael Perry articulated one of the earliest versions of the conscientious objection, and even though he made this particular objection in response to Rawls’s earlier work, A Theory of Justice, it remains quite relevant to Political Liberalism. Perry argues that, because Rawls’s argument for his two principles of justice imagines citizens’ representatives reasoning as if they did not know their religious commitments (their

33 See, for example, Paul Weithman’s argument addressing some of these concerns, “Rawlsian Liberalism and the Privatization of Religion: Three Theological Objections Considered,” Journal of Religious Ethics 22:1 (Spring 1994), 3-26.
“conceptions of the good”), or those of their constituents, his analysis, as Michael Sandel argued, relies implicitly on a controversial, liberal conception of the person such that a person’s ends are separable from their self. Perry adds to this argument the implication that Rawls’s justification of his two principles cannot be impartial to citizens who deny Rawls’s implied conception of the person. Rawls presupposes that all people can put their conceptions of the good aside when they reason about justice; they can, in Perry’s words, “bracket” them. But for Perry, this is precisely what “the partisan,” one who is deeply committed to her conception of the good, “cannot” do. Such a citizen’s moral and religious commitments, Perry argues, are constitutive of their selves; they are fundamental parts of their identities. For the partisan, “to bracket [her deepest convictions] would be to bracket—indeed, to annihilate—herself. And doing that would preclude her—the particular person she is—from engaging in moral discourse with other members of society.” Perry thus sees Rawls’s particular mode of justification as biased against citizens with deep moral and religious convictions; it does not treat them impartially.

Perry’s objection to Rawls is vague between at least two different possible interpretations. His allegation that Rawls demands that the deeply committed partisan


36 Ibid., 72.

37 Ibid., 72-73.
“annihilate” herself could suggest a capacity-based objection to Rawls’s construal of the parties in the original position. Perry may be arguing, then, that religious citizens and others with deep moral commitments are simply unable to reason hypothetically as if they did not believe the things they do, and that as a result they cannot be adequately and impartially represented in the original position. This construal of Perry’s criticism strikes deeply into Rawls’s basic assumptions about democratic citizens, since he believes, as discussed above, that all people with normal mental and psychological capabilities have the ability to engage in morally reciprocal relationships, and that such hypothetical reasoning is required to be able to do so. However, this is not a persuasive construal of Perry’s views. The type of hypothetical reasoning involved in the original position—imagining oneself as if one did not hold the moral or religious views one holds—is found throughout the history of moral philosophy and religious thought, and deeply committed religious “partisans” have engaged in it. So such partisans must be able to reason in the required way.

However, Perry likely means something else. He likely means that the partisan “cannot” bracket her deepest moral convictions because to do so would be to violate the

38 This position of Rawls’s, incidentally, is unchanged between A Theory of Justice and Political Liberalism. For discussion of people’s capacity for just relationships and the hypothetical reasoning necessary to them, see Rawls’s discussion of the “sense of justice” and its development in A Theory of Justice, Revised Edition (Cambridge, MA: Harvard University Press, 1999), 397-434.

39 Aquinas, for example, writes: “And if you are disputing with people who accept no authority, you must resort to natural reasons.” See Quodlibetal Questions, IV q. 9 a. 3c.; quoted in John Finnis, “Seegers Lecture: Public Reason, Abortion, and Cloning,” Valparaiso University Law Review 32 (Spring 1998), 363 n 4. The realization that those who do not accept any authority may accept natural reasons depends upon the ability to hypothetically imagine what would be persuasive to oneself if one did not accept any authority—including, of course, religious authority.
very principles she holds as deep and fundamental to her self-identity. She is like Martin Luther, who when he states before the Diet at Worms, “Here I stand, I can do no other,” does not mean that he is incapable of making a different choice, but that making a different choice would violate conscientiously held principles, and that he is unwilling to do so. He could not live a life of religious (in this case) integrity if he did. Rawls’s original position fails to impartially represent the partisan, then, because the representatives in the original position must reason in a way that violates the partisan’s conscientious convictions. This second interpretation is the best construal of Perry’s views. When Perry states that the partisan “cannot” bracket her deepest convictions, he means that the partisan cannot bracket those convictions in a way that is consistent with them; she cannot conscientiously bracket those convictions.

Rawls, of course, has a well-known response to the objection of Sandel’s on which Perry builds his criticism. Rawls argues that he never intended the constraints on reasoning in the original position to reflect any metaphysical claims about the relationship of selves to ends. The deliberators behind the veil of ignorance are mere “representatives,” not metaphysical selves; Rawls’s actual conception of the person is a political idea of free and equal citizens, as explained above. But this response does not entirely address the implications Perry draws from Sandel’s objection. If the partisan cannot conscientiously reason in the impartial manner the original position instantiates, then Rawls’s revisions to his theory in Political Liberalism will make things worse for the partisan, not better. Rawls, after all, now requires citizens themselves to reason publicly and to provide public justifications in terms of reasonable political conceptions
of justice for their positions. (Publicly justifying political proposals is not the same as using the original position to develop a conception of justice. But insofar as both avoid controversial moral and religious claims, Perry’s objection holds.) Thus Stephen Carter picks up Perry’s earlier objection to argue that Rawls’s (and other similar liberals’) wish to conduct public political discussions in secular or accessible terms forces citizens themselves to bracket their religious convictions in much the same way that the representatives in the original position had to do.  

This is objectionable, Carter believes, for the same reasons Perry elucidates. Rawls’s duty of civility is just as objectionable to citizens with deep religious commitments as claiming that principles chosen in the original position are fair and impartial to them is.  

Deeply committed citizens, Perry’s partisans, “cannot” follow that duty; it conflicts with their religions and should be rejected.

Nicholas Wolterstorff also develops a version of the integrity objection. Wolterstorff draws a distinction between what he calls the “Idea of liberal democracy” and the “liberal position.” The Idea of liberal democracy demands, for Wolterstorff, three things: “Equal protection under law for all people, equal freedom in law for all


41 Andrew Murphy sounds a similar note, arguing that because Rawls’s requirements push religion out of public discussions, he is not actually a part of the liberty of conscience tradition, which, in Murphy’s view, carved out space for religion’s public expression. See his Conscience and Community, especially 263-268.

42 Perry himself does not adapt his earlier criticism of the original position to Rawls’s later work in Political Liberalism, or, at least, he no longer does; he himself now defends a version of the ideal of public justification. See his The Political Morality of Liberal Democracy (New York: Cambridge University Press, 2010).
citizens, and *neutrality* on the part of the state with respect to the diversity of religious and comprehensive perspectives.*43* The liberal position, on the other hand, is one set, or family, of many possible answers to the question of “on what basis” citizens of liberal democracies should make political decisions. Any individual or set of such answers, Wolterstorff adds, may be more or less compatible with the Idea of liberal democracy itself.*44* In Rawls’s language, Wolterstorff is distinguishing between the principles of justice any liberal conception endorses and the guidelines for inquiry it argues should be used when applying those principles. Guidelines for inquiry, Wolterstorff argues, must themselves accord with liberal principles of justice.

Wolterstorff argues that all liberal positions (i.e. liberal guidelines for collective decision-making), both historically and today, are united by the claim that citizens should not make their political decisions on the basis of their religions. Instead, they should use “some source independent of” the various religious perspectives in their society.*45* If that independent source happens to confirm some religious views, then those views may be used as justifications. (Wolterstorff’s example is the position, held by some Enlightenment thinkers, that some version of Christianity qualifies as the rational religion.) It is the source that is primary, however, not the religion. Wolterstorff believes that all such liberal positions (guidelines for inquiry), their various differences

*43* See Robert Audi and Nicholas Wolterstorff, *Religion in the Public Square*, 70.

*44* Ibid., 72-74.

*45* Ibid., 73.
notwithstanding, are indefensible for two different reasons: first, the sort of independent source they demand cannot be found, and second, requiring citizens to reason from such an independent source is unfair—it contradicts the Idea of liberal democracy (liberal principles of justice).

John Rawls’s version of the liberal position fails for the same two reasons. First, the inadequacy of the source itself: public reason fails as an independent source, because it cannot adequately resolve the controversial issues that are the subject of citizens’ fundamental political disputes. Public reason cannot, for example, specify the proper criterion by which citizens should distribute scarce resources, nor can it determine contentious issues of standing, like whether human fetuses should be accorded the rights of persons. Indeed, far from resolving these sorts of disputes, Wolterstorff believes that the proper working of public reason will rather serve to “lay bare” these and other deep disagreements.46

Second, Wolterstorff argues that it is not fair to demand that all citizens provide public justifications for their political positions. This is also for two reasons. First, asking all citizens to provide such justifications inequitably infringes on the free exercise of some citizens’ religions. “It belongs,” Wolterstorff writes, “to the religious convictions of a good many religious people in our society that they ought to base their decisions concerning fundamental issues of justice on their religious convictions.” These religious people see themselves as bound to “strive for wholeness, integrity, integration in

46 Ibid., 103-104.
their lives,” to allow the teachings of their religion to shape their whole lives, including the political aspects of those lives. As a result, demanding that these citizens base their political decisions on anything other than their religions is demanding that they violate their religions. This is to unfairly restrict these citizens’ religious liberty. Second, Wolterstorff worries that because religious arguments are much easier to identify than arguments that come from comprehensive non-religious doctrines, in practice religious citizens will bear an unfair portion of the burden of adhering to Rawls’s requirements. Wolterstorff’s ultimate conclusion is that, to quote the title of one his articles, “We should reject what liberalism tells us about speaking and acting in public for religious reasons.”

Three key premises unite these two different versions of the integrity objection. The first is an interpretive claim about Rawls’s expectations of democratic citizens: to demand that citizens be ready to supply a justification from a reasonable political conception of justice for their preferred political positions is to demand that individual citizens keep their religious convictions from informing or influencing their political views. The second is an empirical claim about citizens’ religious and other comprehensive commitments: some citizens’ religions demand that citizens follow their religious convictions in politics. (I will call citizens who have religious beliefs of this

47 Ibid., 105. Author’s emphasis.
sort “integralists”, following Wolterstorff.) The third premise follows from the first two: integralist citizens cannot conscientiously follow Rawls’s requirements, as Perry and Wolterstorff understand them; they conflict with their religious obligations.

Perry and Wolterstorff conclude that Rawls’s requirements should be rejected as a result. Perry’s objection, as Carter applies it to the question of public reason, suggests that a state where citizens determine policies through public reasoning cannot treat integralist citizens impartially, since integralists will not be adequately represented in public deliberations. Wolterstorff is more vague on this point; he claims that Rawls’s requirements violate his Idea of liberal democracy, just like all versions of the liberal position do. He specifically calls Rawls’s view “not equitable” and claims that it involves “a kind of unfairness,”49 but he never specifies precisely which of the three different aspects of his Idea of liberal democracy—equal protection, equal freedom, and neutrality—he sees it violating.

Finally, Christopher Eberle develops the most sophisticated version of the integrity objection. Eberle considerably clarifies the grounds of the integrity objection’s claim that Rawls’s requirements are unjustifiable, and offers a more complete account both of Rawls’s requirements and of why religious citizens object to them.

Eberle does not see Rawls and other liberals concerned with public justification (Eberle calls this group “justificatory liberals”) as demanding that citizens separate their religious beliefs from their political views, nor does he believe that Rawls demands that

49 Ibid., 104-105.
citizens “privatize” their religions.\textsuperscript{50} Indeed, Eberle interprets political liberals as specifically allowing citizens to support policies on the basis of their religions, \textit{provided that} they can also supply other public or accessible reasons that justify the same policies. (In Rawls’s language, supporting a policy because a comprehensive doctrine justifies it is acceptable so long as a reasonable political conception of justice justifies it as well.) It is this “provided that” condition that Eberle finds objectionable. It carries with it the implication that if citizens do not have the proper sort of public justification for their favored policy, they should not support it, \textit{even if their religion itself justifies the policy.} The “provided that” condition, then, implies a demand for “religious restraint:” citizens are to restrain themselves from supporting policies on the basis of their religious convictions \textit{alone}.\textsuperscript{51}

For Eberle, this demand for religious restraint offends the consciences of religious citizens; it prevents them from being able to live lives of religious integrity. Indeed, Eberle claims that all such religious restraint requirements are “gratuitously burdensome” to religious citizens, because they demand that citizens be willing to “disobey God.”\textsuperscript{52} Eberle argues that “a common sort of theism” views believers as having “totalizing” and “overriding” “obligations” to God. By “obligations,” Eberle means that believers do not see themselves as able to choose whether or not to obey God, “they are subject

\textsuperscript{50} \textit{See} Christopher J. Eberle, \textit{Religious Convictions in Liberal Politics} (New York: Cambridge University Press, 2002), 76-78.

\textsuperscript{51} \textit{See} Eberle’s discussions \textit{ibid.}, 8-13, 68-76.

\textsuperscript{52} \textit{Ibid.}, 322.
irrespective of their feelings, desires, or thoughts.” These obligations are “overriding” in the sense that they must take precedence over all competing obligations, regardless of their source, whether they are “to race, family, state, [or] ethnic group.” And they are “totalizing” because, as Wolterstorff argued above, they apply to all areas of life, including politics. Theists who see themselves as having overriding and totalizing obligations to God, therefore, cannot in good conscience follow citizenship obligations that demand religious restraint.

So Eberle’s objection runs as follows: First, a new interpretive claim: because Rawls does not allow citizens to support policies on the basis of their religious convictions alone, he demands “religious restraint” of citizens. Second, a slightly revised empirical claim about citizens’ religious commitments: some citizens commonly hold those commitments to be overriding, totalizing obligations. The third premise and the conclusion remain the same as in the other versions of the integrity objection: religious citizens of the specified sort cannot in good conscience follow Rawls’s requirements, and therefore those requirements infringe on the religious liberty of such citizens.

Eberle also provides two further arguments for why infringing on the religious liberty of his theists is unjustifiable, two further arguments for rejecting Rawls’s requirements. The first argument returns to the original position and the second to the idea of reasonableness. In the original position, Eberle notes, the parties must choose principles by which they can abide, whether they be principles of justice or legitimacy, as

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53 Ibid., 144-146. The quoted selections all come from these pages.
noted above. There are, in other words, “strains of commitment” that disqualify some possible principles from being chosen in the original position. In Rawls’s argument for his two principles of justice, for example, he states that the parties “cannot enter into agreements that may have consequences they cannot accept,” and that “they will avoid those [agreements] that they can adhere to only with great difficulty.”

This is one reason why the parties do not choose a utilitarian conception of justice, because such a conception may put them in a situation of “having to acquiesce in a loss of freedom…for the sake of a greater good enjoyed by others,” which Rawls feels is just such an unacceptable consequence. Eberle believes that Rawls’s liberal principle of legitimacy has consequences that theists cannot accept, since it implies a duty of religious restraint. Therefore, since the parties in the original position may turn out to be representing theists, they will not choose the liberal principle of legitimacy, and Eberle can conclude, on Rawlsian grounds, that the requirements of citizens that stem from it are unjustifiable.

The second argument concludes that the theists with whom Eberle is concerned qualify as reasonable. An objector, then, cannot get around the implications of Eberle’s strains of commitment argument by claiming that it is unreasonable to have totalizing,  

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54 A Theory of Justice, 153.

55 Ibid., 154.

56 Eberle’s argument has one further premise: the parties in the original position will not choose the liberal principle of legitimacy, not only because theists cannot conscientiously follow it, but also because Eberle’s own ideal, the “ideal of conscientious engagement” is available to the parties and it does not have similar problems. See Religious Conviction in Liberal Politics, 148. I discuss and criticize Eberle’s ideal in Chapter Three, section (III.1).
overriding obligations to God. Eberle asserts that most theists see themselves as have totalizing, overriding obligations to God; this, he argues, “is an ecumenical claim, endorsed by theologically liberal Catholics, Orthodox Jews, politically liberal evangelicals, Eastern Orthodox Christians, and adherents to almost any other theistic perspective.”

These various theists disagree (of course) about the content of their obligations to God, but they agree, Eberle argues, about the status of those obligations. So calling theists with totalizing and overriding obligations to God unreasonable is effectively calling all religious citizens unreasonable, “just the sort of consequence Rawls wants to avoid.”

Furthermore, Eberle asserts that there is nothing inconsistent with a citizen holding herself to have a totalizing and overriding obligation to God and being willing to propose and abide by fair terms of cooperation, Rawls’s own definition of reasonableness. So a duty of religious restraint, as implied by the liberal principle of legitimacy, infringes without justification on the religious liberty of reasonable citizens and should be rejected.

Stepping back for a moment, Eberle’s work helpful reveals that the persuasiveness of his criticisms (as well as the persuasiveness of the other versions of the integrity objection) depend fundamentally on two key claims: first, the accuracy of the objector’s description of theists’ religious obligations, and second the ability for citizens who bear such obligations to also propose and abide by fair terms of cooperation—to be

\[\text{57 Ibid., 149.}\]

\[\text{58 Ibid.}\]
reasonable. These two claims are central to my evaluation of the religious objections in Chapter Two.

II.2: The Natural Law Objection

The second prominent “religious” objection to political liberalism is that it is either arbitrarily biased against or incompatible with citizens’ appealing to natural law justifications in public discussions. Rawls’s account of public reason and his duty of civility should be rejected as a result. There are two different versions of this objection; Robert George, John Finnis, and Christopher Wolfe develop one that relies on the “arbitrarily biased” aspect of the objection, while Paul Weithman’s focuses on the incompatibility aspect. I explain them in that order.

George, Wolfe, and Finnis’s objections rise out of policy disputes with Rawls and his defenders. The three strenuously denied Rawls’s early claim that no reasonable political conception of justice could deny a woman a right to an abortion in the first trimester (a claim Rawls later rescinded), and have engaged Rawls’s idea of public reason with political debates about abortion (as well as gay marriage) in mind. They

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59 I put “religious” in quotes because the natural law tradition understands itself to be describing moral truths accessible to all people through their rational capacities and more-or-less irrespective (depending on the version) of their religious commitments. It thus does not conceive of itself as a religious position. Nevertheless, the proponents of the natural law objection are themselves religious (Roman Catholic, to be specific) and they are particularly concerned with religious citizens, particularly morally conservative religious citizens.

60 For Rawls’s first discussion of abortion, see PL 243 n 32. For his rescission, see PL Iv n 31, Iv n 32 and LP 167 n 80, 168 n 82.

believe their critical updating of the natural law tradition (based on the work of Germaine Grisez and called the “new” natural law) can offer fully accessible—or reasonably endorsable—justifications of complete or nearly complete restriction of abortion and of the immorality of homosexual sex. Hence, if Rawls (or Stephen Macedo, or some other political liberal) claims that public reason demands legalizing homosexual marriage or abortion, they argue that public reason is arbitrarily biased. Reason does not come down on the side of these policy disputes political liberals think it does; such liberals are engaged in “argumentative sleight-of-hand.”

For the new natural lawyers, it is not the idea of public reason to which they object, but rather Rawls’s and Macedo’s and others’ conception of it. Public reason is, as Finnis argues, “a good phrase for summarily conveying the gist of…classical political thought;” public reason is quite simply the natural law tradition, which always claimed (on Finnis’s reading of it) that political institutions and laws should be justified by appeal to reason, and that those reasons are accessible to all, irrespective of their religious commitments. Hence Finnis claims that “Rawls’s legitimacy principle is a distorted and


63 “Abortion, Natural Law, and Public Reason,” 77.
unwarranted analogue of a genuine principle of public reason, namely, that fundamental political, constitutional, and legal questions ought to be settled according to natural right." \(^{64}\) The distortion comes, for Finnis, from Rawls’s idea of the burdens of judgment. Recall that Rawls argues that there are a variety of philosophical and sociological limits on certainty about morality and religion: the evidence is complex; people weight it differently, etc. For Rawls, these burdens suggest that there are many moral and religious questions about which people may reasonably disagree. Finnis feels Rawls has unjustifiably expanded the issues about which reasonable disagreement is permissible; he claims that the natural law tradition distinguishes more carefully between questions for which there is more than one correct answer and those for which there is only one. And for Finnis, the issues of abortion and gay marriage fall unambiguously into the latter category.

So the new natural lawyers object to Rawls’s account of public reason and his duty of civility on the grounds that there are actually far more areas of life for which public reasons—that is, the natural law tradition as George, Wolfe, and Finnis interpret it—can offer a uniquely true answer than Rawls and other political liberals are willing to admit. Hence, public reason is arbitrarily biased, and Rawls’s conception of it should be rejected.

Paul Weithman, on the other hand, has developed a different natural law objection, one that argues that citizens may reasonable reject Rawls’s duty of civility

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\(^{64}\) Ibid., 83.
because citizens’ disagreements over the nature of their collective authority are themselves reasonable. Though much less strident than the new natural lawyers’ arguments, I class Weithman’s views with theirs because the natural law is central to his objection as well. It is because, Weithman argues, citizens may reasonably disagree about whether they have the collective authority to determine the standards by which they should evaluate political legitimacy (which, Weithman claims, is Rawls’s position) or whether they are instead subject to some external moral code, like the natural law, that Weithman argues Rawls’s requirements should be rejected.

Weithman reaches this conclusion by asking two questions of Rawls: First, “How must citizens think of their authority if they accept and comply with the duty of civility and the proviso?” and second, “Is it reasonable for some citizens to reject this view of their own collective authority?”65 If the answer to the second question is “yes,” then, Weithman argues, Rawls has failed to show that citizens are obligated to follow the duty of civility. But the first question (another interpretive premise similar to those in the integrity objection) must be answered before answering the second.

To answer the first question, Weithman points out that citizens’ being able to follow the duty of civility and the proviso depend on their ability “to recognize another’s argument as respectful or disrespectful of one’s fundamental interests as a citizen.”66 This, in turn, means that citizens must understand and affirm the account of their

65 Religion and the Obligations of Citizenship, 181, 208.

66 Ibid., 207.
“fundamental interests” protected by the duty of civility and the proviso. They must affirm, Weithman argues, Rawls’s own “specification of citizenship.”

For example, Weithman asks what is necessary for him to feel disrespected when a fellow citizen proposes a law that violates his religious liberty. (The specific example Weithman uses is a law that closes his church every day except for a few hours on Sunday morning.) “For me to recognize that I have been insulted,” Weithman explains, “I must have a sense of myself as a bearer of rights.” Furthermore, he must understand that “rights and rights violations” count as reasons on the basis of which fundamental political questions may be decided. Only then will Weithman be able to feel that he has been wronged by his fellow’s proposal.

More, however, is necessary if Weithman is to feel wronged when another citizen violates the proviso or the duty of civility. To feelwronged in such a case, Weithman argues, he must accept that he and his fellow citizens’ “rational capacities” have “reason-giving force.” He must accept, then, that free and equal citizens have “the authority to collectively determine what considerations count as reasons for settling questions about the conditions which impinge most fundamentally on the autonomous fashioning of their own lives.” Weithman believes, then, that the best way to specify Rawls’s “reasonable endorsability” criterion for public justification is simply that reasonably endorsable

67 Ibid.
68 Ibid., for both quotations.
69 Ibid., 208.
70 Ibid.
arguments are arguments that are consistent with citizens bearing such collective
authority. Reasonably endorsable reasons are those reasons that citizens understood as
free and equal could give themselves; they are reasons that are at least plausible
candidates for selection in an original position-type choice situation. And the original
position presumes that citizens care deeply about “the autonomous fashioning” of their
lives and that citizens have the collective authority to determine the conditions of that
fashioning. If a citizen does not hold either of these presumptions, then he has no reason
to feel offended when someone violates the duty of civility or to follow it himself.

The above, then, is Weithman’s answer to his first question. In order to “accept
and comply” with Rawls’s requirements, citizens must see themselves as free and equal
and as having the authority to determine what sorts of reasons count in justifying
government coercion and the distribution of resources and opportunities.

For Weithman, however, citizens may reasonably reject this conception of their
collective authority. He gives two separate reasons for this. First is the empirical fact
that there is deep disagreement among citizens about whether or not they bear the
collective authority Rawls claims they do. “Some,” he explains, “will think citizens are

71 Ibid., Weithman’s specific language is that the means used to specific accessible reasons must be
“functionally equivalent” (204) to the original position.

72 This analysis follows an earlier criticism Weithman made of Rawls, where he likewise argued that,
because “many Americans think themselves subject to principles of justice of which they are not the
authors.” Rawls’s conception of political autonomy is not appropriate for them. See his “Citizenship and
Public Reason,” in George and Wolfe, eds., Natural Law and Public Reason, 125-170. The quoted passage
is on pg. 161. This objection bears a striking similarity in form to Perry’s discussed above. Perry argues
that the original position cannot impartially represent those citizens who cannot conscientiously bracket
their religious convictions. Weithman argues that the original position cannot impartially represent those
who feel they are subject to principles of justice, rather than the creators of them.
subject to natural law or some other moral code that they think provides good reasons for action in politics as elsewhere. Whether these reasons can be presented as the outcomes of idealized choice or of acceptance by reasonable citizens is, for them, irrelevant.”

This sort of deep disagreement is especially likely when churches and other institutions in civil society play a fundamental role in educating and socializing people into their citizenship. (Weithman marshals considerable empirical evidence earlier in his argument to show that churches play just such a role in the United States.) Weithman concludes on this basis that deep disagreements over the proper understanding of citizens’ collective authority are inevitable; they are “as natural as the proliferation of views of the good.” And since deep disagreements over citizens’ collective authority are just as natural a result of free institutions as are deep disagreements over conceptions of the good, it is unreasonable for Rawls to impose his favored conception as an obligation on all liberal democratic citizens.

73 Ibid., 209.
74 Ibid., 4, 36ff.
75 Ibid., 209.
76 David Thunder offers a similar, though in the end much more radical, criticism of Rawls; for Thunder, citizens may not only reasonably reject the account of their collective authority Rawls presumes, they may also reasonably reject Rawls’s entire account of citizenship. Citizens can reasonably reject, in Thunder’s opinion, that citizens should be conceived of as politically equal and that their consent (in some form) matters for the justification of coercion. Since citizens can reasonably reject political equality and Rawls’s account presumes it, citizens may reasonably reject Rawls’s account. Unlike Weithman, though, Thunder is objecting not just to Rawls’s conception of political liberalism, but also to foundational premises of the entire liberal political tradition. Though citizens may of course reject such premises, it is very difficult to see how a person who did not feel morally obligated to obtain at least some form of consent from his fellows could propose and abide by fair terms of cooperation with them. Non-consensual coercion would be just as acceptable. See Thunder’s “A Rawlsian Argument Against the Duty of Civility” American Journal of Political Science 50:3 (July 2006), 676-690. The specific discussion of consent and political equality is on pgs. 685-687.
The second reason that citizens’ may reasonably reject Rawls’s conception of their collective authority is the set of potential costs associated with adopting it. To conclude that his ideal is the most reasonable (and therefore to ground the obligations that flow from it), Weithman argues that Rawls must be able to calculate the costs associated with the changes citizens would have to make in their conceptions of citizenship and the consequences of such changes. 77 Weithman worries, for example, that one cost would be excessive self-censorship on the part of religious citizens and churches, both of which may easily confuse the provisional permissibility of religious reasons with their impermissibility. This would impoverish citizens’ public deliberations. Further, Weithman worries that the duty of civility would, if implemented universally, discourage the political participation of extremists whose opinions are likely to be moderated by public deliberation and electoral contests. 78 Finally, Weithman again marshals his empirical evidence to show that, at least in the United States, churches play a fundamental role in educating and socializing people, especially the poor and minorities, into their citizenship. 79 Weithman worries that Rawls’s principles might discourage this type of activity and thereby adversely impact the poor and minority groups. Now, Weithman does not claim that he knows the costs associated with his worries would

77 *Religion and the Obligations of Citizenship*, 211.

78 Ibid., 141-143. For an extended argument for the benefits to democracy of incorporating religious-political movements (even those that may not have stellar democratic credentials) into democratic institutions, see Bryan T. McGraw, *Faith in Politics: Religion and Liberal Democracy* (New York: Cambridge University Press, 2010).

79 See note 74 above.
inevitably result from the universal adoption of Rawls’s principles; rather, he argues, “We know…far too little about what the consequences of such a move would be.”

Without such knowledge, without being able to conclusively assess the costs and benefits of adopting Rawls’s view, citizens can reasonably reject it.

There are, then, two distinct versions of the natural law objection. One, the new natural lawyers’, argues that Rawls’s public reason is an arbitrarily biased and truncated version of the true conception of public reason, which is quite simply the natural law tradition. Rawls’s version should be rejected as a pale imitation of the traditional account. The other, Paul Weithman’s, argues that the conception of citizens’ collective authority on which Rawls’s idea of public reason is based is incompatible with citizens who reasonably see their collective authority as subject to the natural law (or some other external moral code). Since this disagreement is reasonable, Rawls’s duty of civility is not an obligation; citizens may reject it.

II.3: The Unreasonable Exclusion Objection

The final objection to Rawls’s political liberalism is that its requirements of citizens are unreasonably exclusive. They are unreasonably exclusive because they are not necessary for legitimate, stable democratic governance. Unreasonable exclusion objections do not see bias in Rawls’s views, or moral conflicts between his requirements and religious obligations; they simply deny that his requirements are necessary to achieve

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80 Ibid., 211.
political liberalism’s aims. There are two well-developed, extant versions of this objection: Jeffrey Stout’s and Gerald Gaus and Kevin Vallier’s.

Jeffrey Stout argues that Rawls’s quest for a common basis of justification in a pluralistic liberal democracy—for a political conception of justice that can be the object of an overlapping consensus—is “morally unnecessary and epistemologically dubious,” (though Stout does not argue for the second claim). Stout endorses Wolterstorff’s and Eberle’s versions of the integrity objection, but his argument does not rely on either Wolterstorff’s or Eberle’s specific conclusions. Instead, Stout suggests that the moral conflicts the conscientious objection picks out are a main cause for the radical anti-liberalism of many popular contemporary Christian theologians. For Stout, the real issue is that Rawls’s position derives an unfortunate persuasiveness from the lack of other well-developed alternatives to political liberalism’s ideal of democratic citizenship and deliberation. Political liberals, he feels, get too much traction from the argument “either public reason or religious war,” and their position and the lack of alternatives to it has the unfortunate side effect of alienating religious citizens. So Stout’s goal is to develop an alternative account of how citizens can reason together and justify their political positions to each other.

Stout’s proposal is that political philosophers, theorists, and citizens think of public reason as a “vague ideal,” instead of a fundamental obligation of democratic

82 Ibid., 75.
citizenship.\textsuperscript{83} If reasonably endorsable, or mutually accessible, or whatever, arguments are available for a given topic, then they may be used. But this need not exclude other argumentative strategies. Stout mentions “declaration,” where a citizen simple states how his religious or comprehensive view supports the position he argues for, and “conjecture,” where a citizen appeals to premises he himself denies but knows his interlocutors affirm. (Both of these are strategies that Rawls mentioned briefly but did not explore in much length in his final work on public reason.\textsuperscript{84}) Stout’s favored approach, though, is “Socratic conversation,” where a citizen offers “reasons to X that X ought to be moved by from X’s point of view,” and then go on to speak to Y and Z “by offering different reasons to them, reasons relevant from their point of view.”\textsuperscript{85} This “Socratic questioning,” Stout argues, is a “tool of justificatory discourse” that “does not proceed from a…common basis.”\textsuperscript{86} It allows religious citizens to make religious arguments in public. Furthermore, for Stout, Socratic engagement is a form of public deliberation that respects citizens and is morally justifiable but does not require Rawls’s thicker account of public reason. Stout can thus claim that Rawls’s public reason is unnecessary, and because it is unnecessary, it is unreasonable to exclude religious and other comprehensive claims from public deliberations. Rawls’s duty of civility can therefore be rejected.

\textsuperscript{83} Ibid.

\textsuperscript{84} \textit{LP} 155-156.

\textsuperscript{85} \textit{Democracy and Tradition}, 73; emphasis in original.

\textsuperscript{86} Ibid.
Gerald Gaus and Kevin Vallier offer a more systematic version of the unreasonable exclusion objection, though one that nevertheless shares considerable ground with Stout’s. They argue that one cannot validly infer from political liberalism’s aim of enabling free and equal citizens to govern themselves legitimately any duty to refrain from supporting policies that are not publicly justified. In other words, they deny that the liberal principle of legitimacy implies the duty of civility. This is for two related reasons. First, Gaus and Vallier argue that Rawls and other political liberals work with a mistaken conception of public justification. Their conception is too focused on whether or not citizens can share a single justifying reason for a particular law or policy. This they label the “consensus” conception of public justification; it is the conception that is responsible for the demand to push religious and other comprehensive reasons from public political discussions. Those reasons are simply too controversial to ever be a consensus justification for some law. But the consensus conception is not the only way to explicate the concept of public justification; Gaus and Vallier propose a “convergence” conception in its place. In this view, reasons count towards public justification as long as they justify policies that other differently situated citizens can also support (for whatever the reason). A convergence conception is much more open to religious justifications; it imposes only a “minimalist proviso”, where citizens should refrain from supporting only

those laws that require religious reasons to support them. If a non-religious justification for a given law is impossible, differently situated citizens in a contemporary liberal democracy (many of whom may not be religious) will not be able to find even a convergent justification for that law, and it is on that basis illegitimate.\(^{88}\) (Incidentally, Stout is also logically committed to this norm—though he does not discuss it—since he also argues that one must be able to give some persuasive reason to ones fellows for coercing them.)

However, even the minimalist proviso ends up being unnecessary for Gaus and Vallier. This is because they see Rawls (and other political liberals) as making a further mistake: presuming that public political deliberations constitute the justification of coercive laws. This ignores the role of political institutions, especially constitutionally mandated checks and balances, in generating publicly justified laws. Because of such political institutions, there is simply no need for citizens to ask themselves if their preferred laws are susceptible to convergence justification and restrain themselves from supporting them if they are not. Citizens can rely on their political institutions to produce such laws. Even the minimalist proviso may be ignored, then, without jeopardizing public justification or political legitimacy.\(^{89}\)

The implication, then, of Gaus and Vallier’s conclusion (though they do not say it precisely this way) is that Rawls’s duty of civility is not required for democratic citizens

\(^{88}\) Ibid., 61-62.

\(^{89}\) Ibid., 65-70.
to govern themselves legitimately. The argument for the duty of civility is predicated on two errors—that consensus justification is necessary and that public deliberation alone constitutes that justification. As a result, the duty of civility is unreasonably exclusive and unjustifiably restricts citizens’ liberties. It should be rejected.

By questioning the necessity of a common basis or consensus for public justification, then, proponents of the unreasonable exclusion objection articulate alternative ideals of democratic citizenship that, they believe, secure legitimate democratic governance without imposing objectionable duties on religious and other citizens. For them, though, it is not conflict with religious obligations or the natural law that is primary to their arguments (though Stout in particular is sympathetic to such claims); rather, it is the development of more attractive alternative ideals that grounds their criticisms.

**III: Next Steps**

By far the most dominant religious criticism of Rawls’s political liberalism, then, is that its account of liberal-democratic civic obligations demands that citizens do or believe things that are incompatible with the actions or beliefs their religions demand of them. This claim is, with some slight differences, at the basis of the integrity and natural law objections. Religious citizens claim, over and over again, that the civic obligations Rawls and others feel are necessary to allow diverse people to govern themselves legitimately conflict with their religious obligations. It is impossible, the religious critics suggest, to live a life of religious integrity—whether that means following specifically religious demands or simply the natural law—and be a good Rawlsian citizen at the same
time. Indeed, the religious critics’ objections make it appear that the religious as a group find themselves in a position today that is much closer to that of Heber C. Kimball and the 19th Century Mormons than it is to Moses Seixas and Newport’s Jews: on the wrong end of the dominant view of good citizenship. Given political liberal civic obligations, the religious feel that they cannot be both citizens and saints. They have to choose one role or the other; they can honor God or respect their neighbors but not both.

With such an apparently profound moral conflict in mind, it is understandable why political liberals and the religious seem to be separated by an unbridgeable ethical and political gulf—a gulf that shows up just as often in political practice and the flash-point issues of the culture war as it does in complicated philosophical discussions of the ethics of citizenship. It is understandable why Gerald Gaus would look at Eberle’s description of theists and feel that they cannot be good liberals or good democrats. And it is understandable why Robert George would describe “our time” as one characterized by a “contest of worldviews” that “pits devout Catholics, Protestants, Jews and other believers against secularist liberals.” Such views are understandable but nevertheless mistaken.

Citizens’ religious and liberal-democratic civic obligations can be reconciled, and they can be reconciled without adversely weakening political liberal accounts of


legitimate democratic government in conditions of pluralism. Most of the time, people who live in liberal democracies can be both citizens and saints. Granted, this reconciliation cannot be perfect; it is only in the Kingdom of God that there will be no tensions between citizenship and sainthood. Even in a “well-ordered society”—a realistic, political liberal utopia—there may still be some circumstances where people have to choose between honoring their God and respecting their neighbors. But the daily conflicts on which the religious critics focus, conflicts that occur each time a conscientious religious citizen thinks of voting, or writing a newspaper editorial, or deciding which political party with which to affiliate, can be reconciled most of the time for all religious citizens who take their religions to support liberal-democratic political values. To show why this is the case, however, the dizzying array of religious objections to political liberal citizenship requirements I discussed above needs to be clarified and criticized. Before launching into that task, I briefly outline my approach.

The integrity and natural law objections both rely fundamentally on some purported conflict between religious or natural law obligations and Rawls’s requirements. That conflict may be explicitly religious, as it is in the integrity objection, where Rawls’s requirements are said to conflict with religious citizens’ obligation to unite their religious and political views or with their obligation to put overriding priority on their obligations to God. Or it may be more philosophical, as in the new natural lawyers’ objection, where it stems from the alleged conflict between the burdens of judgment and philosophical truth. Or it may have to do with the attitude citizens take to their collective authority—autonomous or heteronymous—as it is for Weithman. Regardless, the coherence of the
integrity and natural law objections depends on establishing some such conflict. Without that conflict, both objections fail; there would be no reason to reject Rawls’s requirements of citizens. These objections also depend upon a further condition: they must be able to show that the conflicting obligation is “reasonable,” that is, it is compatible with the idea of fair terms of cooperation that Rawls argues is the moral underpinning of liberal-democratic political values. If they cannot do this, then the religious obligation is one that may be legitimately infringed upon, just as liberal democracies legitimately prevent religions demanding human sacrifice from practicing such rituals.

To assess whether or not these two conditions hold, then, Rawls’s conception of reasonableness must be carefully analyzed and compared with the obligations that the religious critics claim conflict with the political liberal account of citizenship. I take up this project in Chapter Two. There, I delineate five different definitions of reasonableness at work in Political Liberalism and compare each of them to the key religious obligation in question, the obligation to put overriding priority on a believer’s totalizing religious obligations (the natural law objection presupposes such scope and priority for the natural law’s moral demands). Doing so allows me to precisely specify the conditions under which such a believer’s religious and civic obligations conflict. I then use the results of this analysis to assess the integrity and natural law objections. At the end of my assessment, only a considerably moderated version of the integrity objection holds; the aspect of Rawls’s duty of civility that requires individual citizens to provide public justifications for the political positions they support does conflict, I will
argue, with some *reasonable* citizens’ overriding and totalizing religious obligations. As a result, Rawls’s guidelines for public political discussions should be revised to accommodate such citizens.

I undertake that revision in Chapter Three. There, I argue that properly specifying two essential aspects of Rawls’s mature articulation of citizens’ responsibilities in public political discussions—aspects Rawls himself left quite vague—solves the conflict my analysis in Chapter Two uncovered. The result of my analysis is the “phased account of democratic decision-making,” an alternative set of guidelines for political decision-making that arise out of an original interpretation of Rawls’s proviso. I then compare my alternative guidelines with those upon which the unreasonable exclusion objection bases its criticisms, as well as alternatives Eberle and Weithman propose. None of their alternatives, I argue, actually preserves legitimate democratic governance in conditions of religious and moral pluralism, despite their claims to the contrary. The phased account, on the other hand, preserves legitimate democratic governance while allowing people with overriding, totalizing religious obligations and a commitment to liberal-democratic cooperation to live lives of religious integrity. Given the phased account of democratic decision-making, such people can be both citizens and saints.

Lastly, in Chapter Four, I engage the religious obligation side of the question and consider the obligations associated with the religious practice of political engagement I call prophetic witnessing. This analysis not only shows that such a religious practice is compatible with the obligations of liberal-democratic citizenship the phased account implies; it also suggests that prophetic witnessing is a particularly appropriate example of
how citizens can bring their religious concerns to bear on politics in a religiously pluralistic liberal democracy. Furthermore, prophetic witnessing provides a way religious people can simultaneously satisfy their obligations to God and their neighbors even when they find that legitimate democratic laws conflict with their religious convictions.

IV: Methodological Note

Before launching into my argument, I want to comment on a methodological assumption I make throughout it. In the subsequent chapters, I am engaged in a sort of philosophical analysis Rawls calls “ideal theory.” In ideal theory, a political philosopher or theorist analyzes and develops political and moral norms presuming that they apply to normal people, with all of the foibles associated with normal people, with one exception: people strictly comply with whatever norms one is analyzing or developing. Rawls refers to a society in which people strictly comply with moral and political norms as a “well-ordered society,” and I follow his example. An ideal-theoretical approach to normative analysis has two important benefits. First, it offers great clarity when one is comparing different sets of moral or political norms. If one is comparing these norms while engaged in ideal theory—while imagining different well-ordered societies that adhere to each norm or set of norms—the strict compliance assumption ensures that the different effects one observes are the result of the different norms, and not people’s

92 For Rawls’s discussion of ideal theory and his “strict compliance” assumption, see A Theory of Justice, 7-8, 215-216, 308-309.

93 See A Theory of Justice, 397-405, for Rawls’s discussion of the well-ordered society.
failure to adhere to those norms. Second, ideal theory allows one to accurately evaluate the coherence of a given norm or set of norms. Rawls, for example, concluded that the account of justice as fairness he developed in *A Theory of Justice* was incoherent because, even presuming strict compliance, a society establish on Rawls’s earlier version of his theory could not stably perpetuate itself. This was because his theory both allowed people freedoms of thought and association that would naturally create an environment of religious and philosophical disagreement and simultaneously required citizens to affirm that justice was a good for them because it enabled them to live morally autonomous lives—something, Rawls realized, some citizens in a society with freedom of thought and association would come to deny.

Ideal theory also has drawbacks. The strict compliance assumption is far from social and political reality, so it is natural to wonder how the norms one concludes are coherent and best while doing ideal theory apply to the messy, unjust world of politics. I do not have a conclusive response to this question in all of its forms here. I do, however, believe that ideal theory is a particularly appropriate philosophical method to use when considering, as I am, the role of religious citizens in liberal-democracies. As secular-religious conflict in contemporary politics and the heated controversies between

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94 This argument is A. John Simmons’s; see his “Ideal and Nonideal Theory,” *Philosophy & Public Affairs* 38:1 (Winter 2010), 8-9.

95 For further discussion of the reasons that led Rawls to modify justice as fairness and write *Political Liberalism*, see Samuel Freeman, *Rawls* (New York: Routledge, 2006), 324-331; and Paul Weithman, *Why Political Liberalism*.

96 For a response to this and other criticisms of ideal theory, see Simmons, “Ideal and Nonideal Theory.”
political liberals and religious critics both suggest, it is difficult for people, religious, secular, or otherwise who live in contemporary liberal democracies in the developed world to imagine what political relationships of mutual respect that cross the secular-religious divide look like. Taking up ideal theory when considering such religious-political conflicts is precisely about imagining what sorts of political norms underlie a well-ordered society in which religious and secular citizens not only cooperate with and respect each other, but also wholeheartedly affirm the norms that they understand regulate their social and political cooperation. Showing that such a society is both conceivable and coherent will not necessarily provide immediate solutions to the religious-political controversies of the day. What it will do, however, is offer a basis for hope that such controversies can be solved, and solved in a mutually respectful fashion.
CHAPTER 2. ASSESSING THE REASONABLENESS OF RELIGION: RELIGIOUS INTEGRITY AND RELIGION IN PUBLIC POLITICAL DISCUSSIONS

“But if not, be it known unto thee, O king, that we will not serve thy gods, nor worship the golden image which thou hast set up.”

~Daniel 3:18 (KJV)

Thus Shadrach, Meshach, and Abednego responded to King Nebuchadnezzar’s accusations. Nebuchadnezzar had made an “image of gold” and demanded that all of his subjects “fall down and worship it” at decreed times, when the king’s musicians played. Shadrach, Meshach, and Abednego refused; they knew that the God of Israel’s first commandment was “You shall have no other gods before me.”¹ For their disobedience, the three men were thrown into a “fiery furnace,” only to be saved by God’s miraculous intervention.²

The ethical teaching of this story—repeated later in the same text, though with a different cast of characters, when Daniel is thrown into the lion’s den—is clear. For those exiled from Judah, and for all monotheistic religious traditions that follow, God comes first. Period. No other obligation may take precedence to fulfilling his commands. Indeed, the historical fact that the stories related in Daniel were probably written, not during the Babylonian exile but while the Jews were suffering intense

¹ Exodus 20:3. Unless otherwise noted (as in the epigraph above), all biblical quotations come from the New Revised Standard Version.

² See the rest of Daniel 3 for the full story.
persecutions at the hands of Antiochus Epiphanes puts an even finer point on the story’s moral. Antiochus Epiphanes made Jewish religious rituals illegal, and many Jews died in similar punishments for their own refusal to comply.  

Shadrach, Meshach, and Abednego, while they hoped that God would save them, were willing to die as punishment for their faithfulness if God did not intervene—thus the “But if not” that opens the verse quoted in the epigraph. Even if God does not save us, we will still obey him. The text’s message is clear: better dead having fulfilled one’s obligations to God then alive having broken them.

The conflict-based objections to political liberalism’s ideal of democratic citizenship discussed in Chapter One rely on the same basic moral position Daniel 3 teaches. The cast of characters is different, and the stakes are, mercifully, no longer life and death, but for religious citizens, the core ethical issue has not. Rawls and other political liberals, Wolterstorff, Eberle, Finnis, George, and Weithman allege, have developed an account of democratic citizenship that requires citizens violate their understandings of God’s will. In this sense, Rawls stands in Nebuchadnezzar’s and Antiochus Epiphanes’s places. And today’s religious citizens stand with Shadrach, Meshach, and Abednego—though with several important differences. Not only do they no longer face death (or indeed, even legal repercussions) for their choices, they can now

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publicly argue for the repeal or revision of the offending requirements. And that is, as I discussed at length in Chapter One, precisely what they do.

Turnabout, however, is fair play, especially when discussing political liberalism, a political theory fundamentally based on an ethic of reciprocal respect. So if contemporary religious citizens feel like Shadrach, Meshach, and Abednego to Rawls’s Nebuchadnezzar, a political liberal might response by pointing out that Nebuchadnezzar acted in flagrant and horrible violation of the liberal principle of legitimacy and liberal principles of justice, violating his subjects’ rights to religious liberty. Indeed, by rejecting requirements of citizenship designed to instantiate relationships of equality and mutual respect and to prevent citizens from coercing each other on the basis of religious reasons alone, it is the religious critics—not the political liberals—who stand in a position analogous to Nebuchadnezzar’s. It is as unreasonable for the religious critics to expect to be able to coerce their fellows on the basis of religious reasons alone as it is for Nebuchadnezzar to expect Shadrach, Meshach, and Abednego to worship his golden image and forsake their own religion.4

Mutually comparing alternative theoretical positions to Nebuchadnezzar is, admittedly, not a productive way to conduct philosophical inquiry. But the above discussion accurately conveys the heat involved in the debate about religion and public reason. It also has the benefit of highlighting an essential argumentative hurdle the

4 Hence Stephen Macedo’s harsh but apt words: “If some people nevertheless feel ‘silenced’ or ‘marginalized’ by the fact that some of us believe that it is wrong to seek to shape basic liberties on the basis of religious or metaphysical claims, I can only say ‘grow up!’” See his “In Defense of Liberal Public Reason: Are Slavery and Abortion Hard Cases?” in *Natural Law and Public Reason*, 35.
religious critics must pass if they are to hope to be able to convince political liberals to adjust their understanding of good liberal-democratic citizenship: the idea of reasonableness. Political liberal “reasonableness” is a vague concept, and that vagueness makes it tempting to use the concept as a club, diffusing uncomfortable criticisms by massaging the term so as to cast the criticism in question as unreasonable. But the religious critics take advantage of the vagueness of the concept of reasonableness as well; after all, as Chapter One explained, at least three of the religious critics forestall the accusation of unreasonableness by claiming that their objection is reasonable—and do so using three different glosses of the term! Clearly, then, to develop an ideal of constitutional democratic citizenship that religious citizens can wholeheartedly endorse, I must find some path through the morass of arguments about reasonableness. Without such a path, there will be no way to show political liberals the credibility of the religious critics’ objections—or, at least, the credibility of whichever of those objections survives the proper definition of reasonableness—no way to forestall the argumentative reduction of the religious critics’ claims to Nebuchadnezzar (or Calvin or Winthrop or whomever). Furthermore, clarity

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5 For a selection of only some of the considerable number of articles devoted to Rawls’s conception of reasonableness—its an indication of the difficulties in interpreting Rawls on this matter—see David M. Rassmusen, “Defending Reasonability: The Centrality of Reasonability in the later Rawls,” Philosophy and Social Criticism 30:5-6 (September 2004), 525-540; James W. Boettcher, “What is Reasonableness?” Philosophy and Social Criticism 30:5-6 (September 2004), 597-621; Thomas A. Spragens, “Democratic Reasonableness,” Samuel Freeman, Rawls, 345-351.

6 To specify: Eberle uses a definition of reasonableness as willingness to propose and abide by fair terms of cooperation (see Chapter One, section [II.1]), Weithman uses a definition of reasonableness as a position a person can plausibly come to hold under conditions of freedom in a liberal democracy (Chapter One, section [II.2]), and Thunder uses a definition of reasonableness as simply any plausible position (see pp. 86 n 76 above).
about the concept of the reasonable will enable me to assess the merits of the various extant objections to political liberal citizenship requirements, so that I do not tie myself in knots working to revise political liberal citizenship requirements in order to accommodate illegitimate objections. To risk one more absurd example: it would be quixotic to attempt to devise political liberal citizenship requirements to accommodate the religious obligations of Aztecs, whose religion demands human sacrifice.  

The vagueness of the idea of reasonableness is, as it turns out, crucial for my argument in this chapter as well. After all, in order to show that the religious critics have, at least in some respect, put their fingers on an objection that political liberals should consider, I need to be able to show that political liberal citizenship requirements—often themselves simply defined as what it means to be “reasonable”—can be “reasonably” rejected. To put this is slightly different terms, I need to be able to show that political liberal citizenship requirements conflict with the obligations some “reasonable” citizens bear as a result of their adherence to “reasonable” comprehensive doctrines. If each use of “reasonable” in the above two sentences clearly meant the exact same thing, my argument would be a non-starter; I would be claiming that one can reasonably reject reasonableness, that I can reject A on the grounds of A.  

Fortunately, though, there is no such clear equivalence in the way that Rawls (not to mention the religious critics) uses 

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7 It was William Galston who first observed that, “no free exercise for Aztecs,” is, to say the least, a broadly accepted constraint on religious liberty. See his Liberal Pluralism, 23.

8 A political theorist or philosopher can, of course, reject Rawlsian reasonableness on any one of a number of different non-Rawlsian grounds and then stipulate that this new ground is the truly “reasonable” one. But this is a considerably weaker claim than the one I develop in this chapter, which sees conflict within the various different conceptions of reasonableness that Rawls himself uses.
the term “reasonable.” My argument below proceeds by considering the gaps between
what I argue is Rawls’s core and foundational conception of reasonableness—the
acceptance of a norm of reciprocal respect demonstrated by a citizen’s willingness to
propose and abide by fair terms of cooperation—and Rawls’s various other uses of the
term. If, as I argue in this chapter, citizens can propose and abide by fair terms of
cooperation without simultaneously following one of the other requirements that Rawls
claims is part of political liberal “reasonableness,” then there are grounds to argue that
such an aspect of political liberal reasonableness can be reasonably rejected.

This, I grant, is not an original argumentative strategy. Weithman and Eberle in
particular both employ it. But neither fully addresses what I argue here is the core of
political liberal reasonableness, and as a result, both end up defending conceptions of
reasonableness and requirements of liberal-democratic citizenship that have severely
illiberal consequences, as I will detail at the end of Chapter Three. So while my
argumentative strategy in this chapter is not unique, the execution of it is: no one
concerned with the religious objections to political liberalism has waded through Rawls’s
various uses of “reasonable” in order to show their inconsistencies and demonstrate how
those inconsistencies open space for reasonable religious objections.9

9 My approach in this chapter owes a great deal to Martha Nussbaum’s “Perfectionist Liberalism and
theoretical definition of a reasonable comprehensive doctrine on the grounds that it is unnecessary for
citizens who are ethically reasonable to affirm such a doctrine. See especially pp. 22-33. I will discuss this
point in greater detail below.
As I interpret Rawls, there are no less than five different definitions of “reasonable” at work in Political Liberalism. Moving from the most abstract and general definition to the more specific and substantive, first (1), there is what I will argue is the core meaning of “reasonable:” people, for Rawls, are “reasonable” when they are committed to reciprocally respectful political relationships, or, in Rawls’s terms, they are willing “to propose fair terms of cooperation and to abide by them provided others do.”\(^\text{[10]}\)

Closely associated with, but distinct from, this commitment is citizens’ acceptance of the burdens of judgment. Just what these burdens mean needs to be carefully interpreted in light of the core idea of fair terms of cooperation, as I argue below. The second (2) definition of reasonableness concerns Rawls’s theoretical constraints on “reasonable” comprehensive doctrines. The third (3) plausible definition of reasonableness is Rawls’s hope that reasonable citizens will place high priority on political values—the dictates of a reasonable political conception of justice—such that political values will normally outweigh comprehensive values when the two conflict. The fourth (4) is Rawls’s constraints on “reasonable” liberal political conceptions of justice. Finally, the fifth (5) definition of reasonableness concerns the substantive policy commitments that Rawls claims “reasonable” political liberalisms endorse.

In the ensuing discussion of each of the five different definitions of reasonableness, I consider two different questions. The first is the coherence between Rawls’s core definition of reasonableness, (1) above, and each subsequent definition.

\(^{10}\text{PL 54.}\)
The second question is whether the sort of religious citizen presupposed by the conflict-based religious objections, the citizen who puts overriding priority on the totalizing obligations of her religion, can qualify as reasonable in each of the five different senses listed above. If I am to be able to show that some version of the conflict-based objections goes through, I need to be able to show, first, that there is discrepancy between Rawls’s first and some subsequent definition of reasonableness, and, second, that citizens with overriding, totalizing religious obligations can qualify as reasonable according to at least the first of Rawls’s five definitions of the term. In particular, if, as I will argue, such religious citizens can qualify as reasonable given Rawls’s first, core definition (1), then, I will have shown that such religious citizens can “reasonably reject” the discrepant definition(s) of reasonableness and the requirements of citizenship associated with them. I will have, in other words, developed a religious objection to political liberal citizenship requirements that political liberals should, on their own terms, accept.

Below, my argument proceeds in the order laid out above; sections (I) through (V) canvass Rawls’s’s different definitions of reasonable and consider whether citizens with overriding, totalizing obligations to their religions can qualify as reasonable given that definition. In the conclusion (section [VI]), I survey the results of my analysis to argue that citizens with overriding and totalizing religious obligations can reasonably reject all of Rawls’s second, aspects of his fourth, and fifth definitions of reasonableness and their associated citizenship requirements. I also use the results of my analysis to criticize the two different conflict-based objections to political liberalism, the integrity and natural law objections, discussed in Chapter One, sections (II.1) and (II.2). My analysis leads to
two important conclusions. First, the religious critics’ extant objections are under-
specified; focusing on the scope (totalizing) and priority (overriding) of religious
obligations is necessary but not sufficient to showing that they conflict with political
liberal citizenship requirements; one must also consider the substantive content and
epistemological ground of the obligations in question in order to establish the sort of
conflict the religious objections require. Second, religious citizens who bear overriding
and totalizing religious obligations and also qualify as reasonable given definition (1)
above may consistently bear religious obligations that conflict with Rawls’s requirement
that citizens offer public reasons as justifications for the political positions they support
and may, on that basis, reasonably reject those obligations.

I: The First Definition of Reasonableness

Rawls’s first definition of “reasonableness” is that reasonable citizens are citizens
who are willing to enter into and maintain political relationships of reciprocal respect
with their fellows who are also so willing. His exact words are “Insofar as we are
reasonable, we are ready to work out the framework for the public social world, a
framework it is reasonable to expect everyone to endorse and act on, provided others can
be relied on to do the same.”11 Reasonable people, in other words, are those who are
willing to propose and abide by “fair terms of cooperation.”12 By “terms of cooperation,”
Rawls means the principles by which people’s cooperative social practices will be

11 PL 54.
12 Ibid., 16.
governed; in a democracy terms of cooperation include people’s basic freedom and equality; in an aristocracy they would include deference to excellence or authority, etc. The content of terms of cooperation, for Rawls, comes from the word “fair;” terms of cooperation are “fair” when they are mutually acknowledged to be such by free and equal people.\footnote{Note Rawls’s early discussion of this point in “Justice as Fairness,” \textit{Philosophical Review} 67:2 (April 1958), 179.} Hence being willing to propose and abide by \textit{fair} terms of cooperation means being willing to enter into and maintain relationships of reciprocal respect with one’s fellows. If those terms are fair and I acknowledge them as such, I acknowledge that the terms comport with my status as a free person, not bearing any other obligations to my fellows and of equal worth with them. The same, of course, applies if they acknowledge the terms as fair.

This admittedly very abstract idea of being willing to propose and abide by fair terms of cooperation is, Rawls claims, the first aspect of reasonableness. The second aspect is a person’s acceptance of the “burdens of judgment.” Rawls lists these two aspects with a simple ordinal ranking (first aspect, second aspect), but it is important to recognize that his list is also, as I will argue, a priority listing: the burdens of judgment gain their political and moral significance as a result of the idea of fair terms of cooperation.

I will not list these burdens again (I did so in Chapter One, section [I]), I merely note that they offer reasons why, in a social context of freedom, people come to disagree about the ultimate aims and purposes of their lives, the nature of morality, and even the
proper principles of justice. Rawls’s point in listing these reasons is to show that disagreements about such matters are *reasonable* in two ways; that is, first (1), they do not conflict with a person’s willingness to propose and abide by fair terms of cooperation. As Rawls states: “reasonable disagreement is disagreement *between reasonable persons*: that is, between persons who have realized their two moral powers [a sense of justice and conception of the good] to a degree sufficient to be free and equal citizens in a constitutional regime, and who have an enduring desire to honor fair terms of cooperation” (my emphasis).14 Second (2), these disagreements are reasonable in an epistemological sense; people are *epistemologically entitled* to disagree about the ultimate aims and purposes of their lives, the nature of morality, and the proper principles of justice. This, Rawls hastens to note, does not imply skepticism; people may consistently believe their views on these issues are true. What they lack epistemological entitlement to do is to conclude that others who do not share their (true) views do so because of “ignorance and perversity…or else [because of] rivalries for power, status, or economic gain.”15 Denying this second, epistemological sense of reasonableness impacts a person’s the ability to accept the first: the grounds one has for trusting another when cooperating fairly with them are undermined if one believes that they hold their opinions about the purpose of life, morality, or justice solely on the basis of their ignorance, perversity, or cupidity.

14 *PL* 55.

15 *PL* 58.
Because disagreements about the purpose of life, morality, and justice are reasonable in these senses, or, in other words, because two or more people who disagree about religion, metaphysics, and morals can still consistently propose and abide by reciprocally respectful principles that regulate their cooperative social practices, the principles a person proposes as fair terms of cooperation should not simply be the religious, metaphysical, or moral principles about which a person disagrees with those with whom she is cooperating. It would be contradictory and disrespectful for one to claim to another when determining terms of cooperation, for example, “I recognize that you do not have to believe as I do about God to be able to cooperate fairly with me, and I recognize that you are entitled to your differing beliefs about God (those beliefs are not rooted in your ignorance or perversity), but nevertheless, I propose that we require each other to worship God my way when we cooperate.” Thus the burdens of judgment, Rawls explains, “set limits on what can be reasonably justified to others” (my emphasis).¹⁶ In an environment of reasonable disagreements (in the above two senses), fair terms of cooperation must occupy an area of mutual agreement and acceptance. We (the person with whom I am cooperating and I) may disagree about God’s triune nature, for example, but we can agree that we should each be free to believe as we wish and should be treated as equals regardless of our disagreements.

Please note that the burdens of judgment only “limit what can be reasonably justified to others” because the idea of fair terms of cooperation and the respect that idea

¹⁶ *PL* 61.
implies are presupposed. An aristocrat may recognize that the “hoi polloi” disagree with him about a whole variety of issues, but that disagreement does not matter at all for aristocratic terms of cooperation. The best rule, period. Thus the idea of fair terms of cooperation is the core of Rawls’s conception of reasonableness and is first both in ordinal and priority terms to the burdens of judgment.

As abstract, then, as these two aspects of reasonableness are (in this first definition of reasonableness), they already yield an important substantive political implication: reasonable people will support liberty of conscience and freedom of thought. There is thus already one necessary specification to the religious citizens under consideration: if their objections to political liberal citizenship requirements are to be considered reasonable (in this first sense), their overriding, totalizing religious obligations must include support for liberty of conscience and freedom of thought. If they do not, then there is no reason why a religious citizen would be interested in fair terms of social cooperation with those she would derisively term heathens or infidels. And indeed, “reasonable” people would not wish to cooperate with her, as her overriding, totalizing commitments to her religion would lead her to violate the fair terms to which they are committed. They are effectively playing different games, with incompatible sets of rules. Fortunately, many religious citizens meet Rawls’s first standard of

17 Nussbaum puts this point nicely: “Just noticing that people don’t agree about such matters without coercion does not, all by itself, supply a reason against forcing them to agree.” “Perfectionist Liberalism and Political Liberalism,” 18.

18 PL 61.
reasonableness; the religions to which they are committed endorse religious liberty and freedom of thought. Thus, in this specific sense, Eberle is perfectly correct to claim that having overriding, totalizing religious obligations is consistent with proposing and abiding by fair terms of cooperation.\textsuperscript{19}

Rawls’s first definition of reasonableness is thus tightly connected to his conception of the constraints on the exercise of political power in a liberal democracy: the liberal principle of legitimacy. This principle states: “Our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason.”\textsuperscript{20} Fair terms of cooperation in a context of reasonable pluralism (as given by the burdens of judgment) demand that reasonable citizens—those willing to propose and abide by fair terms of cooperation—be able to endorse the justification of their constitution and laws impacting other basic matters of justice. The liberal principle of legitimacy suggests that no reasonable citizen would agree to live in a society regulated by a philosophical or religious system that he or she cannot accept and that no reasonable citizen would expect any other such citizen to live in a society regulated by a philosophical or religious system he or she cannot accept.\textsuperscript{21}

\textsuperscript{19} Religious Conviction and Liberal Politics, 148-150.

\textsuperscript{20} PL 137.

\textsuperscript{21} Rawls suggests that his core conception of reasonableness also supports his conception of public reason, which includes both the liberal principle of legitimacy and Rawls’s guidelines for public political
There is one final, important implication of Rawls’s first definition of reasonableness. Citizens committed to devising fair terms of cooperation in conditions of reasonable disagreement—that is, reasonable citizens—cannot expect that those terms will always correspond exactly to the full implications of their moral or religious view. Rawls explains: “There is no reason…why any citizens, or association of citizens, should have the right to use the state’s police power to decide constitutional essentials or basic questions of justice as that person’s, or that association’s, comprehensive doctrine directs.”\textsuperscript{22} Insofar as their moral or religious views are consistent with fair terms of cooperation, those terms will overlap to some extent, perhaps to a great extent, with their moral or religious views. But because the others cooperating disagree on moral and religious matters, the overlap is unlikely to be perfect. In short, then, citizens must be able to accept that their moral and religious views may play a contributory role in fair terms of cooperation but may not control or dictate those terms. In a religiously pluralistic society, no reasonable citizen (in the sense analyzed above) would agree that religion X as opposed to religion Y gets to determine the terms of social cooperation.

This final implication of the first definition of reasonableness may present problems to citizens who take themselves to have overriding and totalizing obligations to their religions, especially if they interpret those obligations to mean that they must do discussions in a liberal democracy. I agree in the first case and disagree in the second, as I argue in section (IV).

\textsuperscript{22} \textit{PL} 62.
everything within their power to ensure that the laws or practices of their society correspond perfectly with the dictates of their religious or moral view on some issue. However, the analysis at this point is too abstract to consider this question further at this point. I take it up again in Chapter Four.

II: The Second Definition of Reasonableness

The second definition of reasonableness in *Political Liberalism* is Rawls’s application of the term to comprehensive doctrines. At first, Rawls defines reasonable comprehensive doctrines in terms of his first definition of reasonableness, the fair terms of cooperation and burdens of judgment definition. He writes: “Assume first that reasonable persons affirm only reasonable comprehensive doctrines.”\(^{23}\) In this sentence, any comprehensive doctrine a reasonable citizen—in the first sense analyzed in section (I) above—affirms counts as a reasonable comprehensive doctrine. But Rawls adds further criteria to his definition. A reasonable comprehensive doctrine must also be an “exercise of theoretical reason” that “covers the major religious, philosophical, and moral aspects of human life in a more or less consistent and coherent manner” and that expresses “a intelligible view of the world.”\(^{24}\) It must also be an exercise of practical reason that offers priorities of values and rules for guidance when those values conflict. Finally, a reasonable comprehensive doctrine “belongs to, or draws upon, a tradition of

\(^{23}\) Ibid., 59.

\(^{24}\) Ibid., 59.
thought and doctrine” and evolves slowly due to “good and sufficient reasons” “from its point of view.”

Martha Nussbaum has recently pointed out that this “theoretical” definition of reasonable comprehensive doctrines is in considerable tension with Rawls’s first, fairness-based definition of reasonableness, which she calls “ethical” reasonableness. As Rawls himself states, one goal of his description of reasonable comprehensive doctrines is to make clear that “it is not in general unreasonable to affirm any one of a number of reasonable comprehensive doctrines.” To make a very conservative assumption, it is Rawls’s intent to argue that it is not unreasonable to affirm the truth of Christianity, or Judaism, or Islam, or Utilitarianism, etc. While this is unproblematic given the first, fairness definition of reasonableness (provided, of course, that the believer can reconcile her religious commitments with fair terms of cooperation and the burdens of judgment), Nussbaum argues that it is problematic for Rawls’s second, theoretical definition of reasonableness. Many religious traditions, she argues, do not qualify as reasonable comprehensive doctrines given the criteria Rawls outlines. Nussbaum points out that many citizens adhere to “Worldviews based on astrology, [or] New Age religion” that fail to meet Rawls’s criteria, because they are piecemeal views that do not offer guidance in all of the “major…aspects of human life in a…consistent…manner.”

25 Ibid.

26 “Perfectionist Liberalism and Political Liberalism.”

27 PL, 60.
worries that calling such doctrines unreasonable would imply that the citizens who affirm them are unreasonable as well. And the problem runs even deeper: on Nussbaum’s account, neither traditional Christianity nor Reformed Judaism meet Rawls’s theoretical criteria for reasonableness. The Christian doctrine of the Trinity, Nussbaum observes, “asks the believing Christian to believe a contradiction.” The Trinity, therefore, departs “from the most fundamental axiom of reason.” Nussbaum concludes: “It would be implausible, then, to describe this doctrine as ‘more or less consistent and coherent.’”

In a different way, for Nussbaum, Reform Judaism also fails to meet Rawls’s theoretical criteria. Reform Judaism “has no doctrines…only the core idea of the moral law, which each believer must interpret and apply to the world in his or her own way.” This does not qualify as theoretically reasonable, because “it does not instruct believers to develop consistent and coherent solutions of their own that satisfy Rawls’s first and second criteria,” not to mention that it completely ignores tradition, Rawls’s third criteria.

A critic might quibble with Nussbaum’s interpretations of these religious views, but that does not affect the force of her argument, which is quite simply that Rawls’s theoretical constraints on reasonableness conflict profoundly with the idea of fair terms of cooperation. “Reasonable citizens,” she writes, “should not be in the business of looking over the shoulders of their fellow citizens to ask whether their doctrines contain an


29 Ibid.


31 Ibid., 28.
acceptably comprehensive and coherent exercise of theoretical reason…Such scrutiny…is a kind of invidious interference that has no place in respectful political liberalism.”  

Importantly, this does not mean that citizens should not criticize each other’s comprehensive doctrines. Christopher Hitchens is free to proclaim the evils of theism if he so chooses. Rather, for Nussbaum, the relevant point is that the category of reasonable citizen—a citizen who counts as a full-fledged participant in liberal-democratic cooperation to whom public justifications of coercion are due—should not depend on the consistency or coherence of the comprehensive doctrine that citizen affirms. Respect, after all, is “for persons, not for their doctrines.” Thus, on Nussbaum’s account, Rawls’s second, theoretical definition of reasonableness should be abandoned because it conflicts with his first, fairness definition.

Nussbaum’s argument is striking because it “reasonably” rejects part of Rawls’s definition of reasonableness, though in a way that none of the religious critics have anticipated. Indeed, Nussbaum’s criticisms have nothing to do with public reason requirements; presumably, these requirements still stand even if Rawls’s theoretical definition of reasonableness is abandoned. Nussbaum’s argument thereby offers an important guide to considering how the reasonableness of the religious critics’ arguments

32 Ibid., 29.
33 Ibid., 22.
34 Nussbaum’s guarded praise of Eberle’s position in her “Rawls’s Political Liberalism: A Reassessment,” 11-19, especially pp. 18-19, may suggest otherwise, though this depends on precisely how Nussbaum interprets Rawls’s proviso and the wide view of public political culture, which she does not explain in either the Ratio Juris or Philosophy and Public Affairs articles.
might be assessed. If I can show in subsequent sections that some other of Rawls’s
definitions of reasonableness conflicts with the idea of fair terms of cooperation in some
similar way, then this too would be “reasonable” grounds to reject that definition of
reasonableness, or at least revise is such that it would be consistent with the idea of fair
terms of cooperation and the burdens of judgment.

With such a possibility of revision in mind, I believe a friendly amendment to
Nussbaum’s argument is necessary. She has gone too far in arguing that political liberals
should abandon all theoretical constraints on the idea of reasonable comprehensive
doctrines. Nussbaum herself admits that political liberals should rule out some
comprehensive doctrines as “incompatible with equal respect” and hence unreasonable.35
But she offers no guidance about how to make such a determination absent any
theoretical criteria for evaluating comprehensive doctrines. Some minimal criterion such
as “reasonable comprehensive doctrines are doctrines that reasonable citizens [according
to the first, fairness definition] affirm conscientiously,” or perhaps “in a way that is
consistent and persuasive according to their interpretation of their comprehensive
doctrine” seems required, for the following reason. If, in some public deliberation, a
citizen tells me that he is committed to a comprehensive doctrine that I know demands, at
least on some interpretations, deep restrictions on the religious liberty of the adherents of
some other doctrine (for example), then it seems entirely appropriate for me to inquire
how he reconciles his commitment to that comprehensive doctrine with his presumed

35 “Perfectionist Liberalism and Political Liberalism,” 33.
commitment to fair terms of cooperation. A Catholic citizen well known for his denial of Vatican II, for example (the Catholic council in which the Church endorsed religious liberty, among other large doctrinal changes) would have an obligation to explain how he reconciled his denial of Vatican II with his acceptance of religious liberty and freedom of thought.\textsuperscript{36} In other words, some minimal criterion similar to those I suggested above seems required in order to make sense of the intuition that reasonable citizens according to the first, fairness definition should not affirm comprehensive doctrines that require their adherents to violate fair terms of cooperation.\textsuperscript{37} Such a minimal criterion also seems required to make sense of the religious critics’ objections. The religious critics, after all, argue that political liberal citizenship requirements contradict the obligations of their religions, which they take to impose overriding political imperatives on their adherents.

This objection begs political liberals to evaluate whether the religions said to impose such

\textsuperscript{36}This situation is particularly likely to arise during discussion of a “highly contested political issue” that causes citizens to doubt one another’s adherence to “basic constitutional and political values,” and in which Rawls argues that it is “wise” for citizens to discuss, or “declare,” how they affirm a reasonable political conception of justice on the basis of their comprehensive views. See \textit{LP} 154.

\textsuperscript{37}It was thus, on my view, entirely appropriate for Americans to inquire of John F. Kennedy how he reconciled his commitment to Catholicism with his commitment to liberal-democratic constitutional and political values during the 1960 Presidential campaign. In 1960, after all, Vatican II had not yet occurred and the official doctrine of the institutional Catholic Church remained that “error has no rights” and that Catholics should, when they are a position to do so, work for the establishment of Catholicism in their countries. (For discussion of Vatican II, see John Courtney Murray, \textit{Religious Liberty: Catholic Struggles with Pluralism}, J. Leon Hooper, S.J., ed., [Louisville, KT: Westminster John Knox Press, 1993]). Kennedy’s response was also entirely appropriate on my view: to argue that, \textit{for him}, his Catholicism did not extend to his politics, and that as President he would act as mandated by the Constitution. Kennedy’s speech to the Greater Houston Ministerial Association in which he made this argument is available at http://www.npr.org/templates/story/story.php?storyId=16920600, accessed April 29, 2011. Thus citizens acted appropriately when they inquired about how Kennedy reconciled his faith and his political principles and Kennedy responded appropriately as well. Voters in 1960 would have done wrong only if, even after Kennedy honestly expressed his views, they still chose not to support him \textit{because} of his Catholicism. Similar questions would be appropriate of any adherent of a religion or sect of a religion with an ongoing tradition of rejecting fair terms of cooperation, whether Protestant, Jewish, Muslim, Mormon, or otherwise.

88
imperatives are consistent with fair terms of cooperation, at least as the adherents making
the criticisms themselves interpret them. So the fairness definition of reasonableness
requires, then, at least a minimal theoretical definition of reasonable comprehensive
doctrines, such that reasonable comprehensive doctrines are doctrines reasonable citizens
conscientiously, or, in other words, consistently within the terms of that doctrine as the
citizens interpret it, affirm. Without such a minimal criterion, one courts the
counterintuitive possibility that reasonable citizens could affirm comprehensive doctrines
that themselves require their adherents to violate fair terms of cooperation.

III: The Third Definition of Reasonableness

The third definition of reasonableness at work in Political Liberalism is the claim
that reasonable citizens place high priority on political values such that those values will
“normally outweigh” other nonpolitical, or comprehensive, values when they conflict.
This definition of reasonableness is inferred from what Rawls says about the relationship
between political and nonpolitical values in Political Liberalism; Rawls himself never
explicitly claims that reasonable people prioritize political values over comprehensive
values when they conflict. But with the religious critics’ objections in mind, it is
understandable why a political liberal or others concerned with the religious critics’
objections might argue that citizens with overriding religious obligations cannot be
reasonable because their religious commitments will not allow them to compromise
politically and accept procedural results if, for example, they lose a debate, court case,
or referendum about some fundamental issue.
While the concern about whether citizens with overriding, totalizing religious obligations will be able to compromise politically if they lose a debate or referendum is real—as I argued at the end of section (I)—here I will argue that it is an oversimplification to cast that concern as the result of an inappropriate priority ranking between citizens’ comprehensive doctrines and political conceptions of justice. Indeed, there is no contradiction between a citizen putting overriding priority on their comprehensive commitments and allowing “political values” to trump “nonpolitical values” when they conflict, provided that their comprehensive commitments themselves so order the relevant values. But first, some explanation for why Rawls believes that political values should normally outweigh nonpolitical values when they conflict.

By “political values,” Rawls means the values that arise from the principles reasonable political conceptions of justice endorse: the basic liberties, their priority, and measures assuring citizens effective use of those liberties. These values include, as I discussed in section (I), equality, liberty of conscience, freedom of thought, speech, and association, and the like. Nonpolitical values, in contrast, are values arising from the various comprehensive doctrines: salvation, righteousness, moral autonomy, and the like. Conflicts occur, for example, when freedoms of speech and association create social conditions where religious believers may fall away from their faith, or, for that matter, where morally autonomous people may feel called into and affirm heteronomous traditions. To let political values outweigh nonpolitical values in this case means that the possibility of decline in, say, the number of committed religious adherents does not
justify political interventions to prevent further apostasies, such as restrictions on
freedom of conscience, thought, speech, or association.

Rawls argues that political values should “normally outweigh” nonpolitical values
because they provide the “very conditions that make fair social cooperation possible on a
footing of equal respect,” and because they preserve the “significant intrinsic goods
internal to political life,” goods that include self-respect, civic pride, and the like.\(^{38}\)
Rawls also suggests that, if political values did not outweigh nonpolitical values
consistently enough, the overlapping consensus required for the stability of a liberal
democracy could not occur or perpetuate itself.\(^{39}\) It is understandable, then, how one
might infer from such arguments that a citizen who felt unable, at least under normal
circumstances, to allow political values to outweigh nonpolitical values did not qualify as
reasonable; such a citizen refuses to abide by fair terms of cooperation when those terms
contravene or inhibit their personal commitments. They are, in effect, “fair weather”
citizens, only accepting liberal democracy when it goes their way.\(^{40}\) Furthermore, this
third definition of reasonableness ties directly into Rawls’s core ethical definition of the
term—reasonable citizens must be willing to \emph{abide by} fair terms of cooperation; the third

\(^{38}\) \textit{PL} 157, 208.

\(^{39}\) Ibid., 139, 146.

\(^{40}\) Scholars who criticize the religious objections to political liberalism in terms like these include Nancy L.
definition of reasonableness does not depend on the theoretical definition criticized in section (II) above.

The question, then, is whether a citizen who puts overriding priority on their totalizing religious obligations can allow political values to outweigh nonpolitical values in the way that Rawls feels is necessary. This outweighing is certainly possible; there is no necessary contradiction between putting overriding priority on totalizing religious obligations and letting political values outweigh nonpolitical values. Imagine, for example, a religion that teaches that the conscientious search for religious meaning is of great importance and that no other religious good, whether it be individual or collective salvation or unity in orthodox belief, should be prioritized above allowing people to engage in such a search. Clearly, adherents of such a religion would have no trouble affirming the political values of liberty of conscience, or freedom of thought, speech, and association, since they see such values as protecting a religious and political value—the uninhibited search for religious meaning—that they see as a great good. And just as clearly, this would be the case even if those values had the consequence of creating a social environment in which less people adhered to the religion in question.

That said; it is certainly more likely for there to be considerable tensions between political and nonpolitical values for a citizen who puts overriding priority on totalizing religious obligations. Indeed, for such a citizen to be able to allow political values to

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41 This position is loosely based on that of Roger Williams, as described in Martha Nussbaum, “Living Together: The Roots of Respect” in her Liberty of Conscience; and James Calvin Davis, The Moral Theology of Roger Williams: Christian Conviction and Public Ethics (Louisville, KT: Westminster John Knox Press, 2004).
normally outweigh nonpolitical values (to be reasonable in this third sense), the political implications of their religions must be *substantively compatible* with liberal political values as given by a reasonable political conception of justice. Thus the range of religions that are compatible with a reasonable political conception of justice are considerably constrained when a person considers their religious obligations as totalizing and overriding, as opposed to considering their religious obligations as more limited in scope or priority.

Consider the following three different methods by which a citizen could go about relating her comprehensive doctrine to a reasonable political conception—the process Rawls terms “full justification”—as examples of this increased tension.42

First, citizens might *prioritize the political conception of justice*, and then modify whatever comprehensive views they might hold until those views are consistent with the political conception of justice. In this case, if a citizen held a comprehensive view that demanded, say, the reservation of all social and moral authority to an elite hierarchy, they would resolve the contradiction in favor of the political conception of justice. They would decide that the political conception has refuted their comprehensive view and then modify their comprehensive beliefs such that they now demand social and moral authority be more democratically constituted.

Second, citizens might *separate the domains* to which their political and comprehensive views apply. In this case, to continue with the same example, a citizen

42 See *PL* 385-395.
who affirms a comprehensive doctrine that requires social and moral authority to be held by an elite hierarchy would, in the process of reconciling her comprehensive views with a reasonable political conception of justice, decide that her comprehensive views only apply to her family life and the religious or civic associations to which she belongs. She would “privatize” her comprehensive view. For her, the political conception of justice, not her comprehensive doctrine, applies to public issues.

Third, citizens might prioritize their comprehensive views, rejecting any political conception of justice that is not compatible with them. To continue with the example above, in this case a citizen who believes all social and moral authority should be held by an elite hierarchy would continue to claim such, just as her comprehensive view dictates, the demands of reasonable political conceptions of justice to the contrary notwithstanding. Her comprehensive view has public and political implications that she feels are not to be overridden, no matter the dictates of reasonable political conceptions of justice.

Clearly, for a person who takes his comprehensive doctrine to impose overriding and totalizing obligations, neither of the first two options is acceptable. He may neither prioritize the political conception of justice, as this violates the overriding priority he must place on his comprehensive view; nor may he separate his comprehensive view from his political commitments, as this violates the totalizing nature of his comprehensive commitments. Both of these approaches would be equivalent to Shadrach, Meshach, and Abednego capitulating to Nebuchadnezzar’s demands. He must,
then, follow the third option, prioritizing his comprehensive view and rejecting any political conception of justice that conflicts with it.

Thus the range of religious and comprehensive doctrines that are compatible with a reasonable political conception of justice is considerably constrained if that religion or comprehensive doctrine enjoins its adherents to take its teachings as overriding, totalizing obligations. Certainly the religion used in the example above, one that demands an elite moral hierarchy, is not compatible with a reasonable political conception if its adherents take it to be totalizing and overriding. Indeed, the range of compatibility is constrained to the set of comprehensive doctrines that are substantively compatible with reasonable political conceptions of justice, as my example of the religion that sees the uninhibited conscientious search for meaning as a great religious good suggests. It is thus a mistake to suggest that political liberalism’s compatibility or incompatibility with “religion” can be determined by arguing about the scope (totalizing versus “privatizable”) or priority (overriding versus “compromisable”) of any given religion or comprehensive doctrine alone. Scope and priority merely constrain the set of compatible comprehensive doctrines; they are necessary but not sufficient conditions for incompatibility. Thus a political liberal cannot conclude that a religion or a religious adherent is unreasonable in this third sense because they take their religious commitments to be overriding and totalizing; nor can a religious critic argue that political liberalism unfairly burdens religious citizens by ignoring the fact that their religious commitments are overriding and totalizing. Having overriding and totalizing religious commitments does not prevent a
As an aside, political liberal reasonableness is often cast as being in tension with adherence to principle. In contemporary parlance, “being principled” seems to connote being strident, uncompromising, and even intolerant, while “being reasonable” seems to connote being tolerant and willing to compromise. It is useful to note, then, that citizens who take their comprehensive doctrines as imposing overriding, totalizing obligations on them are among the most consistently principled of citizens. Provided that their principles are substantively compatible with liberal-democratic political values, as discussed above, their being so principled poses no problem for this third definition of political liberal reasonableness. Indeed, far from posing a problem, such principled citizens are actually assets for the political liberal and particularly for the philosopher or political theorist actively engaged in developing political conceptions of justice. Recall that Rawls wishes to show how justice as fairness (or other liberal views), understood as a political conception of justice, can be the subject of an overlapping consensus of reasonable comprehensive doctrines. That consensus, then, depends on compatibility between reasonable comprehensive doctrines and reasonable political conceptions of justice. If, as it turns out, some potentially reasonable political conception is, somehow, improperly specified, it is most likely to rub up against the commitments of a citizen who takes his comprehensive doctrine to impose overriding and totalizing obligations. Presuming that citizen is reasonable, political liberals have every reason to be grateful to him, as his principled commitments have exposed a mistake in their conception, a reason
why it cannot, as currently framed, be the object of an overlapping consensus of reasonable comprehensive doctrines. Thus the principled citizens that the various religious objections to political liberalism presume can—presuming the principled citizens’ own reasonableness—function as the proverbial “canary in the coal mine” for the full and eventual public justification of a political conception of justice.

**IV: The Fourth Definition of Reasonableness**

The fourth definition of reasonable in *Political Liberalism* is Rawls’s application of the term to political conceptions of justice. Rawls’s simplest definition of reasonable political conceptions of justice appeals directly to his core, fairness definition of reasonableness. He states, “any conception that meets the criterion of reciprocity [fair terms of cooperation] and recognizes the burdens of judgment” is a candidate for a “reasonable” political conception of justice. But, as with the theoretical definition of reasonableness discussed in section (II), there are quite a number of different criteria Rawls adds to fill out the definition of a political conception of justice, and the relationship between these criteria and the idea of fair terms of cooperation needs to be assessed. This is particularly relevant because, as my discussion below details, the religious critics’ objections most tellingly pertain to this fourth definition of reasonableness. After all, it is the family of reasonable political conceptions of justice that make up the content of public reason, and it is to a reasonable political conception of justice that citizens must appeal if they are to follow the duty of civility. So the

43 *PL* xlix; also *LP* 133, 141.
relationship between the way Rawls defines a political conception of justice and the core, fairness definition of reasonableness needs to be carefully assessed, as does the compatibility of Rawls’s idea of a political conception of justice with a religion that imposes overriding, totalizing political obligations. In short, here the rubber meets the road.

Rawls’s definition of a political conception of justice is quite complex. First, Rawls only discusses “liberal” conceptions of justice, all of which, he argues, specify “certain basic rights, liberties, and opportunities,” assign “special priority to these rights, liberties, and opportunities,” and affirm “measures assuring all citizens adequate all-purpose means to make effective use of their basic liberties and opportunities.” Rawls believes that these constraints describe a broad family of liberal conceptions of justice, and in only discussing liberal conceptions, he implies that any conception that does not meet these three criteria does not delineate fair terms of cooperation. In short, these three criteria are the first step towards a substantive specification of what fair terms of cooperation—the first definition of reasonableness—imply for Rawls.

Rawls, however, is not discussing liberal conceptions of justice, but liberal political conceptions of justice. To be “political,” a conception of justice must apply only to the basic structure, must be presented independently of any comprehensive doctrine, and be presented in terms of political values implicit in a democratic society’s public

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44 PL 223.
political culture.\textsuperscript{45} Again, these constraints suggest that any conception that is not political in these ways does not qualify as reasonable according to the first, fairness definition of the term.

Finally, Rawls adds that liberal political conceptions of justice include “guidelines of inquiry that specify ways of reasoning and criteria for the kinds of information relevant for political questions.”\textsuperscript{46} As a result, political conceptions of justice have two parts: “First, substantive principles of justice for the basic structure; and second, guidelines of inquiry” that specify how citizens are to go about applying the principles of justice their conception endorses.\textsuperscript{47} These “guidelines of inquiry” are the norms of public reason. For Rawls, such guidelines must make inquiry “free and public” and ensure that it follows the duty of civility: citizens should “be able to explain to one another…how the principles and policies they advocate and vote for can be supported by the political values of public reason,” or, in other words, those values specified by one of the set of reasonable political conceptions of justice.\textsuperscript{48} The aim of these norms is “to make possible reasoned public discussion of political questions” (my emphasis).\textsuperscript{49} Again, implicit in this definition is a claim that Rawls’s core, fairness definition of reasonableness demands such guidelines for inquiry.

\textsuperscript{45} Ibid.
\textsuperscript{46} Ibid.
\textsuperscript{47} Ibid., 224.
\textsuperscript{48} Ibid., 217.
\textsuperscript{49} Ibid., 224.
Without such guidelines, Rawls suggests, inquiry—or public political discussion—will not be “reasoned,” and, as a result, political decisions will not conform to the liberal principle of legitimacy. They will not be decisions that all citizens can be “reasonably expected” to endorse. In short, unless a political conception of justice specifies guidelines for inquiry that enable free, public, and reasoned political discussions, that conception is not reasonable. The set of reasonable political conceptions of justice is limited by the norms of public reason.

For the purposes of my analysis in this section, I assume that Rawls is correct to believe that fair terms of cooperation require conceptions of justice that specify basic rights, liberties, and opportunities; prioritizes them; and provides adequate all-purpose means. (For those concerned at this point with libertarian or classical liberal objections, I will address them briefly in section [V], when I discuss the substantive policies that Rawls argues all reasonable political liberalisms endorse. Such objections, however, are not particularly relevant to the religious critics’ objections, which is the main focus of this chapter.) Furthermore, I take it to be clear that the idea of fair terms of cooperation demand a political conception of justice as well. In a society where reasonable (first definition) pluralism obtains, all citizens should be able to wholeheartedly endorse the values that justify their constitution and the coercive imposition of political power. This clearly demands a conception of justice that is political in the way Rawls describes; citizens should not be coerced solely on the basis of a religion or comprehensive philosophical doctrine. It also clearly requires the liberal principles of legitimacy. If such wholehearted endorsement is to be possible, constitutions and laws, at least when
matters of basic justice are at stake, must have reasonably endorsable justifications. However, Rawls’s claim that fair terms of cooperation demand that all public political discussions about constitutional essentials and matters of basic justice occur within the constrained domain of political values given by the family of reasonable political conceptions of justice is a much more problematic application of the idea of fair terms of cooperation, as I argue below.50

Before getting to the mismatch between Rawls’s guidelines for inquiry and the idea of fair terms of cooperation, however, I need to more precisely specify just what I see at work in the religious critics’ objections. Because, as I argued in section (III) above, the religious critics assume without justification that adhering to a religion that imposes overriding and totalizing political obligations is a sufficient reason to reject Rawls’s requirements of citizens (to allow political values to normally outweigh nonpolitical values, in that case), and ignore whether such religions themselves are substantively compatible with fair terms of cooperation, there remains a considerable amount of analysis to be done before I can show that the idea of fair terms of cooperation, instead of justifying Rawls’s guidelines for inquiry, demands that they be revised. To get there, I first (IV.1) explore the possible ways that a comprehensive doctrine might be compatible or incompatible with Rawls’s criteria for a reasonable political conception of

50 I do not discuss Rawls’s proviso in this section, which allows for arguments from comprehensive doctrines to be made in public political discussions “provided that in due course” public reasons are given (LP 144), because I believe that it, suitably and originally interpreted, adequately addresses the religious critics concerns. I make this argument in Chapter Three. If I were to discuss the proviso here, that discussion would significantly occlude my ability to make the religious critics’ concerns clear and persuasive.
justice. Then (IV.2), I consider what theological issues would lead a religion to conflict with a reasonable political conception. Next (IV.3), I consider examples of different religious views that map onto the possible types of compatibility and incompatibility I previously delineated. Finally (IV.4), I consider whether any of the incompatible positions are compatible with Rawls’s first, fairness definition of reasonableness. If there are such positions, I will have shown that Rawls’s guidelines for inquiry conflict with reasonable (first definition) citizens’ reasonable comprehensive doctrines (second definition, with the revisions detailed in section [II]), and that the idea of fair terms of cooperation demands that such guidelines should be revised. In other words, Rawls’s reasonable guidelines for inquiry (fourth definition) can be reasonably (first definition) rejected.51

IV.1: Comprehensive Compatibility and Incompatibility

Since there are two broad components of reasonable political conceptions of justice on Rawls’s account—liberal principles of justice and guidelines for inquiry that make public political discussions reasoned—there are at least four different possible ways a citizen could affirm or fail to affirm a reasonable political conception of justice.

51 To simplify, in the following discussions I indicate which definition of reasonable I am referring to by an abbreviated subscript notation, as follows: Rawls’s first definition of reasonableness, the definition that refers to fair terms of cooperation, the burdens of judgment, and the liberal principle of legitimacy, is “reasonable_{1D}.” Rawls’s second definition of reasonableness, which pertains to comprehensive doctrines, as I amend it in section (II) above, is “reasonable_{2D}.” Rawls’s third definition of reasonableness, that political values should normally outweigh nonpolitical values, is “reasonable_{3D}.” Rawls’s fourth definition of reasonableness, which applies to political conceptions of justice, is “reasonable_{4D},” etc. While one could argue that the object which each different use of the term “reasonable” modifies sufficiently differentiates the use of the term in most cases (the first definition applies to people, the second to comprehensive doctrines, the fourth to political conceptions of justice), the term itself is vague enough that the abbreviated subscript notation provides a great deal of clarity.
First, a citizen could affirm both aspects of a reasonable political conception of justice: liberal principles and liberal guidelines for inquiry. Call this citizen a “reasoned liberal,” where “liberal” denotes her affirmation of liberal principles of justice and “reasoned” denotes her affirmation of Rawls’s guidelines for inquiry.

Second, a citizen could affirm liberal principles of justice but deny Rawls’s guidelines for inquiry. Call this citizen an “unreasoned liberal.” I choose this label because simple negative terms, like “non-reasoned” or “unreasoned” are too pejorative. This category is critical; many liberals and democrats suspicious of public reason could plausibly fall into it. Nevertheless, I postpone discussing whether or not it is coherent until a later section (IV.4), when I have an example of the position more fully developed.

Third, a citizen could try to deny liberal principles of justice but affirm Rawls’s guidelines for public political discussions. Call such citizens “reasoned illiberals;” they believe that broad restrictions of basic rights and liberties can be justified by appeal to common human reason, or perhaps they believe that if all people reasoned correctly, that they would see that liberal freedoms are not properly justified.

Finally, a citizen could deny both liberal principles of justice and Rawls’s guidelines for inquiry. Call this citizen an “unrestrained illiberal.”

See table 1 below as a representation of these possibilities.

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52 William Connolly’s position, as developed in *Why I am not a Secularist* (Minneapolis, MN: The University of Minnesota Press, 1999), springs to mind, though there are other likely candidates as well.
Table 1: Possible Compatibilities and Incompatibilities Between a Comprehensive Doctrine and a Reasonable Political Conception of Justice

<table>
<thead>
<tr>
<th>Rawls's Guidelines for Inquiry</th>
<th>Liberal Principles of Justice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affirm</td>
<td>Reasoned Liberal</td>
</tr>
<tr>
<td>Deny</td>
<td>Unrestrained Liberal</td>
</tr>
</tbody>
</table>

The distinctions represented in the table above assume that citizens can consistently separate their affirmation of liberal principles of justice from their affirmation of Rawls’s guidelines for inquiry. This may seem inherently inconsistent. Indeed, in Rawls’s own view, justice as fairness, both the principles of justice and the guidelines for inquiry are justified by appeal to the idea of fair terms of cooperation, the first definition of reasonableness, and by means of the original position. So, clearly, an adherent of justice as fairness could not consistently separate their affirmation of the two different components of a reasonable political conception. But Rawls never claims that liberal principles of justice and guidelines for inquiry must have the same ground.53 Indeed, Charles Larmore sees this possibility as essential for Rawls’s ability to

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53 See PL 224-227 for this discussion. Because this is a negative claim, about what Rawls does not argue, there is no direct quotation to support it.
accommodate a “generous” family of liberal conceptions. Without the possibility of
dealing with the justification of the principles of justice and the guidelines for inquiry
separately, Larmore argues, Rawls could not include Utilitarianism as a reasonable
political conception. Treating the two components of a political conception separately,
however, allows a citizen “to consider questions of distributive justice as simply
questions of efficiency while admitting that principles of justice, to have the force of law,
must satisfy the criteria of public reason.” So, for now, I can minimally conclude that
endorsing liberal principles of justice while denying Rawls’s guidelines for inquiry (but,
importantly, not the liberal principle of legitimacy) is not incoherent. Granted, in
Larmore’s example, the Utilitarian denies the fairness ground of liberal principles of
justice, basing his justification of such principles on utility, rather than denying the
fairness ground of Rawls’s guidelines for inquiry. But let me stipulate that my
“unrestrained liberal” does not deny the liberal principle of legitimacy; she merely denies
Rawls’s guidelines for public political discussions. This will have to suffice until I have
the full argument on the table.

IV.2: Religious Compatibility and Incompatibility

In section (IV.1), I outlined the broad range of possible positions one might take
toward Rawls’s account of a reasonable political conception of justice. How do these
possibilities map onto the concerns of a religious citizen who views his comprehensive

University Press, 2003), 389.

55 Ibid., 390.
doctrine as imposing overriding and totalizing political obligations on him, and who must, therefore, adopt the third approach to full justification I described in section (III)? Such a citizen must be able to find both components of a liberal political conception substantively compatible with his religion if he is to affirm them; he must have consistent religious grounds to affirm liberal principles of justice and Rawls’s guidelines for inquiry.

First, liberal principles of justice: what aspects of a religion would enable or prohibit adherents from consistently affirming the basic rights, liberties, and opportunities, their priority, and the provision of adequate all-purpose means as substantively compatible with the political positions their religion enjoins on them? There are an enormous number of different possibilities here. For example, a religion that draws a hard religious and moral boundary between adherents and non-adherents and demands that political and civil liberties be distributed in accordance with that boundary would prohibit its adherents from conscientiously affirming the basic rights, liberties, and opportunities, assuming they took the third approach to full justification. Consider Andrew March’s analysis of the various “Islamic objections to citizenship in non-Muslim liberal democracies.” Some interpretations of Islam forbid Muslims from living in a non-Muslim state, from obeying non-Muslim laws, from contributing to the predominance of non-Muslims and strengthening unbelievers, from forming friendships with non-Muslims, from living in sinful environments likely to abound in liberal democracies, and from being loyal to a non-Muslim state, contributing to its self defense, or recognizing its
legitimacy.  Clearly, then, the amount of territory required to survey in order to catalog all of the different ways a religion can be incompatible with liberal principles of justice is prohibitively large for any work not sharply focused on one specific religion or sect.

That said, the particular basic rights and liberties associated with religious freedom occupy pride of place in Rawls’s political liberalism. They, after all, are the immediate substantive implication Rawls draws from the idea of fair terms of cooperation and the burdens of judgment. Thus a religion’s affirmation of full religious liberty for all, including Atheists, Secular Humanists, and other “heathens,” is a good indication of adherents of that religion’s ability to affirm liberal principles of justice. This is, of course, not a sufficient condition for such affirmation. But it is a particularly salient necessary condition, and one that requires much of adherents of traditions that have, historically, denied full religious liberty, as all of the major monotheistic religions have. With that caveat, then, in what follows I make the plausible assumption that a religious adherent who takes the third approach to full justification will be able to consistently affirm liberal principles of justice if his religion accepts full religious liberty for all.

Second, then, what aspects of a religion would enable an adherent, pursuing the third approach to full justification, to affirm Rawls’s guidelines for inquiry, norms that require public political discussions to be restricted to political values justified by reasonable political conceptions alone? (Remember, I am postponing discussion of the proviso until Chapter Three.) This affirmation will depend on the way the relationship

between reason and revelation is understood in that adherent’s religion. Consider a religion in which reason is understood to provide a way of accessing or justifying moral and political truths that is at least equal in terms of its authority and capacity in this sphere to revelation. This adherent may believe, to speak in the language of contemporary Catholic social theory, for example, that natural reason and scripture share the same political and moral teachings and that natural reason is accessible to those who are ignorant of or deny the truths of scripture. Such an adherent will be able to consistently affirm that public discussions should be limited to political values alone as Rawls describes.\(^\text{57}\) She has religious grounds to believe that those who deny the truths of the revelation she affirms (or interpret them differently) will nevertheless be able to affirm on the basis of reason the moral and political positions she feels obligated, as an adherent of her religion, to support.\(^\text{58}\)

This is not the case for adherents of a religion in which human reason is understood to be a superficial or untrustworthy guide to moral and political truths, a religion in which revelation alone justifies the political implications of the religion. In that case, adherents who pursue the third approach to full justification, though they may

\(^{57}\) Please note the “able to” language here. Her religions does not necessarily require her to affirm those guidelines; what I am arguing instead is that her religion gives her the theological resources to be able to consistently affirm Rawls’s guidelines if she finds them persuasive, even if she adopts the third approach to full justification.

\(^{58}\) It could also be the case that an adherent’s confidence in the reasoned—or “natural”—justification of her views will make her more confident in the absolute truth of those views and less willing to compromise them or to accept the burdens of judgment. (I am indebted to James Calvin Davis for this point.) I will consider to what extent this prevents her from affirming a reasonable political conception of justice or qualifying as a reasonable citizen in greater detail later, when I explicitly consider the new natural lawyers’ objections.
be able to consistently affirm liberal principles of justice on revealed grounds, will not be able to affirm Rawls’s guidelines restricting political discussion to political values alone, as such adherents will not feel that they are able to articulate or justify the political implications of their religion in terms that those who do not accept the revelatory sources they affirm can understand or be expected to accept. Rawls’s guidelines for inquiry are thus incompatible with the moral epistemology of their religious view. They understand their religion to demand that they act in politics as adherents of their religion, always speaking as such; as a result Rawls’s guidelines have the effect of preventing them from conscientiously (that is, consistently with their religious view) participating in public political discussions.

A religious adherent’s ability to consistently affirm Rawls’s guidelines for inquiry will largely depend, then, on the way the relationship between reason and revelation is understood in her religion. If reason is understood to be an acceptable manner by which to access and justify moral and political values, one accessible to all people regardless of the religion they happen to affirm, then a religious adherent will be able to affirm Rawls’s guidelines for public political discussions—she has the theological grounds to accept those guidelines as not contradicting the obligations her religious view imposes on her. If, however, her religion teaches, as she understands it, that revelation alone is the only source of the proper understanding of moral and political values, then she will not be able to affirm Rawls’s guidelines as consistent with her religious view.

In summary, adherents of religions that demand full religious liberty for all, it is plausible to assume, will be able to conscientiously affirm liberal principles of justice,
and adherents of religions that hold reason to be of at least equal authority with scripture or revelation as a source of moral and political values and reasonably endorsable to non-adherents will be able to conscientiously affirm guidelines of inquiry that restrict political discussions to political values alone. Religions that dissent from either of these two claims will be incompatible, to some degree, with Rawls’s understanding of a reasonable political conception of justice and, as a result, adherents of such religions will be unable to conscientiously affirm such a conception (presuming they pursue the third approach to full justification). It is possible, then, that there will be religious comprehensive doctrines that fall into either the reasoned liberal or reasoned illiberal categories. Furthermore, it is possible that religions will fall into either the unrestrained liberal or unrestrained illiberal categories as well. However, because religious comprehensive doctrines dissent from Rawls’s guidelines for inquiry on revealed grounds, I rename religious comprehensive doctrines in the unrestrained set “revealed liberals” and “revealed illiberals.” The adaptation of my section II analysis to religion is represented in table 2 below.
Table 2: Compatibilities and Incompatibilities Between a Religion and a Reasonable Political Conception of Justice

<table>
<thead>
<tr>
<th>Relation of Reason &amp; Rev.</th>
<th>Full Religious Liberty for All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reason ≥ Rev.</td>
<td>Affirm</td>
</tr>
<tr>
<td>Reasoned Liberal</td>
<td>Reasoned Illiberal</td>
</tr>
<tr>
<td>Reason &lt; Rev.</td>
<td>Deny</td>
</tr>
<tr>
<td>Revealed Liberal</td>
<td>Revealed Illiberal</td>
</tr>
</tbody>
</table>

IV.3: Examples of Religious Compatibility and Incompatibility

As a result of my analysis in section (IV.2), I have a map of the different possible forms of compatibility and incompatibility between Rawls’s description of a reasonable political conception of justice and a religious comprehensive doctrine that its adherents take to impose overriding and totalizing political obligations. As a final step before assessing whether any of the adherents who fall into one of the conflicting categories could be reasonable according to Rawls’s first, fairness definition (reasonable1D), here I consider examples of different religious views that fall into each of the possibilities I identified above.

Consider the revealed illiberal category first. Sayyid Qutb and many other contemporary Islamists fall into the revealed illiberal category, as they deny both religious liberty and any justificatory sources outside of the law revealed to
Mohammad. Some religious groups on the Israeli religious right fall into the same category for similar reasons. And so too do many far right Protestant Christians, for example, R.J. Rushdoony and so-called “Christian Reconstructionists,” who feel that Christianity demands the imposition of the Law of Moses, as described in the Hebrew Bible, on the United States. But some (relatively) more moderate conservative Protestants, like Francis Schaeffer, who proclaims support for a form of religious liberty but vilifies “secular humanism” (and secular humanists) as an uncompromising cultural totality standing against the Christian worldview, plausibly fit into this category as well. Schaeffer’s religious liberty is not full and for all; rather, it is restricted to only those who share his belief in God and an ordered universe. Furthermore, given Schaeffer’s deep influence on the contemporary Christian Right, some influential American religious leaders, like Pat Robertson and Jerry Falwell, probably fit into this category as well.

Second, there are also prominent examples of religious reasoned illiberals: the late Archbishop Lefebvre and his Society of Pius X, for example, who believe that Vatican II and the Church’s embrace of full religious liberty for all was inspired by the devil and

59 See Andrew March, Islam and Liberal Citizenship, 103-133.


62 For Schaeffer’s views on this question, see “The Humanist Religion,” A Christian Manifesto (Westchester, IL: Crossway Books, 1982), 53-62. Barry Hankins calls Francis Schaeffer the Christian Right’s “intellectual guru,” see his Francis Schaeffer and the Shaping of Evangelical America (Grand Rapids, MI: William B. Eerdmans Publishing Company, 2008), 204. I say “probably” so that I may avoid a distracting analysis of Robertson’s or Falwell’s specific views.
antichrists—and unacceptably abandoned traditional natural law principles. They believe that the Catholic natural law tradition provides broad, “reasoned” justifications for Catholic establishment and restrictions on the religious liberty of other groups.63

As my analysis in section (IV.2) above suggests, no adherent of any of these religious views will be able to wholeheartedly affirm both components of a reasonable political conception of justice as Rawls describes them, unless they take their religious obligations to be either not overriding or not totalizing or both.

Third, what sorts of religious views fall into the reasoned liberal category? Any religious tradition that affirms full religious liberty for all and reason’s authority in political and moral affairs fits here; examples of such traditions not only abound, they are one of the historical origins of liberal-democratic political values, and even, plausibly, of political liberalism itself. Consider the following:

Roger Williams understood Protestant Christianity, specifically its Reformed (Calvinist) variety to demand that governments extend full religious liberty to all. This is because Williams believed that scripture demanded that individuals’ consciences—the “candle” with which individuals searched for truth—be free from all forms of compulsion. Indeed, Williams went so far as to argue that compelling conscience was “spiritual and soul rape.”64 Furthermore, though Williams undeniably saw Christianity as


64 For discussion of soul rape, see Williams, “The Bloody Tenent Yet More Bloody,” in Roger Williams, On Religious Liberty, edited by James Calvin Davis (Cambridge, MA: Havard University Press, 2008), 113
demanding this position, he also believed that it was broadly justifiable to those who did not share his, at the time, idiosyncratic understanding of Protestantism—particularly to the Jews and Catholics he welcomed to his colony, Rhode Island, and the Native Americans who already lived there. This confidence came because Williams believed—with other of his Puritan contemporaries—in the existence of a natural law that was accessible to all people through their rational capacities and by which they should judge human laws and institutions. Indeed, Williams thought that full religious liberty was justifiable by appeal to both scripture and natural law, thereby leading to his remarkable toleration of all Protestant sects, Catholics, Jews, Muslims, and the various Native American religious traditions. And Williams’ broad approach was highly influential, adopted by leading philosophical exponents of early liberalism like John Locke and providing the theological underpinning of American religious pluralism.

205-6. For discussion of the conscience as candle, see “The Examiner Defended” in On Religious Liberty, 243.

65 For helpful discussions of Williams’ positions, see James Calvin Davis, The Moral Theology of Roger Williams; and Martha Nussbaum, “Living Together: The Roots of Respect” in Liberty of Conscience. Though there are important differences, mostly in tone though also in substance, between Nussbaum’s and Davis’s accounts of Williams, the broad outlines are similar and reflected in my language above.

66 See Nussbaum, Liberty of Conscience, for discussion of Williams’s influence on American religious pluralism; also James Calvin Davis, “Introduction” in On Religious Liberty, 40; and John Marshall, John Locke: Resistance, Religion, and Responsibility (New York: Cambridge University Press, 1994), 60ff., for discussion of Williams’ influence on John Locke. Locke, unlike Williams, infamously denies toleration to adherents of religions that demand loyalty to a foreign prince—a not very subtle reference to at least some Catholics. Though, in Locke’s defense, he dealt directly with the potential political consequences of such loyalties, which were much more dangerous in 17th century England than in 17th century Rhode Island.
Catholic social theory after Vatican II also demands full religious liberty for all and relies on appeal to reason’s authority in moral and political affairs. The Vatican’s 1965 declaration on religious freedom, *Dignitatis Humanae*, argues, for example, that “the human person has a right to religious freedom,” a right grounded, “in the very dignity of the human person as this dignity is known through the revealed word of God and by reason itself.” The declaration itself focuses on interpreting scripture and Church tradition in order to justify full religious liberty for all, which was, for the institutional Church, a considerable policy change. But the Church’s grounds for respect for human dignity are not found in revelation alone. Catholic social theory embraces a Thomistic understanding of natural law, which is held to be universally accessible to all people through their reason and without appeal to scripture. There are, of course, considerable differences between Catholic and Protestant understandings of natural law, but both understandings share the claim that human reason provides wide access to moral norms shared across cultural and religious difference. They are both able, therefore, to affirm Rawls’s guidelines for public political discussions. The natural law grounds of *Dignitatis Humanae*, and the broader reconciliation with modern liberal

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68 See the essays in John Courtney Murray, *Religious Liberty: Catholic Struggles with Pluralism*.

democracy Vatican II represents, are mostly clearly evident in the writings of neo-Thomist political thinkers like John Courtney Murray and Jacques Maritain who were influential before and during Vatican II. Indeed, Martha Nussbaum goes so far as to claim that Maritain might be called “the first political liberal.”

Not only do many Protestant and Catholic Christians fall into the reasoned liberal category, many Jews do as well. Reformed Judaism, with its origins in the Jewish Enlightenment, is characterized not only by the application of critical reason to the Jewish religious tradition, but also by respect for full religious liberty for all and confidence that the moral principles on which the Jewish tradition is based are both universal and justified by accessible reasons. Orthodox Jews also have resources to affirm both religious liberty and Rawls’s guidelines for inquiry as well. David Novak, for example, argues that the rabbis speak of a category of moral norms called the “Noahide laws” they believe God taught to Noah and descended from him to the human family. For some in the Jewish tradition—Maimonides among them—these Noahide laws “are known through rational reflection on [peoples’] ordinary, universal, moral experience.”

70 See John Courtney Murray, We Hold these Truths: Catholic Reflections on the American Proposition (Lanham, MD: Sheed & Ward, 1960); Jacques Maritain, Man and the State (Chicago: University of Chicago Press, 1951). My claims above flatly contradict the natural law objections to political liberalism. I will justify this contradiction later, when I specifically address the natural law objections.

71 “Perfectionist liberalism and Political Liberalism,” 19.

72 The classic exponent of this view is Herman Cohen, Religion of Reason out of the Sources of Judaism, translated with an introduction by Simon Kaplan (Atlanta: Scholars Press, 1995).

Catholic social theory appeals, and similarly enable orthodox Jews, for Novak, to conscientiously affirm full religious liberty for all and guidelines for inquiry that limit public discussions to political values.  

Finally, many Muslims find justifications for full religious liberty and theological resources within Islam that enable them to affirm Rawls’s guidelines for inquiry. Some do this by appeal to an Islamic understanding of natural law, analogous to those discussed above. Others do so by arguing that Islam itself demands a division between the sacred and secular realms, and thus that a secular state simply is the “Islamic” state for which Muslims should hope and work. In other words, those Muslims who feel compelled to use the third approach to full justification fall into the reasoned liberal category on the basis of an Islamic account of natural law, while others feel that Islam itself demands the second, separation, approach to full justification.

74 Admittedly, Novak’s discussion of the Noahide laws leaves many questions unanswered, including whether Orthodox Jews can consistently extend toleration to Hindus and Buddhists, since the Noahide laws forbid idolatry. See Steven S. Schwarzschild, Saul Berman, and Meanchem Elon, “Noachide Laws,” Encyclopedia Judaica, vol. 15, 284-287.


77 For the sake of length, I limit my examples to the three major monotheistic religious traditions.
It is clear, then, that there are examples of religious reasoned liberals across a wide variety of religious traditions. Strikingly, these citizens need not feel any conscientious conflict with political liberal citizenship requirements, even if they put overriding priority on religious commitments they take to be overriding and totalizing and therefore pursue the third approach to full justification. Though I will address the religious objections to political liberalism in greater detail later, it is clear at this point that anyone who broadly claims that political liberalism is unfriendly to religion or unfair to religious citizens, or, indeed, that committed religious citizens who act in politics on the basis of their religions undermine fair democratic cooperation is simply and unambiguously wrong. Such claims do not take sufficient account of the wide variety of different religious commitments and the varieties of ways those commitments impact adherents’ citizenship. They are based on an unjustifiably reduced account of what it means politically to be a person of faith.

Finally, what sorts of religious views fit into the revealed liberal category? Such views, while perhaps not as historically popular or influential in Western liberal-democratic political thought as those that fall into the religious reasoned liberal category, nevertheless make up a prominent stream within many religious traditions.

78 Stanley Fish’s discussions of religion and liberal democratic politics is merely one of the most flagrant examples of this common mistake, see his “Religion and the Liberal State Once Again,” New York Times, November 1, 2010.

79 For a convincing historical analysis of the role that scriptural interpretation played in the development of “Republican Exclusivism”—the claim that a republic is the only legitimate regime type—in European political thought, see Eric Nelson, “‘Talmudical Commonwealthsman’ and the Rise of Republican Exclusivism,” The Hebrew Republic: Jewish Sources and the Transformation of European Political Thought (Cambridge, MA: Harvard University Press, 2010). Nelson’s work suggests that the movement
To begin, consider an adherent of Karl Barth’s influential reinterpretation of Reformed Christianity. Suppose that this adherent understands his religion to impose overriding and totalizing obligations, so that he is bound to take the third approach to full justification—an approach he justifies by reference to Barth’s insistence that Christians are subject to God in all areas of their lives and ought not divide their political and religious commitments.80

Our Barthian should have no trouble endorsing liberal principles of justice. Barth believed that, as an ecclesiological matter, the Church should govern itself democratically and that similar norms applied, though imperfectly, to the state as well. And he likewise demanded that states grant their citizens religious liberty.81

But our Barthian could not simultaneously pursue the third approach to full justification and affirm guidelines of inquiry that restrict public discussions to political values alone. First, the natural law approach to that affirmation discussed above is closed off to him. For Barth, the Christian natural law tradition is a violation of two fundamental Protestant maxims: by the scriptures alone and by grace alone. Barth towards religious liberty had roots in scriptural interpretation—in the understanding of revelation—as well as in analysis of the natural law, which I emphasized in my discussion of the “reasoned liberal” category.


81 For statements of Barth’s political views, especially as they pertain to liberalism and democracy, see his “The Christian Community and the Civil Community” and “Church and State” published in English in Community, State, and Church (Gloucester, MA: Peter Smith, 1968), as well as Jehle, Ever against the Stream, 87-99.
believes that Christian natural lawyers presume to see God’s grace in people’s ability to perceive moral and political truths without access to scripture. But for Barth, this is contradictory; it amounts to claiming that people can have access to God’s grace without having access to God’s grace. The Protestant position, Barth argues, is that God reveals himself in scripture alone. Scripture alone, then, is the source of the grace that people require to understand religious truths and their moral and political implications. To believe that people can access those truths without scripture is to believe that people can access God on their own—by their own efforts or works. Barth thus accuses the Christian natural lawyer of a version of the Pelagian heresy—the belief that people can save themselves by their own good works.\textsuperscript{82} Barth’s condemnation of the natural law tradition not only closes off the possibility of affirming a reasoned mode of inquiry on grounds similar to Roger Williams or contemporary Catholic social theory, it also gives our Barthian reason to be suspicious of speaking in non-scriptural terms. The Barthian will feel compelled to speak as a Christian and only as a Christian in political arguments, offering only scriptural or revealed justifications for his political views. So the Barthian is clearly a revealed liberal, accepting liberal principles of justice but denying Rawls’s guidelines for inquiry.

Similarly, revealed liberal positions exist in Islam and Judaism. The simple fact that both religions see God as calling adherents to follow a positive, revealed law makes the recourse to reason and the natural law so necessary to religious adherents that fall into the reasoned liberal category relatively more controversial than in the Christian tradition. So it is unsurprising that some Jews and Muslims will be able to consistently affirm liberal principles without affirming Rawls’s guidelines for inquiry.

Consider, for example, Andrew March’s work showing that liberal-democratic citizenship need not violate Muslims’ religious obligations. March’s arguments refer to the tradition of Islamic jurisprudence alone. Not once does March appeal to an Islamic idea of natural law or universal reason. March does this because, in the currently dominant understanding of Islam, God’s revealed law is the only moral authority, reason may be involved in interpreting the law, but it does not offer an authoritative compliment or alternative to it. This is what Enver Amon calls the “dominant positivist thesis” in Islamic law. March nevertheless develops Islamic grounds on which Muslims can cooperate on equal terms with non-Muslim fellow citizens. He does not go so far as to present Islamic grounds for fully affirming liberal principles of justice, but he notes that

83 Because Paul taught that Jesus overcame “the law,” in its revealed, Mosaic form, later Christian thinkers had less theological obstacles in the way of appropriating Greek philosophical approaches to politics—particularly the idea of a natural law—than did Jews or Muslims. See Remi Brague, *The Law of God: The Philosophical History of an Idea*, translated by Lydia G. Cochrane (Chicago: The University of Chicago Press, 2007), 256-64.


85 “Natural Law and Natural Rights in Islamic Law,” 351.
there are many Muslims who already do so.\textsuperscript{86} Given the dominance of the positivistic interpretation of Islamic law, then, many Muslims who pursue the third approach to full justification will not be able to affirm Rawls’s guidelines for inquiry, even if they are able to affirm liberal principles of justice on Islamic grounds. They will be revealed liberals. Orthodox Jews who deny the rationalist elements in the Jewish tradition but nevertheless affirm liberal principles of justice will fall into the same category.\textsuperscript{87}

Thus, there are adherents who fall into the revealed liberal category across a variety of different religious traditions. See table 3 below for a complete representation of my analysis in the last three sections.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|}
\hline
\textbf{Relation of Reason & Rev.} & \textbf{Full Religious Liberty for All} \\
\hline
\textbf{Affirm} & \textbf{Deny} \\
\hline
Reasoned Liberal & Reasoned Illiberal \\
Roger Williams & Archbishop Lefebvre \\
\textit{Dignitatis Humanae} & Society of St. Pius X \\
Hermann Cohen, David Novak & \\
Enver Amon, Abdallahi An-Na'im & \\
\hline
Revealed Liberal & Revealed Illiberal \\
Karl Barth & R.J. Rushdoony \\
A. March's Audience & Sayyid Qutb \\
 & Francis Schaeffer \\
 & Pat Robertson, Jerry Falwell \\
\hline
\end{tabular}
\caption{Examples of Religious Compatibility/Incompatibility with a Reasonable Political Conception of Justice}
\end{table}

\textsuperscript{86} March, Islam and Liberal Citizenship, 260, 75.

\textsuperscript{87} Consider David Novak’s discussion of this denial, The Jewish Social Contract, 229-32.
IV.4: The Fourth Definition of Reasonableness and the First Definition Compared

I am now—at last—prepared to assess whether Rawls’s “reasonable” guidelines for inquiry are compatible with his fairness definition of reasonableness, discussed in section (I) above. I will argue here that these guidelines are not compatible, because citizens can consistently reject them without abandoning their commitment to proposing and abiding by fair terms of cooperation, the burdens of judgment, and the liberal principle of legitimacy, and because there are citizens who adhere to religious views that qualify as reasonable according to the first, fairness definition but who cannot reconcile guidelines for inquiry that restrict public political discussions to political values alone with their reasonable (2D) comprehensive views.

Clearly, then, this argument cannot get off the ground unless I can find citizens whose religious views fall into one of the three incompatible categories above who also qualify as reasonable according to the fairness definition, citizens who propose and abide by fair terms of cooperation, accept the burdens of judgment and affirm the liberal principle of legitimacy. Neither the reasoned or revealed illiberals are promising categories in which to look for such citizens. By rejecting liberal principles of justice, they quite clearly reject the very idea of fair terms of cooperation and unambiguously deserve to be labeled as unreasonable according to the first definition.\(^{88}\) The revealed liberal category, on the other hand, is much more promising. Revealed liberals accept

\(^{88}\) Political liberals may still owe people in these two categories justifications for the practice of constitutional democracy, if they are citizens of one. For an example of how this might be done, see Lucas Swaine, *The Liberal Conscience: Politics and Principle in a World of Religious Pluralism* (New York: Columbia University Press, 2006).
liberal principles of justice because they believe those principles instantiate a political society that their revealed scriptures and traditions of interpretation teach is at least an acceptable one in which to live their lives and follow the overriding, totalizing demands of their religions, if not one demanded by their scripture and tradition. It is much more likely, then, that such a citizen will be able to affirm the idea of fair terms of cooperation, the burdens of judgment, and the liberal principle of legitimacy. In what follows, I work back to the first definition of reasonableness in order to see if a revealed liberal—a religious citizen who rejects Rawls’s guidelines for inquiry—can qualify as reasonable in the fairness sense.

Consider again the first component of Rawls’s fairness definition of reasonableness, reasonable(ID): being willing to propose and abide by fair terms of cooperation provided others do so. I see no reason why a revealed liberal cannot meet this first component of reasonableness(ID). She can propose that all members of her society treat each other as political equals when they cooperate. Her religion allows this; it may even demand this of her. She can propose that all members of her society allow each other to worship, think, pray, and gather as they please. Again, her religion, minimally, allows this and may even demand it. Now, our revealed liberal may feel compelled, as the Barthian discussed in section (IV.3) did, to indicate that her religious tradition justifies her own respect for the ideals of fairness. But stating “As a Christian (or a Jew, or a Mormon, or whatever) I believe that we ought to treat one another as equals,” or even, “Because I believe God created each of us in his image we deserve to be respected as political equals and I propose we do so in our society” does not make the
terms she proposes any less fair than they would be if she proposed them without identifying the religious argument she feels justifies her stance. The same is obviously the case for the “abide by” condition. If a revealed liberal feels committed to fair terms of cooperation, there is no reason why the religious grounds of that commitment would make it any less trustworthy than any other plausible ground.

What about the burdens of judgment? Can a revealed liberal accept, in a way consistent with her religious commitments, that other people in her society will hold different religious and philosophical views from her, and that such differences do not undermine their ability to cooperate on fair terms with her? Again, I see no reason why not. She is committed, after all, to full religious liberty for all as a mandate of her religious view. Furthermore, she *denies* that her religion’s teachings are broadly justifiable by appeal to human reason or the natural law or whatever. If she is a Christian, perhaps she sees God’s inscrutable grace as the only relevant reason why she is a believer in her religion and her neighbor is not. Revealed liberal adherents of other religious traditions will, of course, have alternative explanations for religious pluralism. As a revealed liberal, this distinction—between believers and non-believers—matters enormously for her *as a religious matter*, but that same religion teaches her that that distinction *should not be politically relevant*. The fact that her non-believing neighbors also accept fair terms of cooperation and are willing to cooperate with her regardless of their religious differences strikes her, perhaps, as a gift from God. She sees her Judaism (or her Christianity, or whatever) as her justification for accepting reasonable religious and philosophical pluralism, and she is happy others feel the same way she does.
Finally, can a revealed liberal accept the liberal principle of legitimacy? The liberal principle of legitimacy states that the “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 other words, the liberal principle claims that it is not proper for any one religion or comprehensive doctrine to dictate the terms of social cooperation or serve as the arbiter of political legitimacy; those terms and that legitimacy should be such that adherents of all reasonable religious or philosophical views can be expected to endorse. As in the two cases above, there is no reason why a revealed liberal cannot accept the liberal principle of legitimacy. When our revealed liberal argues “Because I believe God created us in his image, we deserve to be respected as political equals and I propose we do so in our society,” it would be uncharitable in the extreme for her interlocutors to assume that what she really meant by that statement was “I want my religious beliefs and no other views to be the arbiter of political legitimacy in our society.” Rather, her statement suggests that she hopes her fellow citizens who may believe in God will be persuaded by her religious argument, brief though it may be, and that others who may not so believe will find other grounds to accept her proposition or point out to her why they cannot. And since she is committed to political equality, it would be perfectly acceptable with her if one of her interlocutors said something like, “I agree that we deserve to be treated as political equals, though for me those comes from our human capacity to recognize the categorical dictates of the moral law we give ourselves” (or the maximization of pleasure, or whatever).
So the revealed liberal’s overriding and totalizing obligation to participate in politics and argue on the basis of her religious beliefs in public political discussions—an obligation stemming in part from her religious conviction that the revealed texts or law of her tradition offers the best access to moral and political truths—poses no problems to her proposing and abiding by fair terms of cooperation or accepting the burdens of judgment and the liberal principle of legitimacy. What her religious commitments do prevent her from accepting, however, are Rawls’s guidelines that restrict public political discussions to political values alone, guidelines that expect all citizens to offer reasonably endurable justifications of the proposals they support. *This* she cannot do; it conflicts with what she takes to be her overriding religious obligations.

What does this conflict suggest? Given that our revealed liberal is willing to propose and abide by fair terms of cooperation, accepts the burdens of judgment and affirms the liberal principle of legitimacy, she is plainly reasonable\(_{1D}\). But Rawls’s definition of a “reasonable” political conception of justice conflicts with her religious obligations, obligations that do not conflict with the core, fairness definition of reasonableness. So our revealed liberal will reasonably\(_{1D}\) reject Rawls’s conception of a reasonable\(_{4D}\) political conception of justice. To accommodate the reasonable\(_{1D}\) revealed liberal, Rawls’s guidelines for inquiry must be revised.

Now, to consider one plausible objection before moving on: There may seem to be another type of revealed liberal, one who sees his religious tradition (which meets the definition of revealed liberal by denying that human reason is a trustworthy source of moral and political truths) as the *only* politically acceptable justification of liberal
principles of justice—which he affirms—and on that basis denies Rawls’s guidelines for inquiry because they forbid such revealed justifications. Certainly, the objection might run, this revealed liberal does not qualify as reasonable. Why accommodate such unreasonable exclusivism?

I grant that the above apparent revealed liberal’s insistence that his tradition offers the only coherent justification of liberal principles of justice—in striking contrast to the first revealed liberal’s openness to other citizens’ acceptance of those principles on other grounds—offends against both fair terms of cooperation and the burdens of judgment. If his tradition is the only acceptable justification of liberal principles, it is hard indeed to see how he could consistently trust and cooperate with those who don’t accept his religion. Indeed, his exclusivism suggests that he believes that his religion must dictate the terms of cooperation in order to realize liberal principles of justice. Thus, though this apparent revealed liberal affirms liberal principles of justice, he does so in a distinctly illiberal way and clearly does not qualify as reasonable. He may be able to propose and abide by terms of cooperation that happen to be fair, but he does not accept the burdens of judgment or the liberal principle of legitimacy. By claiming that his religion provides the only acceptable justification of liberal principles of justice, he suggests that anyone who does not accept his religion cannot be trusted to adhere to such principles. For him, pluralism undermines fair cooperation; there is no such thing as reasonable pluralism. Nevertheless, the possibility of such an apparently revealed liberal does not

89 If one feels that my characterization of Francis Schaeffer in section (IV.3) above was too harsh, perhaps he is an example of this sort of “revealed liberal.”
undermine my argument in this section; all I need to do is to show that Rawls’s guidelines for inquiry fail to comport with his first, fairness definition of reasonable is produce an example of a citizen who meets that definition but cannot conscientiously follow Rawls’s guidelines. I did so above. Her exclusivist cousin does not affect my argument.

V: The Fifth Definition of Reasonableness

The fifth and final definition of reasonable at work in Political Liberalism is Rawls’s application of the term to “political liberalisms.”90 I am not sure if Rawls means this term to denote something other than a reasonable political conception of justice, the subject of section (IV) above, or not. Regardless, the content denoted by his use of the term here is sufficiently different to merit separate treatment. Rawls claims that the principle of reciprocity—the idea of fair terms of cooperation—demands the provision of adequate all-purpose means for all citizens to use their rights, liberties, and opportunities, as I discussed above. He then claims that without a list of five social institutions, “reasonable political liberalisms hold that excessive inequalities tend to develop,” which, he claims, “is an application of common sense political sociology.”91 These social institutions are “public financing of elections,” “fair equality of opportunity—especially in education and training,” “a decent distribution of wealth and income,” “society as the

90 PL lvii.

91 Ibid.
employer of last resort” and “basic health care assured all citizens.” As in sections (II) through (IV) above, the implication of Rawls’s use of the term reasonable in conjunction with this list of institutions is that anyone who denies the necessity of the five of them (or perhaps only the first three, which Rawls feels are especially important) does not qualify as reasonable and, furthermore, that political conceptions of justice that do not endorse such institutions are unreasonable and outside the content of public reason. Coercing citizens on their basis would then be a violation of the liberal principles of legitimacy. In other words, Rawls is arguing here that libertarians are bad citizens.

I do not want to spend a lot of time discussing this final definition of reasonableness; I have included it mostly for completeness’s sake. None of the religious critics discuss institutions of the sort Rawls mentions as posing problems for the religious citizens with which they are concerned (although there are some religious views for which they would pose problems). In this sense, the fifth definition is somewhat of a distraction from the main focus of the chapter. Nevertheless, it is worth sketching out an analysis of it. Rawls’s move from the idea of reciprocity and fair terms of cooperation to those five social institutions is too quick. There is clearly at least a minimal kind of reciprocity at work in some forms of libertarianism or classical liberalism, if not in the radical individualism of Ayn Rand or Murray Rothbard then at least in the more moderate

92 Ibid., lviii-lix.

93 For example, consider a view like Edmund A. Opitz’s in The Libertarian Theology of Freedom (Tampa, FL: Hallberg Publishing Corporation, 1999).
views of Milton Friedman or F.A. Hayek.  

Consider, for example, the sort of reciprocity at work in the maxims “people ought to leave each other alone,” and, “he who does not work shall not eat.” It would take much more analysis than Rawls offers to clarify why such reciprocities do not qualify as reciprocity in Rawls’s sense.  

Absent such analysis, then, and not wanting to distract by embarking on my own, I will presume that someone could adhere to a suitably specified variety of classical liberalism that would allow him or her to reasonably reject this final definition of reasonableness and suggest some more minimal list of required institutions.

That said, I want to point out that in making the above claim, I am not suggesting that the institutions Rawls mentions do not qualify as reasonable or as a legitimate instantiation of fair terms of cooperation. I take Rawls’s efforts at developing justice as fairness into a political conception of justice to show that, while perhaps the institutions discussed above are not required by the idea of fair terms of cooperation, that they certainly do not violate that idea. Insofar as justice as fairness demands as a minimum set of institutions public financing of elections, fair equality of opportunity, a decent distribution of all-purpose means, society as the employer of last resort, and universal basic health care, setting up, maintaining, and funding such institutions (and indeed, more than this, given that Rawls feels this is a minimal set) are clearly legitimate uses of

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94 Friedman and Hayek both qualify as liberals in Samuel Freeman’s analysis, while Rand and Rothbard do not. See his “Illiberal Libertarians: Why Libertarianism is not a Liberal View,” *Philosophy and Public Affairs* 30:2 (Spring 2001): 105-151.

95 For work suggesting that this project cannot succeed, see Thomas A. Spragens, “The Antinomies of Social Justice,” *Review of Politics* 55:2 (1993), 193-216; and his “Democratic Reasonableness.”
coercive political power, provided that they are enacted and set up in a procedurally legitimate way.

VI: The Reasonableness of the Religious Objections Assessed

Given my analysis in the above five sections, it is clear that Rawls’s five different uses of the term “reasonable” do not perfectly cohere with each other. Indeed, only his inferred claim that reasonable people allow political values to “normally outweigh” nonpolitical values is clearly demanded by his core definition of reasonableness, the idea of fair terms of cooperation. The commitment reasonable people make to “abide by” fair terms of cooperation demands such outweighing. The other definitions of reasonable, however, have many more problems. The theoretical definition of reasonable comprehensive doctrines, discussed in section (II), inappropriately demands that comprehensive doctrines adhere to norms of consistency that contradict key tenets of major monotheistic religions. It should be replaced by a definition such that reasonable comprehensive doctrines are doctrines that reasonable citizens affirm in a way that is consistent and persuasive according to their interpretation of their comprehensive doctrine. Rawls’s fifth definition, of the social institutions entailed by the idea of fair terms of cooperation, inappropriately ignores the reciprocity at work in some classical liberal views. And most significantly for my consideration of the religious critics’ objections, the fourth definition of reasonable, the claim that reasonable people limit their contributions to public political discussions to reasonably endorsable political values alone, inappropriately conflicts with the religious obligations of some citizens (revealed liberals) who can consistently propose and abide by fair terms of cooperation, accept the
burdens of judgment, and affirm the liberal principle of legitimacy while denying Rawls’s constraints on public political discussions. *This* is the justifiable kernel at work in the various religious critics’ objections to Rawls’s citizenship requirements. This claim is also, though, different in important respects from the extant religious objections. Before considering the implications of my criticism of Rawls’s various definitions of reasonableness, then, I pause to assess the religious critics’ objections in light of my analysis above.

VI.1: The Natural Law Objections

As I argued in sections (IV.2) and (IV.3) above, the claim, prominent in many monotheistic religious traditions, that human reason and revelation justify the same moral and political truths is essential to many reasoned liberal religious positions. This claim is often expressed in terms of a religious tradition’s appeal to natural law. What then, to make of the new natural lawyers’ argument that political liberalism’s conception of public reason is unjustifiably biased against natural law perspectives?

It is worth remembering that the new natural lawyers are working within one specific approach to the natural law, an approach that has its critics even in the morally conservative Catholic circles in which they move.96 They do not represent the full range of natural law views, many of which have policy implications that are more in line with

liberal policy positions (in the sense of the left and center left in the American ideological spectrum).  

That said, it is difficult to assess whether or not the new natural lawyers actually abide by the broad constraints of reasonableness (1D) I work from above or not. I begin by offering a reading of the new natural lawyers’ criticisms that interprets them as charitably as possible—from the perspective of the first definition of reasonableness. I then offer a more suspicious reading. I will argue that the new natural lawyers have not given enough information to adjudicate between these two views. Nevertheless, neither interpretation supports their objections to Rawls’s guidelines for public political discussions.

First, the charitable reading: the significance the new natural lawyers’ place on their specific policy disagreements with Rawls or Macedo is overblown. Granted, the new natural lawyers believe that their policy proscriptions in favor of abortion regulations and in opposition to homosexual marriage are justifiable by appeal to common human reason, while the alternative positions on those issues are moral tragedies (going so far as to claim, for example, that abortion is the twentieth and twenty-first century’s greatest moral concern, in the way slavery was the nineteenth century’s). But their bark, so to speak, is worse than their bite: the new natural lawyers have consistently refused to endorse the illegal and violent actions of the more radical elements in the anti-abortion

and anti-gay marriage movements, their inflammatory rhetoric notwithstanding.\textsuperscript{98} To this extent, they do not, Finnis’s own claims to the contrary, believe that their moral positions on these issues justify civil strife.\textsuperscript{99} Rather, they work to develop natural law justifications for their morally conservative positions that they hope can persuade people who do not share their religious commitments and organize within legal and institutional channels to support politicians and policies that accord with those positions. They behave, in other words, just as one would expect citizens who endorse the duty of civility to behave, with the only exception that they use harsher, more morally condemnatory language than a political liberal would to describe those with whom they disagree.

Is this difference in language important in evaluating the new natural lawyers? While one could argue that it is irresponsible, as it encourages the radical elements the new natural lawyers repudiate, this imputes greater moral authority (not to mention causal influence) to their work than is warranted. There are plenty of other sources of moral unreasonableness in contemporary liberal democracies. Imagine, then, if the new natural lawyers said, instead, that their positions on abortion or gay marriage were the most reasonable of several possible reasonable positions (that they spoke like Rawls). Their arguments might generate less controversy (though Rawls’s have not, despite his

\textsuperscript{98} Consider, for example, Robert George’s response to abortion provider George Tiller’s murder: “Whoever murdered George Tiller has done a gravely wicked thing. The evil of this action is in no way diminished by the blood George Tiller had on his own hands. No private individual had the right to execute judgment against him. We are a nation of laws.” “Gravely Wicked,” \textit{National Review Online}, May 31, 2009, available at http://www.nationalreview.com/corner/182570/gravely-wicked/robert-p-george, accessed April 29, 2011.

\textsuperscript{99} For this claim of Finnis’s, see his “Abortion, Natural Law, and Public Reason,” 79.
gentler language). But the new natural lawyers’ behavior would not otherwise change. This is because, while they use more charged language, they imbue that language with different political significance than does Rawls. Note that for Rawls, an unjustifiable law when passed in circumstances of “near justice” does merit civil strife, at least in the form of civil disobedience.\footnote{See \textit{A Theory of Justice}, 309ff. There may be a disagreement in the definition of “civil strife” between Rawls and Finnis; Rawls understanding it to require at least non-violent law breaking, while Finnis has a broader definition that would include campaigning for legal change within established institutional channels. But this seems to stretch the term.} For the new natural lawyers, however, laws that they claim are morally tragic merely merit legal and institutional organization for their repeal.

The new natural lawyers, then, remain reasoned liberals: they affirm liberal principles of justice and have the theological resources to affirm Rawls’s guidelines for public political discussions. Indeed, Rawls recognizes this in Finnis’s own views.\footnote{See \textit{LP}, 142, and 142 n 29, where Rawls claims that “Catholic views of the common good and solidarity when they are expressed in terms of political values” qualify as a reasonable political conception of justice, and then cites Finnis and Maritain as examples.} In fact, judging from their behavior, they accept the legitimacy of current abortion regulations, and the public reasons behind them, or at least do not consider them illegitimate enough to merit civil disobedience. Furthermore, there are no serious conflicts between Rawls’s requirements of citizens and their own religious and philosophical positions. Given the new natural lawyers accept liberal principles of justice and their broad reliance on reason and the natural law to justify their positions, they have no grounds on which to argue that Rawls’s requirements conflict with their religious obligations. They are free to make their claims in public political discussions. (This
claim, importantly, does not imply that I believe the new natural lawyers have *succeeded* in offering public justifications for their preferred policies. One may accept that they are offering the right sort of argument while nevertheless denying that their arguments go through.)

So much for the charitable reading. The suspicious reading begins by taking the full gauge of the new natural lawyers’ rhetoric. Their language suggests that they believe legalizing abortion and gay marriage would be a violation of the legitimate scope of political power, even supposing democratic majorities in support of such policies. The generous reading makes a mistake by looking at the new natural lawyers political behavior, as this could be strategic, especially in the abortion case: why turn to civil disobedience when public opinion in the United States is trending their way\textsuperscript{102} and a conservative Supreme Court may soon accomplish their policy goals for them? The key issue for assessing the new natural lawyer’s reasonableness is rather gay marriage, a policy issue which, in contrast to abortion, the argumentative hurdles for the new natural lawyers’ position are much higher.\textsuperscript{103} Indeed, even if the new natural lawyers *could* develop their problematic arguments to justify limiting marriage opportunities to heterosexual couples alone—which is no small task, since those arguments base the moral evaluation of sexual intercourse largely on the proper location of the penis during

\textsuperscript{102} For discussion of current trends in public opinion concerning abortion, see Putnam and Campbell, *American Grace*, 406-414.

\textsuperscript{103} For analysis supporting this claim, see Michael Perry, *The Political Morality of Liberal Democracy*, “Part III: First Principles Applied,” pp. 123-158.
orgasm and have the implication that all use of birth control is a moral wrong akin to the moral wrong of homosexual sex—this by itself would not show that it would be illegitimate for a liberal democracy to legalizing gay marriage. That would require showing that there is no reasonable political conception of justice that could coherently justify making marriage opportunities equal regardless of gender. With this in mind, the new natural lawyer’s strident rhetoric is a violation of the idea of fair terms of cooperation; they appear unwilling to accept political decisions on this issue that do not comport with their religious convictions, even when those decisions clearly have public reasons in their support. Viewed this way, the new natural lawyers are unreasonable; their objections are of the same status as those of Archbishop Lefebvre (see section [IV.3]): they know the truth, and they will ensure that political societies follow it, whether that truth violates publicly justifiable arrangements of marriage opportunities or not. (Chapter 4, I note, will address how the practice of prophetic witnessing allows religious citizens who find themselves in a situation like the above, bound by their religious convictions to support a policy that lacks a public justification, to honor their religious and civic obligations simultaneously.)


105 Finnis’s recent argument that the truth of the Bible, full stop, can be publicly justified by appeal to the natural law gives considerable evidence for the suspicious reading, as it suggests that Finnis believes, then, that appeal to the Bible alone can be sufficient justification for political coercion in a liberal democracy. See his Telling the Truth about God and Man in a Pluralist Society: Economy or Explication?” in The Naked Public Square Reconsidered, 111-126.
I do not see any easy way to adjudicate between these two readings of the new natural lawyers’ objections. This, however, is ultimately irrelevant, since neither reading substantiates their objections to Rawls’s guidelines for public political discussions. Because they believe that the natural law is accessible to people regardless of their religious convictions, and because they believe their moral views are justifiable by appeal to the natural law alone, they are clearly able to justify the political positions they feel obligated to support in terms of reasonably endorsable political values and in a way that is consistent with their religion. Thus, if they are reasoned liberals, as the generous reading suggests, then they have no conflict at all with Rawls’s requirements, and their objection fails. If, on the other hand, they are reasoned illiberals, as the suspicious reading suggests, then their conflict with Rawls’s requirements is irrelevant, since all illiberal views are, as I argued above, by definition unreasonable (1D), and their objection fails. So no matter how I construe the new natural lawyer’s claims, generously or suspiciously, their objections to Rawls’s guidelines for public political discussions fail to go through.

Consider, now, Paul Weithman’s objections to Rawls’s requirements of citizens. Weithman claims that in order for a citizen to think of himself as being wronged when someone violates the duty of civility, he must think of himself as a member of a collective of citizens who have the authority to determine the reasons that count for settling political questions. Citizens, in other words, must think of themselves as politically autonomous. Citizens who think of themselves as subject to a law they did not create—like the natural law, which is generally understood to have been instituted by
God—do not think of themselves as politically autonomous, and so cannot accept or comply with Rawls’s requirements.\textsuperscript{106}

Weithman’s premises, however, do not merit his conclusion. Roger Williams, for example, believed that God ordained the natural law and that all people were subject to its dictates. In other words, he did not believe that people were politically autonomous in the way that Weithman claims is required to accepts Rawls’s account. Nevertheless, as I argued above, someone holding a position like Williams’ is still able to endorse liberal principles of justice and guidelines for decision-making that limit public discussions to political values alone. The same is true for much of contemporary Catholic social theory. This is because both natural law positions hold that reason has authority in moral and political affairs that is at least equal to revelation, and that reason is accessible to those unaware of revelation. Presumably, the citizens Weithman is concerned with, who believe that political standards arise from the natural law, believe similarly. They, then, like Williams or adherents of contemporary Catholic social theory, have the theological resources to be able to express their political commitments in terms of reasonably endorseable political values. Furthermore, it is not clear that differences concerning the origin of the moral norms in question undermine their substantive compatibility. To make this clear, consider Weithman’s example, discussed in Chapter One, section (II.2), where some citizens propose to use coercive political power to close his presumably law-abiding church down except for a few hours on Sunday morning, when worship will be

Were Weithman to be a Rawlsian citizen, he should feel offended, because he, as a member of a citizenry with the collective authority to determine the terms of their association, could never be reasonably expected to endorse such a policy. But any citizen who adheres to a natural law justification of religious liberty would be just as offended as the Rawlsian citizen—he has been done a moral wrong by having his liberty of conscience and freedom of association abridged—and respond similarly.

Now, suppose Weithman were to stipulate that the religious citizens he is concerned with believe that the law they and their political regimes are subject to is revealed in scripture and not accessible without appeal to scripture. Suppose, in other words, that Weithman was discussing revealed liberals as I described them in section (IV). In that case, there is a conflict between the way such citizens believe they are obligated to justify their offense—by appeal to scripture—and the way Rawls thinks they are obligated to justify it—by appeal to political values. But this is to argue, then, that the relevant conflict for religious citizens is not Rawls’s presupposition of political autonomy and their own political heteronomy, but the conflict between the justificatory grounds available to a subset of religious citizens—those in the revealed liberal category—and Rawls’s expectation that reasonable citizens will limit their public political discussions to political values alone. Weithman’s need to specify that the citizens about which he speaks are revealed liberals also suggests that his emphasis on the natural law does not help his objection, since the natural law is traditionally held to be

\[107\] For Weithman’s discussion of the example, see Religion and the Obligations of Citizenship, 207.
accessible to nonbelievers and thereby provides theological resources for citizens looking for reasonably endorsable justifications for the positions they support.

Thus neither version of the natural law objection is persuasive.

VI.2: The Integrity Objection

The integrity objection to political liberal citizenship requirements depends, as I argued in Chapter One, on three key premises: first, the existence of some conflict between religious obligations and political liberal citizenship obligations, second, the absolute priority of the religious obligations in question, and third, the reasonableness of those religious obligations.

Wolterstorff and Eberle each presume that the conflict between religious and citizenship obligations stems from a disagreement between political liberals and religious citizens over the relevant scope or priority of religious obligations, political liberals seeing them as limited in scope and at times overrideable in priority, religious citizens seeing them as all-encompassing in scope and absolutely overriding in priority.108

These presumptions, however, are incorrect, and they unhelpfully exaggerate the conflict between religious obligations and political liberal civic obligations. By presuming that anyone with totalizing, overriding religious obligations cannot conscientiously follow Rawls’s requirements, and speaking as if most religious adherents take their religious obligations to be totalizing and overriding, Wolterstorff and Eberle

108 See Wolterstorff’s contributions to Audi and Wolterstorff, Religion in the Public Square; as well as “Why We Should Reject what Liberalism Tells us about Speaking and Acting in Public for Religious Reasons,” in Religion and Contemporary Liberalism; and Christopher J. Eberle, Religious Convictions in Liberal Politics.
make it appear that all religious people are in conscientious conflict with political liberal citizenship requirements. Political liberalism, they suggest, is simply unfriendly to religion and religious citizens. Political liberalism is like Nebuchadnezzar’s decree to worship the golden idol. This is a deeply tragic conclusion, since it is precisely the religious that Rawls designed political liberalism to accommodate! But the fact of the matter is that Wolterstorff’s and Eberle’s presumptions are incorrect. It is not the case that all overriding and totalizing religious obligations conflict with Rawls’s requirements of citizens. (Nor is it the case that all religions demand that their adherents view their religious obligations as overriding and totalizing.) Citizens whose religious commitments fall into the reasoned liberal category—a category in which a vast swath of theological positions within the major monotheistic religions fall—are able to affirm such requirements without violating their overriding, totalizing religious obligations, if they take their religions to impose such obligations. Political liberalism is not unfriendly to them. It accommodates them as Rawls hoped it would.

Wolterstorff’s and Eberle’s mistake was to take their specification of the scope and priority of some religion’s religious obligations to describe a sufficient condition for conflict with Rawls’s requirements, when all they actually identified were two necessary conditions. This mistake exaggerates the depth of the conflict between political liberalism and religion.

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109 For a riff on this theme, see Romand Coles’s “Tragedy’s Tragedy: Political Liberalism and Its Others” in *Beyond Gated Politics: Reflections for the Possibility of Democracy* (Minneapolis, MN: The University of Minnesota Press, 2005), 1-42.
That said, recognizing that Wolterstorff’s and Eberle’s arguments only identify necessary conditions to conflict with Rawls’s requirements does not make the conflict between those requirements and religious obligations go away. It merely helps to properly specify that conflict’s domain. Once one considers revealed liberal citizens, then the conflict between Rawls’s requirements and religious obligations becomes clear. Revealed liberals have overriding and totalizing religious obligations to argue in public political discussions on revealed grounds alone because their religious tradition requires them to support certain political positions but denies the authority of human reason in moral and political affairs—revelation provides the source and justification of the political positions revealed liberals are religiously obligated to support. Revealed liberals cannot conscientiously affirm or follow Rawls’s requirements; their conflict with Rawls’s requirements is the conflict to which Wolterstorff’s and Eberle’s arguments point.\footnote{There may be a biographical reason for Rawls’s failure to accommodate revealed liberals; in his undergraduate thesis, \textit{A Brief Inquiry into the Meaning of Sin and Faith} (Cambridge, MA: Harvard University Press, 2009), he agrees with Brunner and disagrees with Barth about the role of human reason and the natural law in accessing moral truths. For discussion of this point, see David Reidy, “Rawls’s Religion and Justice as Fairness,” \textit{History of Political Thought} 31:2 (Summer 2010), 326.} Furthermore, as I argued above, there is no reason why a citizen cannot bear an overriding and totalizing religious obligation to argue in public political discussions on revealed grounds alone and simultaneously be willing to propose and abide by fair terms of cooperation, accept the burdens of judgment, and affirm both the liberal principle of legitimacy and liberal principles of justice. In short, one can be both reasonable\footnote{There may be a biographical reason for Rawls’s failure to accommodate revealed liberals; in his undergraduate thesis, \textit{A Brief Inquiry into the Meaning of Sin and Faith} (Cambridge, MA: Harvard University Press, 2009), he agrees with Brunner and disagrees with Barth about the role of human reason and the natural law in accessing moral truths. For discussion of this point, see David Reidy, “Rawls’s Religion and Justice as Fairness,” \textit{History of Political Thought} 31:2 (Summer 2010), 326.} and a revealed liberal simultaneously. Such a citizen has a legitimate gripe against Rawls’s
requirement that citizens provide reasonably endorsable justifications for the laws and policies they support. She may reasonably reject those requirements, and since she does so reasonably, political liberals should revise Rawls’s guidelines for public political discussions in liberal democracies. The integrity objection to political liberalism thus stands, though in a specified, moderated form.

VI.3: Implications

As my analysis above argues, there are reasonable citizens who affirm reasonable comprehensive doctrines that nevertheless cannot accept Rawls’s guidelines for public political discussions in a liberal democracy—those I have termed revealed liberals. As a result, revealed liberals find themselves, despite their own reasonableness and those of their comprehensive doctrines, in the unenviable situation of having to choose between their citizenship and their faith each time they participate in politics in a society that follows Rawls’s guidelines. This is indeed a tragedy. Fortunately, as I will argue in Chapter Three, some crucial revisions to Rawls’s guidelines will be able to accommodate reasonable revealed liberals. This revision is, importantly, not a wholesale rejection of Rawls’s norms. Guidelines for public political discussions that can accommodate reasonable revealed liberals must preserve the idea of fair terms of cooperation, the burdens of judgment, and these two concepts’ expression in the liberal principle of legitimacy. Some set of norms for public political discussion must be found, in other words, that allows reasonable religious citizens to participate in such discussions in a way that is consistent with their religious convictions—it must allow them to offer religious justifications in those discussions—without allowing any
religion or comprehensive doctrine to dictate the terms of social cooperation or become the arbiter of political legitimacy. Extant alternative guidelines for public political discussions, I will argue, fail to do this. The approach I develop in Chapter Three, which attends to the deliberative “phase” of public political discussions, does.
**CHAPTER 3. THE PHASED ACCOUNT OF DEMOCRATIC DECISION-MAKING**

“Come now, and let us reason together...”
~Isaiah 1:18 (KJV)

Moses Seixas’s words, quoted at the beginning of Chapter One, express the promise liberal-democracy offers its religious citizens: a place that “generously affords to All liberty of conscience and the immunities of citizenship.” Citizenship in such a society, however, also imposes obligations, and those obligations delineate the scope and limits of religious liberty, the range of differing religious beliefs and practices that a society that protects religious liberty and offers citizenship to all can accommodate. And, as my analysis in Chapter Two shows, for many, many religious citizens, a political liberal society realizes these promises. For citizens whose religious views fall in the reasoned liberal category, they can be both citizens and saints: the obligations they bear as citizens and those they bear as religious believers (even those of “integralists” who feel compelled to give absolute priority to their totalizing religious obligations) are mutually compatible. Such citizens can “reason together” with their fellow citizens who do not share their religious commitments, affirming with them political liberal guidelines for public political discussions. They can consistently rejoice with Moses Seixas at their good fortune to live in a liberal democracy.

The good fortune of the reasoned liberal, however, should not overshadow the conflicts political liberal citizenship, as presently understood, poses to the revealed liberal. Religiously committed to participating in politics on revealed grounds alone and
offering only revealed arguments in public political discussions, these citizens do not enjoy the happy compatibility of the reasoned liberals. Both political liberals and their religious critics have so far failed to articulate guidelines for public political discussions that describe how revealed liberals can “reason together” with their fellow citizens. As a result, for revealed liberals, political liberal citizenship obligations conflict with their religious duties, and they face an unhappy choice: obey God and offend their neighbor or satisfy their neighbor and offend God.

This conflict arises because the revealed liberal cannot consistently affirm Rawls’s guidelines for public political discussions, a set of norms that require citizens to deliberate about politics in terms of political values they reasonably expect their fellows to endorse. The revealed liberal recognizes that the religious arguments she feels compelled to make do not meet this criterion, and so she dissents from Rawls’s guidelines for public political discussions. (Although, as I argued in Chapter Two, the reasonable revealed liberal accepts the idea of fair terms of cooperation, the burdens of judgment, and the liberal principle of legitimacy.)

Because the revealed liberal can reasonably reject Rawls’s guidelines for public political discussions, her dissension from those guidelines calls political liberals to develop norms for political inquiry that can accommodate reasonable religious and other comprehensive arguments in public political discussions without sacrificing the essential role that the liberal principle of legitimacy—and its justification in the reciprocity requirements expressed by the idea of fair terms of cooperation and the burdens of judgment—plays in enabling a religiously pluralistic society to govern itself.
stably and democratically over time. Christopher Eberle, Paul Weithman, Jeffrey Stout, and Gerald Gaus and Kevin Vallier all claim to have found such norms. I disagree. As I will argue in detail in this chapter, each of these thinkers’ proposals carry with them drawbacks that make adopting them prohibitively costly. All four sacrifice legitimacy and stability in order to include the reasonable\(_{1D}\) revealed liberal. And all four include far more than the reasonable\(_{1D}\) revealed liberal; their norms do not prevent unreasonable\(_{2D}\) proposals from becoming law and shaping the rights, liberties, and opportunities of a constitutional democracy. In the place of these unacceptable alternatives, I propose a new account of the guidelines for public political discussions, what I call the “phased account of democratic decision-making,” that, I argue, retains the most crucial aspects of Rawls’s guidelines—in particular, the liberal principle of legitimacy—while accommodating reasonable\(_{1D}\) revealed liberals. My revision proceeds by clarifying the deliberative context, or “phase” to which Rawls’s ideal of public justification should apply. This clarification builds off of a new interpretation of Rawls’s “proviso” and his “wide view of public political culture.” I then explore the implications of the necessarily more permissive norms that should govern the other phases of democratic decision-making (where public justification, as I will argue, is not appropriate) for revealed liberals.

My argument proceeds in six broad steps. First (I), I clarify the purpose behind developing guidelines for public political discussions. What is it that such guidelines are expected to accomplish in a political liberal society, and how does political liberalism’s current failure to accommodate reasonable\(_{1D}\) revealed liberals affect that goal? Second
(II), I develop my own alternative, the phased account of democratic-decision making, following the context-specifying strategy outlined above. I do this by first (II.1) criticizing some other political philosophers who have attempted to accommodate revealed liberals by restricting the context to which the norm requiring public justifications applies and distinguishing my approach from theirs. I then (II.2) distinguish four different “phases” of democratic decision-making, four different steps any deliberative body passes through when it passes a binding resolution. Next (II.3), I interpret Rawls’s proviso and wide view of public political culture in light of these phases. This interpretation suggests that Rawls’s public justification requirement ought only apply to the final, “resolution” phase of democratic decision-making. Finally (II.4), I consider what norms ought to apply to the preceding phases of decision-making, filling out the phased account. I then discuss the implications of the phased account for citizens’ political advocacy. Following this analysis (III), I consider Eberle’s, Weithman’s, Stout’s, and Gaus and Vallier’s alternative proposals and evaluate them in comparison to my own, showing that my phased account better achieves the purposes of a political liberal mode of inquiry than their proposals do. Finally (IV), I consider whether reasonable(D) revealed liberals can conscientiously affirm the phased account of democratic decision-making. I then explore the implications of the phased account for political liberal dialogue with religion, setting up my evaluation of religious practices of political engagement in Chapter Four.
I: The Aim of Articulating Norms to Guide Democratic Decision-making

What is the purpose of delineating guidelines for public political discussion in a politically liberal constitutional democracy? What are the desiderata that the guidelines Rawls expects each reasonable political conception of justice to include supposed to achieve?

Recall that Rawls requires political discussions to be free, public, and reasoned, in the sense that those discussions are limited to “reasonably endorsable” political values. These stipulations ensure that public political discussions in a politically liberal constitutional democracy accomplish three different, though related, goals, as follows.

The first (1) purpose of the norms of public political discussion is to guide political discussions such that collective decisions preserve the legitimacy (and thereby the stability, in Rawls’s sense of stability for the right reasons) of a political liberal regime. The norms of public political discussion, in other words, must create a deliberative system such that the outputs of that system—the laws and policies that citizens collectively decide to enact—are legitimate and such that each citizen who participates in the process of collective decision-making is treated fairly and with respect. Thus norms of public political discussion should preserve legitimacy, both in the procedural sense (the process of decision-making must respect citizens) and in the

1 Please remember that my discussion in Chapter Two postponed consideration of Rawls’s proviso until this chapter.
substantive sense (the outcomes, which citizens may be forced to comply with, must also respect citizens). 2

The specifics of the norms necessary to achieve the legitimacy purpose vary, then, according to the conceptions of legitimacy and respect that one adopts. As I have argued, for Rawls the idea of fair terms of cooperation and the burdens of judgment support a substantive principle of legitimacy that requires that laws and policies have “reasonably endorsable” justifications, or, in other words, justifications that stem from reasonable political conceptions of justice (at least for constitutional essentials and matters of basic justice). Altering this conception of legitimacy or respect, then, would generate correspondingly different norms for public political discussion and a correspondingly broader or narrower set of legitimate laws and policies.

Second (2), norms for public political discussion, in so far as they are said to be a necessary to support a liberal democracy, should create a decision-making process that produces outcomes that accord with liberal principles of justice—the basic rights, liberties, and opportunities, their priority, and sufficient all-purpose means. Particularly essential here are the basic civil liberties (conscience, thought, and association) since they are necessary to create the “background culture” that is the condition of the possibility of free and public political discussion. This second desideratum overlaps with the first, since liberal norms for public political discussion are unlikely to conclude that any

outcome that violates the basic rights, liberties, and opportunities or their priority is legitimate. However, this criterion is worth including separately from the legitimacy purpose as a way of evaluating proposed norms. If some such norms allow results that legitimize outcomes that violate basic rights and liberties, then this is cause for concern, even if on some alternative conception of legitimacy or respect from Rawls’s those outcomes are considered acceptable.

Third (3), norms for public political discussion should be inclusive. Given that political liberals demand that all citizens be accorded equal freedom to pursue their plans of life and to determine the nature of their political life together, political liberal norms for public political discussion should create a decision-making process such that as many (reasonable) citizens as wish to can contribute to that process. This purpose also overlaps with the first, as procedural legitimacy demands inclusion of all citizens who desire to contribute. Similar to the situation with the second purpose, however, inclusion is worth considering separately as a way of double-checking conceptions of legitimacy and respect. As Wolterstorff suggests, there are conceivable norms for public political discussion—such as, say, the “elite theory of democracy,” that violate liberal principles; checking for their inclusiveness is a way of avoiding such norms.

3 Religion in the Public Sphere, 72-74. The elite theory of democracy is my own example of a set of norms for and practices of public political discussion that violates political liberalism’s conception of legitimacy; for the classic exponents of this view, see Joseph Schumpeter, Capitalism, Socialism and Democracy (New York: Harper and Row, 1956); and Anthony Downs, An Economic Theory of Democracy (New York: Harper and Row, 1957). The elite theory suggests that democratic decision-making runs better and produces better outcomes when only elites are involved; it thereby suggests that normal citizens ought not be involved in democratic decision-making and hence violates the liberal principle according all citizens equal freedom to participate in public decision-making.
Political liberal decision-making guidelines, then, should outline norms for the guidance of public political discussions such that these discussions (1) are procedurally and substantively legitimate, treating citizens fairly and with respect both during the decision-making process and afterward, when laws and policies are enacted, (2) produce laws and policies that comport with the basic rights and liberties demanded by liberal principles of justice, and (3) include all willing (reasonable\textsuperscript{(1D)}) citizens.

Now, in order to clearly fix the point of comparison for the rest of the chapter, I will evaluate how Rawls’s guidelines for public political discussion fair at achieving the above three desiderata.

First, legitimacy: as explored in the previous chapter, Rawls’s criterion for legitimacy, the liberal principle, is directly related to his requirement that public inquiry be limited to reasonably endorsable political values—contributions to public political discussions must be justified by appeal to reasons drawn from one of the family of reasonable\textsuperscript{(4D)} political conceptions of justice. As a result of this norm (and assuming strict compliance with it, as per the method of ideal theory) all resolutions made while following Rawls’s guidelines will likewise have such a justification and thereby qualify as legitimate according to the liberal principle.

Second, comportment with the basic rights and liberties as given by the principles of justice: Rawls’s guidelines for public political discussion also achieve this second purpose. While specifying just what specific law or policy will be the outcome of following Rawls’s norms is impossible (and quite properly so, since the conditions affecting any set of citizens following such norms will vary drastically), it is possible to
outline, with a fair degree of certainty, those policies that cannot be justified without appeal to religious or other comprehensive doctrines and are thereby substantively illegitimate, and presuming strict compliance, will never be the outcome of a public political discussion that follows Rawls’s norms. This set of substantively illegitimate policies corresponds nicely with the basic rights, liberties, and opportunities. After all, as Rawls notes, reciprocity—the requirement of the first definition of reasonableness—“is normally violated whenever basic liberties are denied.” The following is a plausible list of policies that cannot be justified without appeal to comprehensive views. To keep the examples particularly relevant to the concerns of religious citizens, each is drawn from the realm of religious liberty and establishment—what would fall under first amendment jurisprudence in the United States.

(A) Policies that mandate that all citizens follow strict dietary codes, whether their justifications are religious or secular. A legislature that passed a law compelling citizens to be vegans, or to keep Kosher or Halal is clearly violating the norm that requires reasonably endorseable justifications. Kosher and Halal require appeal to religious traditions for their justification, while

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4 Thomas Spragens explains: “When citizens who are morally reasonably by democratic standards reach their decisions through procedures which themselves embody the constraints of reasonableness, a large number of possible substantive outcomes are exposed as illegitimate.” See his “Democratic Reasonableness,” 207.

5 PL li.
the argument for a vegan diet depends on controversial judgments about the immorality of using animal products.6

(B) Policies that mandate that all citizens wear or display religious symbols, or policies that forbid citizens from wearing or displaying religious symbols. In both cases, the justification for such laws would violate the reasonable endorsability criterion; it is beyond imagining, for example, that reasonable citizens who were committed to Islam could endorse any of the justifications offered for forbidding the wearing of the hijab—just as Jewish citizens could not endorse policies forbidding the yarmulke.7

(C) Policies that establish one religion or one sect of one religion as the official religion of the polity and fund that religion through taxation.8

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6 I leave enforced vegetarianism off the list intentionally, as it could be the case, under dire environmental circumstances, that the stable perpetuation of a liberal-democratic society would require reducing its resource consumption so far as to demand universal vegetarianism. In this case, though, the justification would be due to scarcity, not to more controversial claims about the moral status of non-human animals. For one discussion of that status, see Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard University Press, 2006), 325 ff. This presumes, accurately, I believe, that keeping animals to use products they produce while living (milk, eggs, etc.) has considerably less environmental impact, and consumes considerably less natural resources, than raising animals to consume their meat.


8 It is an open question whether so-called “noncoercive” forms of establishment are acceptable. For one view on this question, see Daniel Brudney, “On Noncoercive Establishment,” *Political Theory* 33:6 (December 2005), 812-839.
(D) Policies that mandate one specific day of the week only for rest or worship.

While weekly closings are certainly justifiable on broad public health and quality of life considerations, that those closings should be legally required to happen each week on Fridays, or Saturdays, or Sundays requires appeal to a religious tradition, and are particularly inappropriate in a religiously pluralistic society.

The above list is only suggestive, but it serves to show how Rawls’s requirement that public political discussions be limited to reasonably endorsable political values ensures policy outcomes that comport broadly with the basic rights, liberties, and opportunities, which are constraints on the coercive use of political power that similarly act against blue laws, establishment, and infringements of personal and religious liberty in dress and diet. Rawls’s guidelines for public political discussions meet, then, the first and second desiderata for a political liberal mode of inquiry.

As the analysis in Chapter Two shows, however, Rawls’s guidelines do not fare as well, comparatively, at the inclusiveness aim. They exclude reasonable revealed liberals, who are willing to propose and abide by fair terms of cooperation, accept the burdens of judgment, and affirm the liberal principle of legitimacy but believe themselves to have overriding obligations to speak and act politically on religious grounds alone, obligations that arise from their religion’s exclusive reliance on revealed sources (scripture, tradition, or authority) to justify their political implications. Because Rawls’s guidelines require citizens to limit public political discussions to reasonably endorsable
political values, reasonable\(_{(1D)}\) revealed liberals cannot conscientiously participate in those discussions.

The aim, then, of revising Rawls’s guidelines for public political discussion is to articulate norms of democratic decision-making that meet, as Rawls’s do, the first two desiderata of such guidelines (legitimacy and substantive correspondence with liberal principles of justice) while improving the inclusiveness of public political discussions. I argue such norms exist, and I describe and argue for them below. If my alternative set of guidelines persuasively meets all three desiderata better than Rawls’s (and the other alternatives on offer), this will argue for the adoption of those guidelines. It will also show that the conflict between reasonable\(_{(1D)}\) revealed liberals’ civic and religious obligations can be reconciled—that all religious citizens who are reasonable\(_{(1D)}\) and affirm reasonable\(_{(2D)}\) comprehensive doctrines can wholeheartedly affirm their citizenship in a constitutional democracy that follows my guidelines.

II: The Phased Account of Democratic Decision-making

The guidelines of public political discussion in a well-ordered constitutional democracy can be revised so as to be considerably more inclusive if the phase, or context, to which the norm requiring public justification applies is properly specified. This will allow the political liberal to deduce the implications of the guidelines for public political discussion for the ethics of citizenship with greater care than Rawls does, and demonstrate that there is considerably more room in public political discussions for religious arguments—and for revealed liberals—than has previously been recognized. In other words, properly narrowing the domain to which the requirement to provide public
justifications applies will enable me to articulate norms for public political discussions that reasonable revealed liberals can affirm. First, however, I need to differentiate my approach to properly specifying the context of the public justification requirement from others who have attempted a somewhat similar strategy.

II.1: Unhelpful Attempts to Specify the Context of the Public Justification Requirement

Jürgen Habermas, Gerald Gaus, and Richard North have all recently written essays in which they work to address revealed liberals’ concerns, and they each do so by narrowing the context to which the requirement to provide public justifications applies, in what turn out to be remarkably similar ways. Each effectively argues that the obligation to provide public justifications (and the correlative requirement to only support publicly justifiable laws) should only apply to political discussions conducted by politically influential citizens and/or within formal political institutions. Such obligations do not apply, they argue, to other citizens, or citizens arguing outside of such institutions. This approach, I will argue, buys reconciliation for the revealed liberal on the cheap, at the expense of her being able to understand herself as a full fledged, equal citizens of a constitutional democracy. None is an acceptable solution to the dilemma the

9 Rawls himself is vague about the precise context to which the obligation to provide public justifications applies, both in the more restrictive account he gives in Political Liberalism and the more permissive one in “The Idea of Public Reason Revisited.” As Charles Larmore observes, Rawls never clearly specifies the boundary between “open discussion,” to which the obligation to provide public justifications should not apply, and “decision making,” where that obligation must apply. See “Public Reason,” The Cambridge Companion to Rawls, 382. As I will argue below, phases of deliberation akin to Larmore’s “open discussion” are a necessary part of the formal democratic decision-making process.

10 Habermas, Gaus, and North do not specify the revealed liberals’ objection in precisely the same way I do in Chapter Two, but they generally accept Weithman’s or Eberle’s objections more or less as they express them. This may be one contributing reason to why their alternatives are not persuasive.
reasonable revealed liberal poses to public political discussions in a pluralistic constitutional democracy.

Habermas, for example, argues for a strict boundary between the formal public sphere of political institutions and the informal debates that occur in the media and civil society. Because of revealed liberals’ concerns, Habermas feels that public reason norms cannot apply to the informal public sphere. But they must apply within formal institutions, lest the neutrality of the state be put at risk. Indeed, Habermas goes so far as to argue that, in the legislature, “the rules of procedure must empower the house leader to strike religious positions or justifications from the official transcripts.” Habermas argues for what he terms an “institutional translation proviso” such that revealed liberals may make religious arguments in the informal public sphere and then rely upon sympathetic secular citizens (or, I add, religious reasoned liberals) to “translate” their arguments into public reasons. In this way, Habermas feels that revealed liberals “can understand themselves as participating in the legislative process, although only secular reasons count therein.”

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11 Jürgen Habermas, “Religion in the Public Sphere,” in Between Naturalism and Religion, translated by Ciaran Cronin, (Malden, MA: Polity Press, 2008), 127-131. Rawls makes a similar distinction between the “background culture” and “public political discussions,” which I did not address in Chapter Two because the distinction does not help the revealed liberal, whose obligation to participate in politics on religious grounds alone does not go away when she moves from one such realm to the other, when she, for example, walks from the capitol lawn into the legislative chamber.

12 Ibid., 131.

13 Ibid.
Gerald Gaus similarly specifies the context of public reason norms such that they only apply within formal institutions, though he does so for different reasons than Habermas does. Gaus’s thesis is that the obligation to provide public justifications implies no duty of civility, or what he calls, following Eberle, “religious restraint,” for “normal” citizens—those who do not occupy any political office. This is because normal citizens in contemporary representative democracies do not exercise decisive influence over any political outcomes whatsoever—a conclusion Gaus draws from mathematical analyses of the vanishingly low probability that any one citizen’s vote will decisively affect the vote’s outcome. It would be perverse, Gaus concludes, to criticize citizens for, say, voting in a referendum for a law that is not publicly justifiable, since that citizen is not in any meaningful way responsible for the outcome of the referendum. The same, of course, is the case for citizens voting in typical elections, since they do not even vote directly for laws, but for representatives who then vote for laws. A minimal duty of restraint does apply, Gaus admits, to members of parliament and other representative bodies who are directly involved in crafting laws and policies. Because such citizens are more responsible for political outcomes, they, but not normal citizens, should only support publicly justifiable policies.\(^{14}\)

North’s position is also similar. Like Habermas and Gaus, he objects to applying public reason norms to all citizens, arguing that ordinary citizens not only have little influence over political outcomes, but that their fellows do not take the arguments

ordinary citizens offer as justifications for the state’s actions. Rather, citizens take their fellows’ arguments as mere ordinary citizens’ opinions, opinions that do not justify laws that they must obey. As a result, they understand themselves as having the right to ignore or disagree with such opinions if they choose.

However, this is not the case, North observes, for “publicly influential citizens,”—members of parliament, presidents, prime ministers, and others—who ordinary citizens recognize as having considerable influence over the shape of their state’s laws and policies, and who ordinary citizens may plausibly see as speaking for the state as a whole. As a result, citizens quite reasonably infer from a publicly influential citizen’s arguments the conclusion that those arguments represent not only that citizen’s opinions, but also the state’s justification of the law or policy in question. And in this case, a publicly influential citizen’s appeal to religious reasons alone in support of some law or policy implies a partiality on the part of the state toward the religious tradition from which such arguments arise. The obligation to provide public justifications and only support publicly justifiable laws, therefore, needs to be sensitive to the context of the citizen to whom they are applied; since most citizens are not legislators or publicly influential citizens, it is a mistake to judge them as if they were.15

Specifying that the obligation to provide public justifications and only support publicly justifiable laws only apply to political actors in formal government institutions,

as Habermas, Gaus, and North do, is unsatisfactory. First, this approach merely restricts the scope of the conflict between revealed liberals’ religious obligations and political liberal citizenship requirements. Presumably there will be revealed liberals who are elected to public office, and who will therefore still be forced to choose between their religious and citizenship obligations. Furthermore, the remaining conflict for the revealed liberal legislator raises serious questions, as I explore below, about how revealed liberal citizens are to be able to affirm the outputs of their legislatures. But these are not the only reasons why this version of the context-specifying strategy is unsatisfactory.

Limiting the context of public reason norms to formal government institutions is also unsatisfactory because it leaves Rawls’s original guidelines for public political discussions more or less intact, and it was these guidelines that were the ultimate source of conflict for revealed liberals. For Rawls, a citizen is one who can see herself as a legislator; indeed, citizens in a politically liberal society are to “think of themselves as if they were legislators” (the emphasis is Rawls’s).\(^\text{16}\) As a result, citizens can identify with, and ideally, affirm the laws their legislators enact. In a society in which legislators and citizens are held to different norms for their political participation, this is no longer the case. Consider the following thought experiment:

Imagine a society I will call “Utah, Idealized” (UI for short). UI is just like the contemporary state of Utah in the United States, but it is a thought experiment that runs under the strict compliance assumption of ideal theory. Hence, all people in UI

\(^{16}\text{LP 135.}\)
scrupulously follow the norms of any given political mode of inquiry. Thus, UI, like Utah today, is starkly divided between two quite different populations. First, there are politically and morally conservative Mormons who live in the rural and suburban areas of the state and make up between 60 and 65 percent of the total population. Assume, for the sake of argument, that the Mormons are revealed liberals. The remaining 35 to 40 percent of the population are more-or-less secularists (in part as a reaction to the overwhelming political power of the Mormon majority—even those who are religious tend to support more rigorous Church-State separation than they might if they lived in a different state) who predominately live in the only urban area in Utah, Salt Lake City—with some outposts in the resort areas around Park City where the Sundance Film Festival is held. The secularists make up a slight but persistent majority of Salt Lake City’s population, and are considerably more progressive, both politically and morally, than the Mormon majority.

Now imagine that UI adopts a mode of inquiry with the type of strict normative differentiation between formal institutions and the informal public sphere that Habermas, Gaus, and North envision: the obligations to provide public justifications and support only publicly justifiable laws apply to the legislators, but no such norms apply to the citizens generally. UI helpfully demonstrates how frustrating this situation will be,

17 There is good empirical evidence that Mormons generally pursue the third approach to full justification, prioritizing the political implications of their religious commitments. See Putnam and Campbell, American Grace, figure 12.4, pp. 440. Whether or not Mormonism as a theological position should be classed in the reasoned or revealed liberal category depends on theological issues I will not evaluate here. (As an aside, I do believe that the case for classing contemporary Mormonism in the revealed liberal category is strong. Nineteenth century Mormons, on the other hand, were likely revealed illiberals.)
particularly for the majority Mormon citizens. They will clearly not be able to feel that they themselves are passing the laws their legislators enact, because their legislators follow norms for decision-making that restrict the range of policies the legislators may enact, norms that, as normal citizens, do not apply to them, and to which they do not (and, if they are revealed liberals, cannot conscientiously) subscribe. Citizens of UI will thus be inappropriately alienated from their legislature; they will not be able to fully affirm its outputs because they do not affirm the norms that govern those outputs.18 Thus the Habermas-Gaus-North strategy sacrifices the democratic aspect of the ideal of public justification—citizens governing themselves on equal terms—in order to preserve legitimacy according to the liberal principle, or some similar alternative. If this is the only solution to the revealed liberal’s objection, it is deeply unsatisfying.

Habermas is more aware of this problem than Gaus and North are, and he attempts to address it by describing the cognitive presuppositions required of both religious and secular citizens necessary to enable their discussions in the informal public sphere to translate religious arguments into public reasons admissible within formal institutions. Religious citizens, Habermas explains, “must develop” three different

18 One may wonder if at least some of the Mormon citizens in UI will feel alienated from their representatives as long as their representatives refrain from imposing the Mormon citizens’ religious preferences on the other citizens of UI, publicly justifiable or not. This is to question these citizens’ reasonableness, and it is a valid concern. It also highlights the significant questions that accounts like North’s and Gaus’s leave unexamined. If the duties to provide public justifications and only support publicly justifiable laws do not apply to normal citizens, what duties do apply to them, and how can those duties be reconciled to the different set of duties that pertain to influential citizens? To mandate that UI’s citizens are reasonable is to mandate that they accept the liberal principle of legitimacy, which is to impose the obligation to only support publicly justifiable laws on them. And this is to considerably undermine the distinction Gaus and North defend. Habermas’s position is more sensitive to this issue, as I explore below.
epistemic stances, the first reconciling their religion’s exclusive truth claims to religious pluralism, the second reconciling their religious beliefs to the progress of science in a way that does not contradict those beliefs, and the third reconciling their religion to the priority of “secular” reasons in the political realm. Furthermore, secular citizens are not, on Habermas’s view, left out of such required adjustments. They must adopt Habermas’s own post-metaphysical philosophy and abandon the “secularist self-understanding of Modernity” that denies the truth of religion in general so that they can see religious arguments as at least potentially expressing moral truths translatable into secular reasons.\(^{19}\) Presumably, if such translations function appropriately, both religious and secular citizens will be able to see themselves as involved in democratic governance and be able to affirm its outputs.

Two serious flaws mar Habermas’s solution. First, his solution imposes an unequal burden on secular citizens: as Christina Lafont argues, on Habermas’s view secular citizens are forbidden to make “public use of their sincere beliefs,” because those beliefs deny the truth value of religious claims—they are not sufficiently post-metaphysical—but religious citizens are quite explicitly under no such obligation; indeed, Habermas’s institutional translation proviso is explicitly designed to allow religious citizens to make “public use of their sincere beliefs.” Secular citizens are thus required to abandon the foundational assumptions of their comprehensive commitments in order to dialogue with religious citizens, while religious citizens are under no such obligation.

\(^{19}\) “Religion in the Public Sphere,” 135ff.
Religious citizens must reconcile pluralism and science with the exclusive truth claims of their religion; secular citizens must simply give up their exclusive truth claims entirely. Second, Habermas puts such post-metaphysical, secular citizens in a position of power over religious citizens (or, to be more precise, puts reasoned liberals in a position of power over revealed liberals), since the secular citizens, presumably, would be those doing all of the translating. This will create the same sort of frustration and alienation among UI’s religious citizens as the differentiation between formal and informal norms did above; it will also create additional frustration for secular citizens who must accept an unequal double standard.

The solution for UI is clear: if the citizens are to be able to affirm the outputs of their legislature and identify with their representative’s actions, then they and their representatives must adhere to and follow the same set of guidelines for public political discussion. This means that carving out an exemption from such guidelines for revealed liberals by differentiating formal and informal institutions or ordinary and influential citizens is not a viable solution. Indeed, it is no reconciliation at all; to so restrict the scope of liberal norms of public political discussion is to admit that there is no viable set of such norms that both revealed and reasoned liberals can affirm together. And this is


21 Paul Weithman’s most recent work on this topic also offers a similarly unsatisfying reconciliation. He points out that it is a mistake to judge citizens of actual constitutional democracies by Rawls’s ideal of democratic citizenship, which only applies to a well-ordered society. While this may be the case, to rely on this distinction alone to reconcile religious citizens to Rawls’s guidelines is to admit that the revealed liberal cannot affirm the norms that govern inquiry in a well-ordered society and admits, then, that the
to concede that revealed liberals’ civic and religious obligations cannot be reconciled; they simply have to choose between obeying God and respecting their fellow citizens. This may turn out to be the case. But it is far too hasty to concede this deeply unsatisfying conclusion before attempting to develop guidelines for public political discussion that both revealed and reasoned liberals can affirm—one that can show that the revealed liberals’ religious and citizenship obligations can be reconciled.

So the manner in which Habermas, Gaus, and North specify the context of public justification norms is, in the end, unhelpful. Nevertheless, there are other ways of restricting the context of the public justification norm besides relying on distinctions between the formal institutional realm and informal public sphere or between ordinary and influential citizens. Below, instead of applying the context-specifying strategy to the power context in which citizens find themselves (influential versus ordinary, or formal versus informal), I apply it to citizens’ temporal context, the phases of the democratic decision-making process in which citizens participate. Such a specification will, in the end, enable me to develop norms for public political discussions that achieve all three of the political liberal desiderata: legitimacy, substantive fit with liberal principles of justice,
and inclusiveness. Indeed, as I argue in section (III), reasonable revealing liberals can affirm such norms.

II.2: The Phases of Democratic Decision-making

The political liberal account of citizens’ collective decision-making envisions citizens deliberating over the proper application of the principles of justice to concrete political circumstances by trading properly justified proposals with each other. Imagine, then, a group of political liberal citizens arguing about some policy issue. Citizen A supports policy $\alpha$ for public reason $Z$, citizen B supports policy $\beta$ for public reason $Y$, etc. To so imagine political liberal decision-making is to imagine that the only relevant question citizens need to decide collectively is what they should do about some predetermined policy issue. But this is plainly not the only relevant question citizens must decide collectively; indeed, there are many other issues about which citizens must make decisions about first, before the type of discussion the political liberal account presupposes is appropriate. As I argue in what follows, the political liberal account is only an accurate description of what goes on in the final two phases of deliberation.

Below, I consider what questions a “deliberative body” must address in order to move from simply convening to passing laws and resolutions. I do not yet discuss what sorts of norms should guide these different phases; my aim (for now) is merely to differentiate them.

But before I continue, one methodological note: I choose the vague term “deliberative body” intentionally, as I believe that the phases of democratic decision-making I describe below apply to more or less any body that convenes to make decisions
democratically, no matter the type: directly democratic, representative, formal, informal, or, indeed, public or civic-associational. (Later on I will draw out more clearly the implications my phased account has for citizens, legislators, and judges, presupposing that the “deliberative body” I discuss is a constitutional democracy’s legislature.) Furthermore, my use of the term “deliberative body” suggests my acceptance of Rawls’s association of political liberalism with deliberative democracy. I note, though, that my aim is to use the idea of a deliberative body as a convenient way to point out the necessary phases of the democratic decision-making process; my use of the term is not meant to imply my acceptance of any one particular account of deliberative democracy outside of my ongoing engagement with Rawls’s political liberalism.

Imagine, then, that a “deliberative body” convenes in order to discuss issues of public importance in their area of responsibility—their nation or state, if this deliberative body is a legislature, or the affairs of their voluntary association, etc. The goal of their discussion is to deliberate about and pass binding resolutions, resolutions that will have the coercive force of law behind them, if they are a legislature, or will determine, for example, who is eligible for membership in their association or what the purpose of their association is, among other things. I presume that the deliberative body also aims, insofar as it is possible, to find a consensus resolution to the issues they will discuss. (I take their consensus aim to be supported by a relatively uncontroversial moral intuition that equal citizens should at least attempt to govern themselves according to mutually

22 LP 138-140.
agreeable terms.\textsuperscript{23} What questions will such a deliberative body need to address in order to accomplish its goal of passing binding resolutions?

Before the deliberative body discusses any one potential resolution or proposal, the first question it must answer is what issues it will discuss together—what items should be on the body’s “deliberative agenda.” This I call the “agenda-setting phase” of democratic decision-making. Deliberative bodies do not always pay careful attention to this phase; they sometimes allow outside interests or powerful members to set their agendas without contesting them. Indeed, sometimes a certain member or members of a deliberative body may set their body’s agenda by default, simply because they happen to have the most well thought out or developed proposal (as was the case with James Madison and the Virginia Delegation to the United States’ constitutional convention). But many deliberative bodies’ decisions to ignore or fail to scrutinize the agenda-setting phase of deliberation does not mean that the question of the deliberative body’s agenda goes unanswered; all deliberative bodies must decide, in some way and before they move on to other issues, what issues they wish to discuss. The agenda-setting phase is thus the first phase, temporally, in any deliberative body’s decision-making process.

\textsuperscript{23} For examples of arguments that take consensus to be the aim of deliberation, see Amy Gutmann and Dennis Thompson, \textit{Democracy and Disagreement}; Joshua Cohen, “Deliberation and Democratic Legitimacy” in \textit{Philosophy, Politics, Democracy: Selected Essays}. Even Christopher Eberle argues that citizens should at least attempt to persuade their fellow citizens of the moral justification of their preferred policies, see \textit{Religious Conviction in Liberal Politics}, 94-102. There are, however, accounts of democracy that deny that consensus is its proper aim; theorists of “agonistic pluralism” are most prominent here. Consider, for example, Chantal Mouffe, “Deliberative Democracy or Agonistic Pluralism,” \textit{Social Research} 66.3 (Fall 1999), 745-758. As I use it, a “consensus” resolution is not meant to be anything different from a “convergent” resolution; indeed, I argue later that this distinction of Gaus and Vallier’s (see their “The Roles of Religious Conviction in a Publicly Justified Polity”) is one without a meaningful difference later, in section (III.2).
Next, in order to move toward its goal of passing binding resolutions, a deliberative body must decide its order of business. It must use some method to rank order the issues that it has decided (during the agenda-setting phase) it wishes to discuss, whether that method is their collective sense of the issues’ relative importance, or a deliberate choice to table certain controversial issues in order to allow members more time to think about and informally discuss them, or whatever. The “issue-ordering” phase is thus the second phase in any deliberative body’s decision-making process.

Now, having decided what issues to include on its agenda and rank-ordered its agenda items, a deliberative body is ready to open discussion of the first issue on its agenda. This is the “deliberation phase” of democratic decision-making. It is only here, during this third phase that the political liberal description of democratic discussion described above applies. Having opened discussion of some issue or proposal, the members of the deliberative body discuss it together, trading proposals, criticizing those proposals, offering alternatives, etc. (Whether or not the proposals at this phase of deliberation must be publicly justified is a question of what norms apply to this phase, and I am currently postponing such questions.)

Finally, after a suitable period of time spent discussing some issue, the deliberative body closes discussion. This may occur because the deliberative body has reached consensus—all members of the body agree that some proposal is the best way to address the issue they have discussed, or at least no members have objections to the proposal and are willing to accept it. A deliberative body may also close discussion when the body decides that further discussion will not alter the disagreements preventing
consensus and calls a vote to determine whether the proposal under discussion passes as a binding resolution or not. I call this final phase the “resolution phase” of democratic decision-making. (Sometimes, a deliberative body may simply table an issue, choosing not to call a vote or to enact any specific proposal. In such cases, decision-making never reaches the resolution phase.) In some deliberative bodies, the resolution phase does not necessarily end after the body passes a resolution. If the deliberative body is a legislature in a contemporary constitutional democracy, the resolution phase continues as executive agencies fill out the specifics of whatever resolution the legislature has passed. It also continues as courts, in legal systems with judicial review, consider challenges to the constitutionality of laws the body has passed. Of course, deliberative bodies are also free to reconsider their resolutions at any time, though this sort of action returns the decision-making process to the agenda-setting phase.

Thus, for a deliberative body to achieve its aim of passing a binding resolution, it must pass through the above four phases of democratic decision-making. It must (1) choose which issues it wishes to discuss—the agenda-setting phase, (2) rank-order those issues—the issue-ordering phase, (3) open discussion of some specified issue—the deliberation phase, and (4) pass a resolution to address the issue in question, whether by consensus or by calling a vote—the resolution phase.

As I will argue below, political liberal norms of democratic decision-making should vary according to the various phases of the democratic decision-making process. Different norms, for example, must apply to the agenda-setting phase and the resolution phase, and confusing the distinctions between the various phases of the democratic
decision-making process can make some set of guidelines for public political discussion seem counter-intuitive, nonsensical, or overly restrictive. To begin the process of articulating norms for these different decision-making phases, I take what may appear to be a short detour, but one with considerable benefits. Keeping the above distinctions between the four phases of democratic decision-making in mind enables me to make an original and persuasive interpretation of Rawls’s proviso and wide view of public political culture (in section [II.3]), one that explains why Rawls could have thought it would address religious citizens’ concerns. That interpretation, in turn, will help me to articulate what sort of norm should apply to the resolution phase of decision-making. I will then (section [II.4]) discuss what norms should apply to the other phases.

II.3: John Rawls’s Proviso and the Phases of Democratic Decision-making

In Rawls’s last published work on public reason, “The Idea of Public Reason Revisited,” he makes a final revision to the guidelines for public political discussion he defended in *Political Liberalism*, guidelines he had already revised once, after the publication of the hardcover edition for inclusion in the paperback version. Rawls’s new position, which he calls “the wide view of public political culture” and “the proviso” has perplexed—to say the least—those interested in the proper role of religious and comprehensive arguments in public political discussions. Indeed, as readers normally interpret Rawls’s mature position, it appears to impose an arbitrary, post-hoc obligation on religious citizens that is not substantially different from the unacceptable obligation to limit their contributions to public political discussions to reasonably endorsable political
values. It is unclear, on this reading, how Rawls’s new view could possibly help reasonable religious citizens or revealed liberals.

First, then, I will discuss the dominant interpretation of Rawls’s mature view. Rawls states his new guideline, “the proviso,” as follows: “reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussions at any time, provided that in due course proper political reasons…are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support.”

Most of Rawls’s readers, despite ambiguous textual evidence I will discuss later, interpret the proviso to mean that the same citizen who introduced the comprehensive reasons into public political discussion is responsible to provide proper political reasons at some later time. Jeffrey Stout, for example, interprets the proviso to mean, “a citizen may offer religious reasons for a political conclusion, but only if he or she eventually supplements these reasons by producing arguments based in the social contract.”

Similarly, Jürgen Habermas interprets Rawls’s proviso to mean that religious citizens themselves are “obligated to find an equivalent in a universally acceptable language for every religious statement they pronounce.” And this interpretation, as both Stout and Habermas later observe, clearly cannot accommodate those I term...

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24 LP 152.
25 Democracy and Tradition, 69.
26 “Religion in the Public Sphere,” in Between Naturalism and Religion, 125. This is also the way Cristina Lafont reads the proviso, see “Religion in the Public Sphere: What are the Deliberative Obligations of Democratic Citizenship?”, 130.
revealed liberals, reasonable religious citizens who are committed to offering only religious arguments in public political discussions.

But Stout’s and Habermas’s interpretations of the proviso trade on ambiguities in Rawls’s language, ambiguities that suggest the possibility of an alternative construal. Rawls almost always expresses the proviso in the passive voice, as I quoted it above: “public reasons…are presented.” This formulation leaves the subject to whom the obligation to fulfill the proviso pertains vague. Rawls could mean what Stout and Habermas interpret him to mean, that the obligation to fulfill the proviso pertains to the citizen who introduced the comprehensive reason; Rawls himself speaks in this way when he explains that, “On the wide view citizens of faith who cite the Gospel parable of the Good Samaritan do not stop there, but go on to give a public justification for this parable’s conclusions in terms of political values.” But this is not the only way that Rawls speaks of the proviso. Earlier he suggests that the proviso raises many questions about how it should be satisfied, including “when does it need to be satisfied?” and “on whom does the obligation to honor it fall?” Indeed, these questions suggest that Rawls’s use of the vague passive voice to express the proviso may have been deliberate, since he wished the details of the proviso to be worked out in “good sense and

\[27\text{ Rawls expresses the proviso in the active voice only twice. In one case, he uses the similarly vague first personal plural; See } LP 144. \text{ I will discuss the other case momentarily.}\]

\[28\text{ LP 155.}\]

\[29\text{ Ibid., 153.}\]
understanding.” The textual evidence for the proper specification of the proviso is thus mixed; in Rawls’s example of the use of the parable of the Good Samaritan, he speaks of the proviso in the way Stout and Habermas do, but when he describes the specifics of the proviso himself, he suggests a more open interpretation.

It is this more open interpretation that my delineation of the phases of democratic decision-making above helps to clarify. If one rejects the Stout-Habermas interpretation of the proviso as being inappropriate for a democracy with reasonable revealed liberal citizens, in what other ways can the proviso be construed?

Note first, then, that Rawls’s statement of the proviso itself suggests that the obligation to provide public justifications in terms of reasonably endorsable political values varies temporarily. At some time T, religious and comprehensive arguments are permissible in public political discussions, while at some time T+1, a public justification must be provided. So the proviso is, as Rawls claims, vague along two different dimensions: first, the subject to whom the obligation to provide public justifications pertains is vague, as I discussed above; second, the temporal context in which the obligation must be satisfied is also vague. What is the most open plausible construal of these two dimensions?

With the phases of democratic decision-making in mind, it is clear what the most open temporal construal is: make the obligation to provide public justifications pertain only to the resolution phase of democratic decision-making. Thus, a deliberative body

30 Ibid.
must have a public justification for any resolution that it passes. In a reasonably pluralistic democracy, this will almost assuredly (though not necessarily) be the case if a legislature manages to pass a resolution by consensus. In the more likely event, though, that a legislature passes the resolution by a vote, then the obligation to provide a public justification for its resolution provides a substantive constraint on the set of resolutions a legislature may legitimately pass, as I discussed in section (I) above. A legislature should pass only those resolutions that can be publicly justified in terms of reasonably endorsable political values. This makes clear, then, how the proviso coheres with the liberal principle of legitimacy, understood as a constraint on the types of laws a legislature may pass—the proviso thus ensures that democratic law is legitimate.

Furthermore, the above construal of the temporal aspect of the proviso makes clear the subject to whom the obligation to fulfill the proviso pertains, as my use of the active voice in the paragraph above suggests. It is first and foremost a constitutional democracy’s legislature (deliberative body), whether representative, directly democratic, or otherwise, that bears the obligation to provide public justifications and only support only those laws and policies that are publicly justifiable. That said, this assignment of the obligation to provide a public justification to a constitutional democracy’s legislature does not imply a distinction between ordinary and elite citizens, as I criticized in section (II.1) above. Because political liberalism is a theory of constitutional democracy, the citizens themselves are the ultimate source of the law, and they share the obligation to provide public justifications and only support publicly justifiable laws, just as they themselves, at least ideally, sit in the legislature or think of themselves as if they sit there.
Importantly, this obligation pertains to the citizens as a collective body, when they act to pass laws that are backed by coercive political power, not as individuals. To put this claim in Rousseau’s terms, the public justification obligation imposes constraints on the citizens’ collective, general will. Any obligations it imposes on individual citizens are derived from the general obligation imposed on the citizens collectively as constituted in a deliberative body.

The above, then, is the most open plausible construal of Rawls’s proviso and his wide view of public political culture. 31 Importantly, this most open construal coheres with what Rawls says about the proviso and the wide view: “It is important to observe that the introduction into public political culture of religious and secular doctrines, provided the proviso is met, does not change the nature and content of justification in public reason itself.” 32 Indeed. So long as the obligation to provide a public justification pertains, at least, to the citizens constituted as a deliberative body, acting in the resolution phase of democratic decision-making, no citizen will ever have to accept as legitimate a law that lacks a justifying reason she can be reasonably expected to endorse: the “nature and content of justification in public reason” does not change. What does change is the

31 My construal ignores the possibility, which Rawls discussed in earlier articulations of his guidelines, that in non-ideal situations of injustice it may be permissible to pass a resolution without providing a public justification for it because no reasonable political conception can yet be articulated separately from religious or comprehensive views. (Larmore sees this as the most persuasive construal of the proviso; he does not see Rawls’s mature view as an improvement. See his “Public Reason,” 386-387.) I ignore this possibility because I presume, as per the method of ideal theory, that I am articulating norms for a well-ordered society. Carving out exceptions for religious arguments in non-ideal rather than ideal theory, as this earlier version of the proviso does, fails to reconcile revealed liberals’ religious and civic obligations for the reasons I explored in note 21 above.

32 LP 153.
recognition that including arguments from religious and comprehensive doctrines in public political discussion during the previous three phases need not affect the obligation to provide a public justification when passing a resolution. This also means that it is inappropriate to cast individual citizens as obligated to publicly justify the various political positions they prefer to each other, as individuals. The fact that my religious or comprehensive argument for some proposal does not justify that proposal to you, individually, as we discuss politics on the street or in the halls of the legislature, is unimportant on this construal. Rather, justification of laws is public, it occurs between the citizens collectively constituted as a deliberative body and the citizens as subjects of their democratically created laws. This construal also avoids casting the proviso as a post-hoc obligation; a citizen has not done wrong if she offers a religious argument for a position that she thought might be publicly justifiable but, as things turned out, was not. She has only done wrong if, when acting within a deliberative body she votes to pass a resolution that she knows is not publicly justifiable. Thus, if she offers a religious argument for a proposal and then discovers that proposal is not publicly justifiable but nevertheless votes for it, she has violated her obligations.

This construal of the proviso nevertheless leaves many questions unanswered. As the last example above suggests, simply stating that the obligation to publicly justify laws pertains to a deliberative body in the resolution phase of democratic decision-making

33 I am indebted to Brookes Brown for pushing me on this point. Cristina Lafont’s proposal, in “Religion in the Public Sphere: What are the Deliberative Obligations of Democratic Citizenship?”, could also, I believe, be understood to accord with my construal of the proviso.
offers little guidance about when religious and comprehensive arguments are more or less appropriate. Thus, fully articulating the guidelines of public political discussions suggested by my construal of the proviso above requires attending to what norms should apply to the three previous phases of democratic decision-making. Doing so will also, as the ensuing analysis will show, address those concerned that this most open construal of the proviso is not restrictive enough, that is allows for too much deliberation based on religious and comprehensive reasons.

II.4: Substantive Norms for the Phases of Democratic Decision-making

What norms, then, should guide each phase of democratic decision-making in a constitutional democracy? Following my most open construal of the proviso elaborated above, the resolution phase of democratic decision-making should be constrained by a deliberative body’s obligation to provide public justifications for the laws it passes, and to pass only those laws that are publicly justifiable. This is, as I have explained above, a substantive constraint on the laws a deliberative body may pass; even if some law meets all the requirements for procedural legitimacy—it passes by majority vote, there was sufficient time for all views to be heard, etc.—it is still illegitimate if it is not publicly justifiable. Knowing the proper substantive norms for the resolution phase of democratic decision-making, however, does not specify what substantive norms, if any, should apply to the other three phases of the decision-making process. (I leave aside discussion of procedural norms for these phases because the religious critics do not directly object to norms specifying, for example, majority rule as an acceptable decision-making procedure, assigning each member of a deliberative body one vote, and the like. Their
objections pertain, rather, to the substantive constraints Rawls’s guidelines impose on public political discussions.) The key question here is what substantive norm, if any, should apply to the agenda-setting phase of democratic decision-making. This is to ask what sort of justifications citizens should offer when they argue that some issue or proposal should be put on their deliberative body’s agenda. To forecast, I will defend an agenda-setting norm that permits citizens to justify adding issues to the deliberative agenda by appeal to reasonable political conceptions of justice or reasonable comprehensive doctrines. This norm, as opposed to the resolution norm, more clearly applies directly to individual citizens, their representatives (if any) and their associations and parties. When a deliberative body convenes and then enters the agenda-setting phase of democratic decision-making, it solicits proposals for inclusion on the deliberative agenda from the members of the body, individually or as parties. Thus it is appropriate that an agenda-setting norm applies to the individual members of the deliberative body. However, the agenda-setting norm I defend also applies to the deliberative body as a whole. If a deliberative body adds an issue or proposal to the deliberative agenda that cannot be justified properly according to whatever agenda-setting norm it has adopted, it has done a wrong, as I explain below.

Before continuing further, I comment on agenda-setting norms in general: substantive agenda-setting norms are not well addressed in the literature on deliberative democracy or political liberalism. There is broad consensus on basic procedural norms for agenda-setting, but there is no extant discussion of any substantive norm that should guide agenda setting in democratic discussions. One of the purposes of this section, then,
is to show why such a substantive norm is necessary, and explain how that norm relates to the resolution norm I defended in the previous section.

For example, Joshua Cohen argues that, since, all deliberators are formally equal—there are no procedural rules that single out some individual deliberator or class of deliberators—each deliberator must be able to “put issues on the agenda, propose solutions, and offer reasons in support of or in criticism of proposals.”

A deliberative body’s agenda must be open to criticism from all deliberators. Similarly, Benjamin Barber argues that a “strong democracy” must never close its agenda; the issues it chooses to discuss and act on must always be open to criticism and revision. (Cohen makes a similar point when he argues that deliberators must not be restricted by the authority of prior norms or requirements” or by “the existing system of rights.”) Paul Weithman offers a more moderate account of what deliberative democracy demands, arguing simply that “the agenda of public political debate in governmental fora should not be set entirely by political elites or public officials; ordinary citizens should be able to affect it.” But none of these norms offers a deliberative body any substantive guidance in making judgments about what sorts of issues are worth its attention and what are not. Instead, they are only procedural norms: any deliberator may propose changes to a

34 “Deliberation and Democratic Legitimacy,” 24.


37 Religion and the Obligations of Citizenship, 55.
deliberative body’s agenda at any time. The deliberative body that looks to contemporary deliberative democratic theory for substantive guidance about how to decide what should be discussed finds no answers.38

One might counter that Jürgen Habermas’s “two track” account of deliberative opinion and will formation undermines my claim that deliberative democratic theory offers no substantive guidance about how to decide what is worth deliberating.39 Habermas does offer an account of how opinion in the informal public sphere guides the agenda of formal representative institutions, so a deliberator in one of these formal institutions who wonders whether an issue should be on the agenda for discussion need only ask herself whether the issue is being discussed in the informal public sphere. However, this account of agenda setting only pushes the question back to the informal public sphere: how should citizens in that sphere go about deciding what is worth discussing? Habermas’s account offers little guidance here. He in effect argues that truly legitimate, deliberative agenda setting arises when peripheral groups, who have “greater sensitivity in detecting and identifying new problem situations” are able to break into the

38 Indeed, sustained discussion of agenda setting in the deliberative democracy literature generally occurs when deliberative theorists begin discussing how deliberative democratic theory can be made more realistic or applied to the real world. See, for example, Charles Beitz, Political Equality (Princeton: Princeton University Press, 1989), 180; James Bohman, Public Deliberation: Pluralism, Complexity, and Democracy (Cambridge, MA: The MIT Press, 1996), 119-123; 139-142; Jürgen Habermas, Between Facts and Norms, 287-387.

39 See Habermas, Between Facts and Norms, 308, 314; as well as Seyla Benhabib, “Models of Public Space: Hannah Arendt, the Liberal Tradition and Jürgen Habermas,” in Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics (New York: Routledge, 1992), 89-120. One might also claim that public reason itself offers such guidance: deliberators should discuss only those policies and issues that can be justified by appeal to reasonable political conceptions of justice. But the point of my argument here is to show that the same norm that governs the resolution of deliberation cannot coherently govern agenda setting, as I elaborate in a moment.
formal institutional realm to raise their issues and compel their representatives, through the force of public opinion, to address them.\textsuperscript{40} And this is, indeed, an accurate sociological description of how a constitutional democracy’s legislature’s agenda is set. But this position offers insufficient normative guidance; on its basis one cannot adjudicate between issues that merit deliberation and those that do not. One cannot conclusively infer simply from a group’s location at the social and political periphery that formal institutions should address its concerns; surely some peripheral groups’ concerns are unreasonable\textsuperscript{(1D)} and ought to stay peripheral.

Is the lack of any such articulated, substantive norm for agenda setting in political liberalism and deliberative democratic theory a problem? It is, particularly when one affirms a resolution norm that includes the requirement that resolved policies be justified by public (reasonably endorsable) reasons. As Seyla Benhabib points out, what a group of citizens sees as appropriately public can serve to force other citizens’ concerns off of the agenda; this was the historical fate of women’s issues, like spousal abuse, that were traditionally thought to be matters solely between a husband and wife where the public ought not intervene.\textsuperscript{41} Without an articulated, substantive norm for agenda setting, then, a deliberative body risks allowing unexamined prejudices to determine the sets of issues discussed, unexamined prejudices that may perpetuate serious injustices. Indeed, the effect of such prejudices on actual deliberative bodies has been empirically

\textsuperscript{40} Habermas, \textit{Between Facts and Norms}, 381.
\textsuperscript{41} Benhabib, “Models of Public Space.”
Furthermore, a substantive norm for agenda-setting will help to clarify on what grounds arguments from comprehensive doctrines are permissible in public political discussions, even, as I will argue, within formal institutions.

What sort of norm, then, should guide agenda setting in a politically liberal deliberative body where resolutions must be justified by appeal to political values arising from a reasonable political conception of justice? Before specifying this norm precisely, I will briefly comment on the relationship between agenda-setting and resolution norms. Remember, my account presumes that one aim of democratic discussion is to find a consensus resolution of some issue, if possible, as I stated in section (II.2) above. Presuming that aim, whatever substantive norm one defends for agenda setting, that norm must be less restrictive than the resolution norm one adopts. If that were not the case, then the aim of deliberation—discussion towards consensus—would be undermined.

Consider, then, a deliberative body that adopts Rawls’s public reason norm as its standard for both the agenda setting and resolution phases of democratic decision-making. In other words, consider a deliberative body that adopts an agenda-setting norm that is just as restrictive as its resolution norm. In such a body, deliberators must be able to justify the policies they resolve to enact by appeal to a reasonable political conception of justice. They must also, however, be able to show that whatever issue or proposal they wish to discuss collectively is susceptible to resolution by appeal to a reasonable political conception of justice.

conception of justice. In other words, they must be able to show that the issue about which they are concerned can be resolved by deliberation before the body deliberates about it. Claiming that the same norm should apply to both the agenda-setting and resolution phases of deliberation, then, has the perverse effect of undermining any need for deliberation at all: deliberators must know and present a resolution for the issue or proposal they wish to discuss before they are permitted to argue that the issue or proposal needs to be discussed. In such a body, then, there are likely to be a set of issues of unknown size for which the deliberators may be able to find a consensus or publicly justifiable solution but never have the opportunity to do so because no one deliberator feels confident enough that she has such a solution before discussing it with her fellow deliberators. Deliberations in such a body are hobbled by an overly restrictive agenda-setting norm. This is one reason—though perhaps not the one Rawls had in mind—that Rawls was right to suggest that public justificatory obligations vary temporally. At time T (the agenda-setting phase) those obligations should be relaxed in some yet to be specified way; at time T+1 (the resolution phase) they are in place.

So a substantive agenda-setting norm must be less restrictive than the resolution norm adopted by any deliberative body that aims at consensus. This, of course, does not specify any one particular norm for agenda setting; it merely delimits the set to those that are less restrictive than a deliberative body’s resolution norm, which I previously specified to be the obligation to provide a public justification. What norm, then, should guide discussion about a deliberative body’s agenda in a politically liberal society?
I propose that the following norm guide such discussions: citizens who argue that some issue or proposal should be put on the agenda for public discussion should show that their proposal can be justified by appeal to a reasonable\(^{4D}\) political conception of justice or a reasonable\(^{2D}\) comprehensive doctrine. Hereafter, I refer to this agenda-setting norm as the “nearly uninhibited norm.”

What would democratic discussion look like in a deliberative body that followed this agenda-setting norm? Citizens would be free to argue from their comprehensive views, including their religious commitments, in public political discussions, without concern for whether or not their issue can be resolved by a publicly justifiable solution. For example, citizens could argue that because their religion teaches that human sexual relationships are sacred and should be intimate, they wish to consider more serious regulations on pornography distribution and access. Or, citizens could argue that, due to their comprehensive belief in the respect due to all sentient animals (not just humans), they wish to reconsider the status of such animals before the law. Agenda setting discussions would, in such a society, range across the length and breadth of the various reasonable\(^{2D}\) religious and moral commitments its citizens held, regardless of how widely shared or controversial those moral commitments might be (provided that those citizens can conscientiously reconcile their moral commitments with fair terms of cooperation and the burdens of judgment—the core reasonableness condition I defended in Chapter Two). Agenda-setting deliberation in such a society would be, as the name suggests, nearly uninhibited.
I say “nearly uninhibited” on purpose, however. The above norm is not as permissive as it might be. One could claim, for example, that agenda-setting discussions should be governed by a norm like the following: *citizens who argue that some proposal should be put on the agenda for public discussion may justify their proposal however they please.* This I term the “completely uninhibited norm.” Under such a norm, citizens would be free to appeal, not only to reasonable political conceptions and reasonable comprehensive doctrines, but also to unreasonable views, rank self-interest, or pure whim and fancy.

Are there good reasons to choose the first, nearly uninhibited norm, over the second, completely uninhibited norm? (To ask this question is also to ask whether there are good reasons to have any substantive agenda-setting norm whatsoever.) There are. In a society where agenda-setting discussions are governed by the completely uninhibited norm, democratic discussions are likely to be distracted by unreasonable, extreme proposals. The reasonability constraint in the nearly uninhibited norm ensures that deliberators do not waste their time and effort responding to proposals to do away with fundamental rights or elevate some class to official nobility, or similar possibilities that would be acceptable under the completely uninhibited norm. Furthermore, restricting acceptable proposals to those that can be justified by appeal to reasonable political conceptions preserves civic comity;

43 By “rank self interest” I mean self-interest outside of the permissible concern for one’s own well being within a fair set of rights and liberties. For elaboration, see the discussion in Jane Mansbridge et al., “The Place of Self Interest and the Role of Power in Deliberative Democracy,” *Journal of Political Philosophy* 18:1 (March 2010), 76.
no proposal to, say, exile or severely restrict the rights and privileges of some group would be acceptable under the nearly uninhibited norm, while citizens who make such proposals would not be violating the completely uninhibited norm. For these reasons, the nearly uninhibited norm is more appropriate for a politically liberal society than the completely uninhibited norm.

One point of clarification to the above: in a society that adopted the completely uninhibited norm, civic comity would be risked by the deliberative body’s discussion of offensive and unreasonable policies, not by its enacting offensive and unreasonable policies. This is because I have already specified that, in the phased account of democratic decision-making, a deliberative body must provide a public justification at the resolution phase of decision-making. Such extreme or unreasonable proposals cannot be justified by appeal to any reasonable political conception of justice. So, given the strict compliance assumption of ideal theory, no such extreme or unreasonable proposal would be enacted, even if, under the completely uninhibited norm, a deliberative body may discuss them.

So an agenda-setting norm less restrictive that then nearly uninhibited norm can be ruled out. What about an agenda-setting norm that is more restrictive? Consider the following possibility: citizens who argue that some issue or proposal should be put on the agenda for public discussion should have a high degree of confidence that their proposal can be justified by appeal to a reasonable political conception of justice. This is the
“high degree of confidence norm.” The high degree of confidence norm is more restrictive than the nearly uninhibited norm, but it is not as restrictive as the resolution norm; to satisfy that norm, the deliberative body must be convinced that the policy it is enacting is publicly justifiable. To meet the above agenda-setting norm, all one must do is have a high degree of confidence that one’s proposal will, after deliberation, turn out to be publicly justifiable. Public political discussions under this norm would be quite different than under the nearly uninhibited norm; citizens would need to be able to demonstrate their confidence in a proposal’s public justifiability before they could permissibly argue for that proposals inclusion on the agenda. All deliberators would need to be competent in and comfortable using the language of public reason. In a deliberative body that adopted such a norm, the set of proposals that would make it onto the agenda would be smaller than under the nearly uninhibited norm, and they are likely to more closely reflect the set of proposals that would eventually be enacted. How, then, to adjudicate between these two different norms? Which is more appropriate for a politically liberal society?

Keep in mind the three desiderata for a political liberal mode of inquiry. Insofar as possible, a political liberal mode of inquiry should simultaneously ensure legitimate political outcomes (1), preserve a substantive fit between those outcomes and liberal principles of justice (2), and be inclusive (3). The nearly uninhibited norm is clearly

44 I am indebted to Keegan Callanan for suggesting this possibility to me. This particular agenda-setting norm could be construed as a more restrictive interpretation of the proviso than the one I articulated in section (II.3) above, an interpretation closer to the way Habermas, Stout, and others read the proviso.
more inclusive than the high degree of confidence norm, since it allows citizens to justify putting their proposals on the agenda by appealing to reasonable\(_{(2D)}\) comprehensive doctrines as well as reasonable\(_{(4D)}\) political conceptions of justice. In particular, the nearly uninhibited norm holds out the possibility of accommodating reasonable\(_{(1D)}\) revealed liberals,\(^{45}\) whereas the high degree of confidence norm does not. Furthermore, because deliberative bodies must provide public justifications during the resolution phase, adopting the nearly uninhibited norm does not legitimate the deliberative body’s enacting illegitimate or illiberal policies. Adopting the nearly uninhibited norm does not jeopardize desiderata 1 or 2. Therefore, since guidelines for democratic decision-making that adopt the nearly uninhibited agenda-setting norm and require deliberative bodies to provide public justifications during the resolution phase are more inclusive than guidelines that adopt the high degree of confidence norm, and since doing so does not sacrifice desiderata 1 or 2, the nearly uninhibited agenda-setting norm is a more appropriate norm for inclusion in the phased account of democratic decision-making than the high degree of confidence norm is.

Nevertheless, there are other concerns that may make the nearly uninhibited norm less attractive and that therefore need to be considered before the high degree of confidence norm is conclusively dismissed. Consider again the differences between a deliberative body that adopts the nearly uninhibited norm and one that adopts the high degree of confidence norm. First (1), in a deliberative body that adopts the nearly

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\(^{45}\) As mentioned above, this will be conclusively addressed in section (IV) of this chapter.
uninhibited norm, there will be a larger set of issues and proposals that may permissibly make it onto the agenda for discussion than in a deliberative body that adopts the high degree of confidence norm. It may be the case, then, that a deliberative body that adopts the nearly uninhibited norm sacrifices some time that it could otherwise spend discussing proposals that probably have public justifications in order to spend time on those that, in the end, may turn out to lack them. For example, such a body could be distracted by controversial discussions of adult pornography regulation while basic infrastructure decisions languish unattended. As a result, the nearly uninhibited norm may seem less efficient than the high degree of confidence norm; it risks wasting a deliberative body’s time. Second (2), it may be the case that, in a deliberative body that adopts the nearly uninhibited norm, the set of proposals it chooses to discuss may be skewed towards the comprehensive preferences of the majority, to the expense of minority comprehensive preferences (a body that discusses animal rights to the exclusions of concerns about pornography) or to the expense of minority political preferences (a body that discusses adult pornography regulations to the exclusion of concerns about the public health of underprivileged mothers in a minority ethnic group). Finally (3), a deliberative body that adopts the nearly uninhibited norm might, by openly deliberating about controversial proposals that may turn out to lack public justifications, risk civic comity.

46 My example assumes that proposals to regulate the creation and distribution of child pornography meet the high degree of confidence norm while proposals to regulate the creation and distribution of adult pornography to adults only meet the nearly uninhibited norm. However, there may be reasonable political conceptions of justice that can justify relatively more strict adult pornography regulations than are currently law in the United States, for example, and my example is not meant to suggest that this is not the case.
None of these concerns are ultimately persuasive reasons to reject the nearly uninhibited norm.

The first concern worries that the nearly uninhibited norm will waste a deliberative body’s time. The persuasiveness of this concern turns on the degree of confidence one places in democratic deliberation’s ability to develop justifications and policy proposals that meet the standards of public reason. Imagine that the set of proposals and issues a deliberative body could discuss ranges from 1 to 10, including in this set extreme and unreasonable proposals. The set of proposals that meet the high degree of confidence norm is narrower; this ranges, say, from 4 to 6. The set of proposals that meet the nearly uninhibited more is wider, but narrower than the full range, from 2 to 8, for example. If one believes that properly conducted democratic deliberations can find publicly justifiable solutions to collective problems, then there is no reason to believe that the proposals or issues that the high degree of confidence norm excludes while the nearly uninhibited norm includes (2,3,7,8) are any less worth discussing than those from 4 to 6 that the high degree of confidence norm includes. They, too, may turn out, after deliberation, to be addressable by means of publicly justifiable policies. If so, this is a considerable triumph for the process of democratic decision-making, as it developed a solution to a problem that individual citizens or groups of citizens may have doubted was amenable to a publicly justifiable solution. There is no reason to disqualify such issues from being discussed before exploring plausible solutions to them.

Alternatively, the first concern could be based on the assumption that proposals that meet the high degree of confidence norm are more politically important, and hence
more worth addressing collectively, than those than meet the nearly uninhibited norm only. One might worry on this basis that adopting the nearly uninhibited norm would distract a deliberative body from the bread-and-butter political issues that meet the high degree of confidence norm (adult pornography regulations versus basic infrastructure). But this is to assume more than is warranted from the information given by a proposal’s meeting either of the two agenda-setting norms. There may be many proposals that obviously have public reasons in their support that are not particularly important at any given political moment (lawn watering restrictions during a flood, for example) while there are other issues and proposals that, because they are controversial or because adherents of one or another comprehensive doctrine find them particularly salient, may lack obvious public Justifications but address crucially important moral and political issues (the nature and boundaries of the political community, for example, whether in terms of abortion issues or immigration questions). So it is not valid to draw any conclusions about the relative political importance of a proposal by the fact that it satisfies the high degree of confidence norm. The first concern, then, can be dismissed.

With concerns about the relative political importance of differing proposals in mind, it is important to note that neither agenda-setting norm currently under consideration offers a deliberative body any guidance on the proper way to rank order the proposals that make it onto their agenda, or the proper way to determine its order of business. As I argued in section (II.2) above, this is a distinct phase in the deliberative process; rank-ordering will occur regardless of the agenda-setting norm a deliberative body adopts.
It is important to keep the distinctions between these two phases of the decision-making process in mind, since the second concern, that adopting the nearly uninhibited norm will skew a deliberative body’s discussions toward the comprehensive preferences of the majority, worries about the rank ordering of agenda items, rather than about the way a deliberative body determines what proposals may permissibly be included on the agenda. The worry underlying the second concern, in other words, is that the issues already on the agenda that are particularly salient to the majority’s preferences will be ordered ahead of those issues already on the agenda that are salient to the minority, and, as a result, the majority’s concerns will be more effectively addressed. Any deliberative body’s order of business is going to be influenced by its evaluation of the relative importance of the issues under consideration, as it should be. Further, some members of that body may, in some circumstances, disagree with the ordering of its agenda. But this concern is a separate issue from determining what items may be included on that agenda. After all, the same concern about bias in the ordering of agenda items could arise even if the deliberative body adopted the high degree of confidence norm. So the second concern can be dismissed.

Finally, the third concern: adopting the nearly uninhibited norm risks civic comity by allowing a deliberative body to discuss proposals that may turn out, after deliberation, to lack public justifications and that may also be highly controversial. This concern is difficult; it applies the same argument I used above to reject the completely uninhibited norm to reject the nearly uninhibited norm. While it is the case that a deliberative body’s mere discussion of some particularly egregious proposals (mass deportation of members
of certain ethnic group, for example) does indeed risk civic comity, even if the body never acts on the proposal, such proposals will not be discussed in a deliberative body that adopts the nearly uninhibited norm. The nearly uninhibited norm, after all, requires that the comprehensive doctrine from which reasons are drawn to justify including some proposal on the agenda be reasonable—it must be compatible, on its own terms, as its adherent understands it, with fair terms of cooperation, the burdens of judgment, and the liberal principle of legitimacy. Civic comity-risking proposals will not be able to meet this norm. Recall the three different ways that a citizen can fully justify a reasonable political conception of justice from Chapter Two, section (III). She may prioritize the political conception. If she does this, then any proposal she justifies by appeal to her comprehensive doctrine will also be justified by the reasonable political conception of justice she prefers. She may separate her comprehensive views from her political conception, in which case she will not see her comprehensive doctrine as having political salience and will not, then, justify proposals for public discussion by appeal to it. Finally, she may prioritize her comprehensive doctrine, in which case she only qualifies as reasonable if her comprehensive doctrine, as she understands it, can consistently endorse fair terms of cooperation, the burdens of judgment, and the liberal principle of legitimacy. A comprehensive doctrine that does so, and is understood by its adherents to do so, cannot consistently be used to justify proposals that would, if enacted, violate liberal principles of justice, and so such a comprehensive doctrine cannot be used to justify proposals of the sort that harm civic comity by their mere discussion. So the civic comity concern does not apply to the nearly uninhibited norm and can be dismissed.
The nearly uninhibited norm, in conclusion, is the appropriate agenda-setting norm for deliberative bodies in a politically liberal society. Political liberal guidelines for public political discussions should be *phased*; they should include two separate, substantive norms: a resolution norm (public justification) that determines the acceptable justifications of laws and policies a deliberative body *enacts*, and an agenda-setting norm (the nearly uninhibited norm) that determines the acceptable justifications of issues and proposals for inclusion on the deliberative body’s agenda.

How, then, are collective decisions made in a political liberal society that adheres to the phased account of democratic decision-making? Citizens discuss the political issues that matter to them and offer possible proposals to address them, sharing with their fellow citizens the reasonable (4D) political or reasonable (2D) comprehensive reasons that justify their proposals. When citizens deliberate formally, they rank order the issues with which they are concerned and proceed through each proposal, searching for a policy that will address the issue and can be a consensus solution to it. If they fail to reach consensus, they enact the policy the majority supports (or they use some other acceptable decision-making procedure to make a decision in the face of disagreement), provided that the policy selected can be publicly justified. If no policy to address the issue meets this criterion, the citizens do not act, since acting in that case would violate the deliberative body’s resolution norm.

What obligations of democratic citizenship does the phased account of democratic decision-making imply? It constrains the sorts of justifications citizens offer in public political discussions to those arising from reasonable (4D) political conceptions of justice.
or reasonable\textsubscript{(2D)} comprehensive doctrines. Provided that a religion endorses the liberal principle of legitimacy and liberal principles of justice, then, citizens may use religious justifications in public political discussions, without individually incurring any obligation to provide reasons from a reasonable\textsubscript{(4D)} political conception at a later date. After all, citizens’ public political discussions are as often about what their deliberative body should discuss—what its agenda should be—as about what specific policy it should enact to address some issue. That said, citizens must recognize the force of public justification as a resolution norm. All citizens of a constitutional democracy are, after all, members of the “deliberative body” that passes binding resolutions, even if some only participate through their representatives. If, after due collective and public deliberation, a citizen comes to feel that some policy lacks any public reasons in its support, she should not support that policy. (Please note that this norm does not require a citizen to deliberate in terms of public reasons; she may discern the public justifiability, or lack thereof, of a certain policy by listening to the views and objections of her fellows.) This is a restraint norm (unapologetically so!), and it is one that applies to all citizens. Similarly, citizens should not vote for a party or representative they believe will not follow public reason, understood as a resolution norm. Furthermore, the phased account of democratic decision-making suggests that the proposals citizens justify by appeal to religious or comprehensive reasons should be subject to increasing scrutiny to ensure that those proposals are publicly justifiable as discussion of the proposal moves through the decision-making process toward the resolution phase.
Note that there is no distinction above between the norms that apply to citizens and those that apply to their legislators. The phased account of democratic decision-making is in equal force for both political roles. This means that a legislator who argued on the floor of parliament that he and/or his constituents have religious reasons to wish their legislature to consider some issue does not violate the phased account. This is not the case, however, for judges in a constitutional system that allows for judicial review. One might worry that, since my phased account allows reasonable, comprehensive justifications at the agenda-setting phase, that it may allow judges on a high or supreme court to select cases based on their comprehensive or religious preferences. (Judges do, in modern supreme courts, exercise considerable discretion over the cases they adjudicate.) This, however, would be a misapplication of the phased account of democratic decision-making. When judges exercise judicial review, they intervene in the resolution phase of deliberation, as I specified in section (II.2) above. Their role should be understood to be redressing laws or policies that were inappropriately enacted, laws and policies that the legislature believed were constitutional and publicly justifiable (that is, met the resolution norm) but the court now believes, when they overturn them, are not. Indeed, it is because judges intervene in the resolution phase of democratic decision-making, and because that phase is the one in which the public justification norm is essential, as I argued above, that my phased account coheres with Rawls’s claim that a

The phased account of democratic decision-making I propose above is not the only alternative set of guidelines for public political discussion that political philosophers purport to be superior to Rawls’s or to address religious citizens’ concerns, however. There are no fewer than four alternative extant proposals in the literature, developed by Paul Weithman, Christopher Eberle, Jeffrey Stout, and Gerald Gaus and Kevin Vallier. Here, I assess how well these alternative modes of inquiry meet the three desiderata of a political liberal mode of inquiry: legitimacy, substantive fit with liberal principles of justice, and inclusion. I address Weithman’s and Eberle’s proposals first and Stout’s and Gaus and Vallier’s second, due to similarities between their positions that will be apparent as my analysis proceeds.

48 PL 231ff.

49 I am indebted to Sylje Langvatn for alerting me to the concern about supreme court justices.

50 One might worry, then, that this differentiation between the norms that apply to judges on the one hand and citizens and legislators on the other could be subject to the same criticism I made of Habermas’s, Gaus’s, and North’s attempts to separate citizens’ norms from legislators’. To do this, though, is to question the democratic credentials of judicial review as an institution, and it is beyond the scope of my inquiry. For careful consideration of this question, see Christopher F. Zurn, Deliberative Democracy and the Institutions of Judicial Review (New York: Cambridge University Press, 2007).
Neither Weithman nor Eberle cast their proposals as explicit alternatives to Rawls’s broad guidelines for democratic decision-making. Rather, they both see their proposals as outlining alternative ethics of citizenship, alternative accounts of how citizens of liberal democracies ought to behave when acting as citizens. This poses some inevitable ambiguities when comparing their proposals to my own alternative guidelines, as developed above. For Rawls’s account as well as my own, the duties that pertain to the social role of citizen follow from the guidelines for democratic decision-making one defends, as my analysis in Chapters One and Two makes clear. Weithman and Eberle, however, defend accounts of the duties of citizenship only. It is therefore an open question what guidelines for democratic decision-making Weithman and Eberle see as corresponding to the alternative ethics of citizenship they defend. In what follows, I make several inferences about what guidelines are likely to correspond to their positions on the ethics of citizenship. This is a tricky enterprise, since norms that make up guidelines for democratic decision-making may have widely differing scopes, both in the sense of the specific people and locations to which they apply and the time context to which they apply. As I discussed above, some norms may apply directly to individual citizens while others apply to the citizens collectively, while others may apply to influential citizens but not to normal citizens. Both Weithman and Eberle are, then free to argue that they had different guidelines in mind, ones not susceptible to the criticisms I
develop here. To do so, however, they will need to develop such guidelines and show how they comport with the duties of citizenship they defend.\textsuperscript{51}

Weithman defends the following two principles as his account of the duties of liberal-democratic citizenship:

\begin{enumerate}
\item Citizens of a liberal democracy may base their votes on reasons drawn from their comprehensive moral views, including their religious views, without having other reasons which are sufficient for their vote—provided that they sincerely believe that their government would be justified in adopting the measures they vote for.
\item Citizens of a liberal democracy may offer arguments in public political debate which depend upon reasons drawn from their comprehensive moral views, including their religious views, without making them good by appeal to other arguments—provided they believe that their government would be justified in adopting the measures they favor and are prepared to indicate what they think would justify adoption of the measures.\textsuperscript{52}
\end{enumerate}

Some clarifying comments before beginning my analysis: by “comprehensive moral view,” Weithman means more or less what Rawls means by “comprehensive doctrine,” an ordered and coherent set of moral claims covering all or most areas of life.\textsuperscript{53}

\textsuperscript{51} Since publishing \textit{Religion and the Obligations of Citizenship}, Weithman has changed his view of the proper obligations of liberal democratic citizens; he now defends an explicitly Rawlsian position. See his “Religion, Citizenship, and Obligation” and \textit{Why Political Liberalism}. He has not, however, published an account of his reasons for this change. Eberle continues to defend the position he describes in \textit{Religious Conviction in Liberal Politics}, see, for example, “Basic Human Worth and Religious Restraint,” \textit{Philosophy and Social Criticism} 35: 1-2 (January/February 2009), 151-181; and “Religion, War and Respect,” Presented at the Conference of the International Research Network on Religion and Democracy, Between Rawls and Religion: Liberalism in a Postsecular World, John Cabot and LUISS Universities, Rome, Italy, December 16-19, 2010, manuscript on file with the author.

\textsuperscript{52} \textit{Religion and the Obligations of Citizenship}, 121.

\textsuperscript{53} Ibid., 122-124; Weithman’s work predates Nussbaum’s criticisms of Rawl’s theoretical definition of reasonable comprehensive doctrines that I discussed in Chapter Two, section (II); he presumes, then, that his definition is noncontroversial.
By “depend” in 5.2, Weithman means “dependence as seen from the point of view of the person offering the argument,” or, he adds, “from what others reasonably suppose that point of view to be.”

Weithman offers an explanation for the difference between 5.1 and 5.2, but this difference will not be relevant to my analysis below.

How should democratic decision-making proceed in a society that follows Weithman’s two principles? What guidelines for this process correspond to his account of citizens’ duties? Weithman never distinguishes between agenda-setting norms and resolution norms in his discussion, nor does he suggest that state officials or influential citizens bear different obligations than normal citizens. In the absence of such discussion, then, I will take Weithman’s principles as global norms for all democratic decision-making. The most relevant portions of his principles are his provisos, and since I am asking what decision-making guidelines correspond to his principles, I will work from 5.2 rather than 5.1. A principle that applies only to voting is less helpful, since in voting much of the decision-making has either already largely happened—consider a referendum, where the options available to citizens are predetermined in advance—or is largely yet to happen, when citizens vote for their representatives. Consider, then, 5.2’s proviso: citizens may offer arguments in public political discussions which depend upon their comprehensive views provided that they believe their government would be justified in adopting the measures they favor and are prepared to indicate what they would think would justify the adoption of the measure. This proviso outlines the constraints on the

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54 Ibid., 122.
sorts of positions for which liberal democratic citizens, on Weithman’s account, may support and for which they may publicly argue; it is therefore a good basis from which to draw conclusions about the norms that would govern collective decision-making in a deliberative body that followed Weithman’s principles. In other words, it is the basis on which one may determine what guidelines for democratic decision-making would correspond to Weithman’s ethics of citizenship.

In the absence of anything from Weithman to the contrary, a society that adopted Weithman’s principles would be one in which citizens can not only argue for any position they sincerely believe their government would be justified in adopting but also one in which the citizens collectively may enact and enforce any position they sincerely believe their government would be justified in adopting. To put the same conclusion in the language I used earlier, Weithman’s principles, absent any claim from him to the contrary, may be taken to act as the resolution norm for his society. The stakes of Weithman’s ethics of citizenship, then, are not only the reasons people may use in public political argument but also the reasons the citizens collectively may use in coercing each other. And according to Weithman’s principles, the only constraint on that coercion is what citizens “sincerely believe” their government is justified in doing. Citizens in Weithman’s society, then, would argue together about what they sincerely believe their government should do, using some decision-making procedure, presumably, to address persistent disagreements, without any substantive constraints on the positions they support outside of the sincere belief condition.
Does this mode of inquiry meet the three desiderata of political liberal inquiry? It is undeniably more inclusive than Rawls’s political liberal mode of inquiry, and, since the constraints on the types of policies citizens may enact is relaxed, it is also more inclusive than the mode of inquiry I defend above. But Weithman’s mode does not fare nearly as well at the other two desiderata. Consider, first, legitimacy: Weithman acknowledges that his principles demand that Rawls’s account of legitimacy be reconceived; the liberal principle of legitimacy, after all, includes a reasonable endorsability constraint for constitutional issues and matters of basic justice, while Weithman’s proviso does not.55 But Weithman does not develop a revised account of legitimacy, and indeed, it is difficult to explain how legitimate coercion in the face of deep moral disagreement can be maintained when the only justification citizens are required to give each other is their sincere beliefs, which may be idiosyncratic, unreasonable56, or offensive. Indeed, it is worth noting that Weithman’s principles remove all interpersonal requirements from public justification—a position is within the legitimate scope of coercion no matter how deeply, cogently, or persuasively some citizens argue against it, even if they were to argue that the policy in question violates fundamental rights and liberties and liberal principles of justice, or that no plausible normative account of the society’s deep moral intuitions (reasonable4D political conception of justice) could justify the policy.56

55 Religion and the Obligations of Citizenship, 212-217.

56 Habermas calls Weithman’s ethic an “egocentric procedure,” in which “each person’s worldview constitutes the insurmountable horizon of her deliberations on justice;” see “Religion in the Public Sphere,” 133.
Consider, then, the scope of the possible outcomes of democratic decisions made in accordance with Weithman’s guidelines. As the concern above with basic rights and liberties suggests, that scope far exceeds substantive compatibility with core liberal principles of justice. Given sincerely believing majorities, establishment far beyond the non-coercive sort is permissible, as would be state enforcement of Kosher or Hallal, religious or secular dress codes, and rigorous blue laws. Weithman notes that his main concern is religious citizens who wish to exclusively rely on religious reasons and also accept that government must act in the common interest and respect the “usual rights and liberties,” a group analogous to reasonable revealed liberals. But in seeking to include such citizens, Weithman has also included within his account of the duties of citizenship citizens who sincerely believe that their government would be justified in adopting policies that considerably alter or indeed violate basic rights and liberties, or further a conception of the common interest that is radically sectarian. Such inclusion is no idle worry, since a citizen’s fellows’ concerns need exercise no weight in his decisions or in citizens’ collective decisions. What Weithman’s principles ignore, then, is the recognition that collective decision-making in a liberal-democratic society shapes the operative definition of common interest and the basic rights and liberties. Without a substantive norm to guide such decision-making that includes at least some minimal criterion of interpersonal reciprocity, deep liberal commitments, including the basic rights

57 Religion and the Obligations of Citizenship, 137.
and liberties, will simply be one option in a much wider menu of possibilities.\textsuperscript{58} The mode of inquiry, then, that corresponds to Weithman’s principles suffers from severe inadequacies in the first two desiderata. It will not preserve legitimacy as given by the liberal principle, nor will its outcomes necessarily cohere with liberal principles of justice.

Christopher Eberle’s position suffers from similar problems. Like Weithman, he develops an ethic of citizenship rather than guidelines for democratic decision-making or an alternative conception of legitimacy, though he is more explicit than Weithman in intending his ethic of citizenship to act in these areas as well.\textsuperscript{59} And like Weithman, he intends his ethic of citizenship to include reasonable\textsuperscript{(ID)} revealed liberals, though, as I will argue, he, like Weithman, includes far more than them as well.

Eberle calls his account of the obligations of liberal democratic citizenship the “Ideal of Conscientious Engagement,” which includes the following constraints on the reasons citizens use in public justification:

(1) [A citizen] will pursue a high degree of rational justification for the claim that a favored moral policy is morally appropriate.
(2) She will withhold support from a given coercive policy if she can’t acquire a sufficiently high degree of rational justification for the claim that that policy is morally appropriate.
(3) She will attempt to communicate to her compatriots her reasons for coercing them.
(4) She will pursue public justification for her favored coercive policies.

\textsuperscript{58} Consider Joshua Cohen’s “Procedure and Substance in Deliberative Democracy,” in \textit{Philosophy, Politics, Democracy: Selected Essays}, 154-180 on this point.

\textsuperscript{59} \textit{Religious Convictions and Liberal Politics}, 140-150.
(5) She will listen to her compatriot’s evaluation of her reason for her favored policies with the intention of learning from them about the moral (im)propriety of those policies.

(6) She will not support any policy on the basis of a rationale that denies the dignity of her compatriots.\(^{60}\)

Again, some short clarifying comments: for Eberle, “rational justification” is a first-person process, it designates the assurance that one has good reasons for one’s beliefs, given one’s individual perspective and evidential set.\(^{61}\) So Eberle’s first two constraints require citizens to only support those policies for which they believe themselves to have good moral reasons. In contrast, by “public justification,” Eberle means an argument for a given claim that is widely persuasive, not just to an individual citizen, but to that citizen’s fellows as well.\(^{62}\)

What guidelines for democratic decision-making correspond to Eberle’s ethic of citizenship? What constraints does it impose on the positions liberal democratic citizens may support and coercively enact? Ultimately, there are only two. Note that Eberle, like Weithman, sees the first-person perspective as determinative; citizens should not support policies that they do not believe are moral. Eberle goes farther than Weithman, however, by arguing that citizens also should not support policies that are “based on a rationale that denies the dignity of her compatriots” (my emphasis). Eberle does have a form of interpersonal constraint, since he requires citizens to pursue public justification, but that

\(^{60}\) Ibid., 104-105.

\(^{61}\) Ibid., 61.

\(^{62}\) Ibid., 94-102.
emphasis is important. Eberle does not require citizens to stop supporting a policy that they conclude is not publicly justified. So, since what Eberle means by rational justification is reasonably clear and similar to Weithman’s “sincere belief” constraint, the difference between his mode of inquiry and Weithman’s depends on what Eberle means by “dignity.”

Unfortunately, Eberle gives his readers very little to go on here, defining dignity in terms of “personhood” or full humanity, both vague terms. And without much more specificity about what substantive constraints on coercion respect for human dignity entails, Eberle’s mode of inquiry falls into the same problems with respect to legitimacy and substantive fit with liberal principles of justice as Weithman’s. Consider the following extreme but illustrative example:

Augustine’s argument for religious coercion fully satisfies Eberle’s ideal of conscientious engagement. Augustine interpreted his moral evidential set (mostly Christian scripture) so as to justify religious coercion. He communicated this justification at great length to those who disagreed with him, seeking to find a widely convincing rationale for religiously coercing his compatriots, who were, after all, mostly Christians like himself. Furthermore, Augustine did not support religious coercion because he thought the Donatists or other “heretics” were less than fully human—far from it. He supported religious coercion out of a deep concern for the status of his heretical compatriots’ souls—a concern that also, quite consistently, led Augustine to

63 Ibid., 103-104.
diligently oppose the death penalty.\textsuperscript{64} Granted, Augustine’s conception of human dignity is frighteningly impoverished, as any conception that can be used to justify religious coercion must be—but without more from Eberle, it seems quite clear that Augustine’s argument for religious coercion fully satisfies Eberle’s ideal of conscientious engagement.\textsuperscript{65}

Assuming again, then, that Eberle’s ideal may be expanded to act as a resolution norm and criterion of legitimacy, Eberle’s mode of inquiry offers the same unpleasant dilemma as Weithman’s: greater inclusion at the cost of accepting as legitimate policies that violate basic liberal rights and liberties, including, as an extreme possibility, religious liberty. Eberle demurs; he presumes that liberal-democratic citizens support the basic rights and liberties, especially religious liberty.\textsuperscript{66} But the guidelines for democratic decision-making his ideal of conscientious engagement suggests are in tension with this laudable sentiment. Like Weithman, Eberle does not recognize that collective, public discussion and decision-making in a liberal democratic society shapes the nature and set of rights and liberties its citizens enjoy. That guidelines for democratic decision-making


\textsuperscript{65} For an alternative construal of Eberle’s position that uses his vagueness concerning the dignity constraint to push him towards Rawls’s position, see Lafont, “Religion in the Public Sphere: What are the Deliberative Obligations of Democratic Citizenship?”, 147 n 25. Though an interesting construal, Lafont’s reading of Eberle commits Eberle to defending a form of religious restraint, which directly contradicts the overall thrust of his work. (Indeed, Eberle says that restraint doctrines are “\textit{gratuitously burdensome} to religious citizens” [his emphasis], \textit{Religious Convictions in Liberal Politics}, 332.) This in turn suggests that my more permissive reading, elaborated with the Augustine example, is closer to the spirit of Eberle’s work.

\textsuperscript{66} \textit{Religious Convictions in Liberal Politics}, 59, 353 n 28.
legitimate potentially severe violations or restrictions of those basic rights and liberties is a serious argument against it, regardless of what one presumes citizens believe.

III.2: Convergence

As I argued in Chapter One, Jeffrey Stout and Gerald Gaus and Kevin Vallier differ markedly from other religious critics of political liberalism; they do not base their “unreasonable exclusion” objection to Rawls’s requirements of citizens on their conflict with religious obligations, though they are sympathetic to such claims. Rather, they reject Rawls’s ethic because they see other, less restrictive decision-making guidelines available that enable legitimate self-governance in conditions of religious and moral pluralism.

Stout sets off to develop such alternative guidelines, arguing that citizens can respect each other by engaging each other “Socratically,” offering publicly not only the reasons they may support a given policy, but also the reasons they believe other citizens might favor it, given their diverse commitments. The key distinction that Stout draws between himself and Rawls is that Rawls, he claims, requires there to be one common basis for justification, while Stout himself envisions citizens appealing to multiple different bases simultaneously.67

As Stout describes it, his position is open to criticism on much the same grounds as Eberle’s and Weithman’s: he never addresses the implications of his view for the first

67 Democracy and Tradition, 65-77. This is a dubious reading of Rawls, who, at least in his later work, spoke of there being a family of reasonable political conceptions of justice, not just one, all of which provide the proper sort of justifying reasons.
two desiderata of political liberal inquiry, legitimacy and substantive fit with liberal principles of justice. Indeed, Stout explicitly forswears discussion of the “distinctive” issues “surrounding the role of judge” and “public official,” the cases that are key examples for Rawls’s view and which most obviously raise issues of legitimacy and substantive fit with liberal principles of justice. Fortunately for Stout, however, Gerald Gaus and Kevin Vallier have recently taken up his broad argumentative strategy, and they have clarified his approach and dealt with the second two desiderata more thoroughly—if still, ultimately, unpersuasively.

As I discussed in Chapter One, Gaus and Vallier argue that the exclusion of religious reasons from public justification is based on two essential errors: the “Error of Consensus” and the “Error of Deliberation as Constitutive of Public Justification.” The Error of Consensus makes the mistake of assuming that for some law to be publicly justified all citizens (at the proper level of idealization) must share the same reason for endorsing the law. Instead, Gaus and Vallier argue for convergence: a law is publicly justified so long as all citizens have conclusive reasons to accept the law, irrespective of whether or not any two citizens share the same reason. (Note here the similarity between the distinctions Stout draws between Rawls’s “common basis” and Stout’s own proposal for “Socratic conversation.”) On the convergence conception of public justification, reasonable religious reasons, like any other reasonable reasons, participate in a “network”

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68 Ibid., 315 n 11.
of reasons that constitutes the public justification of laws.\textsuperscript{69} As a result, citizens can feel perfectly comfortable appealing to religious reasons in public political discussions. Convergence justification demands only a “minimalist proviso” of liberal democratic citizens: “a citizen should not endorse a law which she believes has only a religious rationale”\textsuperscript{70} (my emphasis). This is, of course, the same proviso that Gaus argues applies to legislators and other political influential citizens.\textsuperscript{71}

Before discussing Gaus and Vallier’s account of the “Error of Deliberation as Constitutive of Public Justification,” I want to pause to point out the broad similarities between Gaus and Vallier’s minimalist proviso, my proposal to consider a deliberative body’s obligation to provide public justifications as the resolution norm of democratic decision-making, and the most open construal of Rawls’s proviso I offered above. All three exclude laws and policies that require religious justifications from the set of publicly justifiable, and hence legitimate, policies. Furthermore, all three require a degree of religious restraint; citizens may not simply support any policy for which they have a religious justification. Particularly for revealed liberals, and likely for other citizens as well, the distinctions between Gaus and Vallier’s minimalist proviso and specifying the obligation to provide public justifications as the resolution norm for democratic decision-making are basically irrelevant. Gaus, at least, has his own reasons

\textsuperscript{69} “Religious Conviction in a Publicly Justified Polity,” 61.

\textsuperscript{70} Ibid.

\textsuperscript{71} See note 14 in section (II.1) above.
for not endorsing Rawls’s proviso,\textsuperscript{72} which may or may not stand up to my account of it, but these are not reasons that matter to revealed liberal’s concerns.

Consider, then, the minimalist proviso with the three desiderata of political liberal inquiry in mind. The minimalist proviso preserves legitimacy as given by the liberal principle, since convergence justification demands that each citizen have a conclusive reason to endorse laws. (Indeed, Gaus takes this further than Rawls himself, since Gaus does not limit the scope of public justification to constitutional essentials and matters of basic justice.) The minimalist proviso also provides for outcomes that substantively comport with liberal principles of justice.\textsuperscript{73} Notably, because of the minimalist proviso, Gaus and Vallier’s mode of inquiry leads to the same substantive narrowing of possible political outcomes as Rawls’s does, as discussed in section (I) above. The minimalist proviso certainly does not pose the plausible threats to religious liberty that Weithman’s and Eberle’s modes do. And it is no more inclusive; Gaus and Vallier note that the minimalist proviso “may still provoke the integrity objection,”\textsuperscript{74} because it still expects revealed liberals to exercise some religious restraint. Indeed, Gaus and Vallier are uncompromising on this point, arguing that, “if ‘integrity’ requires that one dominate

\textsuperscript{72} See, for example, Gerald Gaus, “Rawls’s Political Liberalism: Public Reason as the Domain of the Political,” in Contemporary Theories of Liberalism, 177-204.

\textsuperscript{73} I ignore the real question of whether convergence slants toward more libertarian policies than Rawls’s guidelines for public political discussions do, as this distracts from the key issues under consideration.

\textsuperscript{74} “Religious Conviction in a Publicly Justified Polity,” 62.
others by imposing publicly unjustified coercive legislation, then integrity must give way to the principle of respect for others.\footnote{75}{Ibid.}

In terms of the three desiderata of political liberal inquiry, then, Gaus and Vallier’s minimalist proviso and my interpretation of Rawls’s proviso are identical. Why, then, the concern to articulate the distinction between the consensus and convergence conceptions of public justification? At least when compared to the interpretation of Rawls’s proviso I offer above, the distinction is overblown; Rawls hopes for an overlapping \textit{consensus} around a \textit{family} of reasonable political conceptions of justice. On this account, a law that could be justified by convergent appeal to multiple reasonable political conceptions would certainly be acceptable. Perhaps Gaus’s rejection of Rawls’s distinction between political and comprehensive conceptions makes clarifying the two different forms of public justification necessary.\footnote{76}{Again, consider Gaus’s “Rawls’s Political Liberalism: Public Reason as the Domain of the Political,” in \textit{Contemporary Theories of Liberalism}.} Whatever the reason, though, convergence justification and its minimalist proviso are so functionally similar to specifying that a deliberative body must provide public justifications at the resolution phase of democratic decision-making (my most open construal of the wide view of public political culture and the proviso) as to make the “Error of Consensus” irrelevant to my analysis.

On, then, to the “Error of Deliberation as Constitutive of Justification.” Here, Gaus and Vallier argue that a Rawlsian account of democratic decision-making endorses

\begin{footnotesize}
\begin{itemize}
\item \footnote{75}{Ibid.}
\item \footnote{76}{Again, consider Gaus’s “Rawls’s Political Liberalism: Public Reason as the Domain of the Political,” in \textit{Contemporary Theories of Liberalism}.}
\end{itemize}
\end{footnotesize}
the “Principle of Politics as Public Reasoning,” the claim that, “because (1) all laws must be publicly justified and (2) politics is (ultimately) about what laws are to be selected, then (3) politics should aim at public justification, and so (4) politics should be a form of public reasoning,” from which, they observe, arguments that do not count as public reasons are excluded from politics.\textsuperscript{77} Note that with the distinctions between the four phases of democratic decision-making and their accompanying norms I argued for above in mind, premises 1, 2, and 3 are not sufficient to justify conclusion 4 and the exclusions that are said to follow. I may believe that all laws must be publicly justified, that politics is ultimately about what laws are to be selected, and that politics should aim at public justification without concluding that all of public political discussion should be guided by public justification norms. Indeed, taking public reason norms and deliberation’s consensus aim seriously demands quite the opposite. Nevertheless, Gaus and Vallier are not (and could not be) addressing my phased account of democratic decision-making; they raise a different objection to the principle of politics as public reasoning.

The principle of politics as public reasoning, they claim, fundamentally ignores the role political institutions play in constitutional democracies in “generating political outcomes.”\textsuperscript{78} The principle of politics as public reasoning assumes that political institutions are “registers;” they function merely to ensure that political outcomes “accurately register the views of the citizenry about the publicly justified resolution” of

\textsuperscript{77} “Religious Conviction in a Publicly Justified Polity,” 65-66.

\textsuperscript{78} Ibid., 66.
some issues. Gaus and Vallier argue, instead, that convergence justification leads one to recognize that the desire to ensure publicly justified outcomes should lead one to see political institutions as “generators.” On this account, political institutions function to “take a set of citizen views (cv₁...cvₙ) about i, and to generate a publicly justified resolution of i.” Such a resolution is one that, because systematic knowledge of all citizens’ reasons in a complex society is impossible for any one person to achieve, otherwise could not arise. Thus, Gaus and Vallier argue, rather than developing norms of restraint that hope, chimerically, to perfect the inputs to political institutions, justificatory liberals (Gaus and Vallier’s term for political liberals, more or less) should “develop the theory of constitutional government that takes real-world imperfect inputs we confront and yields laws that tend to be publicly justified,” a task the groundwork of which, Gaus and Vallier suggest, public choice theory has already laid. This is because both justificatory liberalism and constitutional political economy look for “institutions that in some way track a strong Pareto requirement: all must rank the law as an improvement.”

Gaus and Vallier’s alternative liberal mode of inquiry, then, combines convergence

79 Ibid.
80 Ibid.
81 More or less because Gaus and Vallier follow Eberle in adopting the term to refer to Rawlsian political liberals as well as Gaus’s own position, developed in Justificatory Liberalism, and others interested in public justification. See Eberle, Religious Convictions in Liberal Politics, 48-80.
82 “Religious Conviction in a Publicly Justified Polity,” 70.
83 Ibid. I wonder if Gaus and Vallier’s account does not reduce the ideal of public justification to constitutional political economy.
justification with a conception of political institutions as the generators of publicly justified outcomes to argue that collective decision-making in a constitutional democracy need rely on no individual restraint norms for its guidance.\(^8^4\) Laws must be publicly justified, but ensuring publicly justified laws does not rely on publicly justified inputs, rather it relies on well-designed institutions that take imperfect inputs and ensure publicly justified outputs.

Ostensibly, Gaus and Vallier’s alternative mode of inquiry achieves all three political liberal desiderata. As discussed above, it holds to the liberal principle of legitimacy and, assuming the generative account of political institutions is correct, it produces outcomes that substantively comport with liberal principles of justice. Furthermore, it is fully inclusive: revealed liberals may support whatever laws they please while they and their fellows trust their institutions to register their preferences and generate a law that is better for everyone, all things considered. Gaus and Vallier’s alternative guidelines for public political discussion are thus, on their face, the strongest competitor to the phased account I described above, and thereby merit the relatively extended treatment I am giving it in comparison to the others.

As I suggested above, Gaus and Vallier’s alternative mode of inquiry is ultimately unacceptable. Gaus and Vallier achieve all three desiderata simultaneously by placing an

\(^{8^4}\) Gaus and Vallier do half-step away from the strong claim that no individual restraint norms are necessary in a footnote, writing “It is plausible to conclude that, after we correct for the third error, the minimalist proviso only has significant force for legislators (and not for citizens), since they are relatively decisive in political decision-making” (Ibid., 75 n. 33), which is the position Gaus himself defends in “The Place of Religious Belief in Public Reason Liberalism.”
incredible and unwarranted amount of confidence in the generative function of political institutions. Without that function, they must either endorse the minimalist proviso for all citizens (and end up in a functionally similar place to Rawls’s proviso as I interpret it), or they must sacrifice legitimacy and substantive fit with liberal principles of justice in order to privilege inclusion, as Weithman and Eberle do. Return to Utah, Idealized for another short thought experiment.

Imagine that UI adopts Gaus and Vallier’s mode of inquiry, and, under the assumptions of my thought experiment, follows them scrupulously. Assume that Utah’s constitution follows typical constitutional design in the United States, notable for its relatively severe supermajority requirements. Even with these requirements, will the UI State Legislature produce publicly justified outputs? Probably not. Keep in mind, according to Gaus and Vallier, that no individual restraint norms are necessary, and so none apply to any citizen, in any position, in UI. Individuals are not required to support only those positions that all people rank as a Pareto improvement, or only those positions that are publicly justifiable on the convergence account; political institutions are supposed to generate laws that do this. (Here, I am considering the most radical possible construal of Gaus and Vallier’s position. I will consider a more moderate construal below.) Each citizen, including legislators and public officials, supports whatever policy they or their constituents prefer, without respect to the source of the justification of that law (political or comprehensive) or their fellows’ view of the law. The citizens are divided into two distinct political groups, as described above, each with distinct political preferences. In this case, the Mormons will always win, regardless of the minority’s
objections (as they almost always do in the actual Utah\textsuperscript{85}). The secularist minority simply does not hold enough seats in the state legislature to block the Mormon majority’s will, even given the UI state constitution’s supermajority requirements. And because no norms govern the Mormons’ (or the secularists’) inputs, the Mormons will be free to inscribe their religious and other comprehensive values into law in Utah, even if their preferences violate the minimalist proviso, Gaus and Vallier’s Pareto improvement requirement, or even if those preferences violate liberal principles of justice. Thus, in this case, Gaus and Vallier fall into the same problem that plagues Weithman and Eberle: their alternative mode of inquiry sacrifices legitimacy and substantive fit for inclusion.

Now, as I noted above, Gaus and Vallier do admit that, even given their generative account of political institutions, the minimalist proviso may still need to apply to legislators and other influential citizens.\textsuperscript{86} So imagine a UI where the minimalist proviso so applies to legislators and politically influential citizens only. This change holds out the possibility that political outcomes will preserve legitimacy and substantive fit with liberal principles of justice, since legislators will act against the expressed preferences of their constituents in order to follow the minimalist proviso. But this pushes UI back into the same problems I described in section (II.1): the differing norms citizens and legislators follow create frustration and alienation, as the Mormon citizens can no longer affirm the outputs of their legislature. Since this is Utah, Idealized, though,


\textsuperscript{86} “Religious Conviction in a Publicly Justified Polity,” 75 n. 33; note 84 above.
the problem has a simple solution: imagine a third UI where the minimalist proviso applies to all citizens. However, now the thought experiment returns Gaus and Vallier’s alternative account of democratic decision-making back to where it was before considering the generative function of political institutions. The three desiderata are achieved, though, because it includes a general restraint requirement, it is no longer as inclusive—revealed liberal endorsement is still in question—and the alternative mode lacks the clarity my argument above offers concerning the permissible role of reasons from reasonable religious and comprehensive doctrines in the agenda-setting phase of deliberation. It also lacks any functional space between the minimalist proviso and my most open construal of Rawls’s wide view of public political culture. So once Gaus and Vallier admit that some restraint norm is necessary, even just for some influential subset of citizens, they end up back where they began: without meaningful alternative guidelines for public political discussions.

Thus, although Paul Weithman, Christopher Eberle, Jeffrey Stout, and Gerald Gaus and Kevin Vallier all claim to have devised alternative guidelines for democratic decision-making or ethics of citizenship that address religious citizens’—revealed liberals’—concerns, none have devised alternative accounts that can simultaneously achieve all three political liberal desiderata: legitimacy, substantive fit with liberal principles of justice, and inclusion. All either sacrifice legitimacy and substantive fit for inclusion or inclusion for legitimacy and substantive fit. None of their alternatives are acceptable; none show how reasonable revealed liberals can be effectively and consistently included in political liberal inquiry and discussion.
IV: The Phased Account of Democratic Decision-making and Revealed Liberals

Can reasonable\textsubscript{(1D)} revealed liberals conscientiously accept the phased account of democratic decision-making I described in section (II) above? In other words, can those reasonable\textsubscript{(1D)} citizens who (1) place absolute priority on the totalizing moral and political implications of their religions, (2) affirm on the basis of those implications liberal principles of justice and (3) are conscientiously compelled to speak and participate in politics on religious grounds alone, accept a phased account of democratic decision-making that permits reasonable\textsubscript{(2D)} religious and comprehensive justifications during the agenda-setting phase of deliberation while requiring that deliberative bodies publicly justify the laws they pass during the resolution phase?

Keep in mind that reasonable revealed liberals are reasonable according to the first and second definitions of the term I defended in Chapter Two. This means that they are willing to propose and abide by fair terms of cooperation, they accept the burdens of judgment, and they affirm the liberal principle of legitimacy. It also means that they understand their religion to be able to consistently endorse these principles. They do not wish to control democratic decision-making on the basis of their religious beliefs, nor do they seek to impose those beliefs on their fellow citizens. They dissent from Rawls’s pre-proviso guidelines for public political discussions because those guidelines forbid them from arguing for their political positions on religious grounds alone, and they take their religious commitments to impose on them an overriding obligation to do just that. The question of whether reasonable\textsubscript{(1D)} revealed liberals can affirm the phased account of
democratic decision-making is simply the question, then, of whether it is permissible, on that account, for citizens to offer religious justifications in public political discussions without ever offering a justification for their political proposals that explicitly relies on reasonably endorsable political values. (The reasonable revealed liberal endorses these values; she simply makes it clear that she does so because they are justified by the revealed sources or texts her religion affirms.)

It is plainly the case that, on the phased account of democratic decision-making, it is permissible for citizens to participate in public political discussions without ever, themselves, individually, offering a public justification for any proposal. The reasonable revealed liberal can certainly conscientiously participate in agenda-setting deliberations, as her religious arguments are explicitly acceptable there. What about later in the decision-making process, however, when proposals must be subject to increasing scrutiny to determine whether they are publicly justifiable, so that a deliberative body knows whether or not they may legitimately pass them as laws? Does the reasonable revealed liberal’s obligation to only offer religious justifications in public political discussions prevent her from helping to determine whether a proposal is publicly justifiable or not? No, her obligation does not prevent her from participating in such discussions. She can offer arguments for why a given proposal conforms or fails to conform to the political values she affirms on the basis of her religious convictions—always making their religious grounding clear, as she feels she must. And her obligation to offer religious justifications alone does not prevent her from listening to her fellow deliberators to discern whether they believe the political values arising from their favored
conceptions of justice can justify the policy or not. She is quite capable, then, of determining whether any given proposal is publicly justifiable or not. Finally, can she restrain herself from voting for proposals that she concludes are not publicly justifiable? Insofar as she is committed to fair terms of cooperation, the burdens of judgment, and the liberal principle of legitimacy (insofar as she is reasonable), she ought to. And since she understands her religion to endorse these principles, she can do so without violating her conscientious religious convictions. (I grant that there may be circumstances in which her religious commitment to the ideal of reasonableness and the implications of some of her other religious commitments are in tension. Chapter Four explores a way that she can navigate this tension without violating her obligations to her God or her fellow citizens.)

So the reasonable revealed liberal can conscientiously affirm the phased account of democratic decision-making I developed in section (II) above. Her obligations as a citizen—presuming the phased account—and obligations as a person of faith are now compatible.

That said, some may worry about the depth of this reconciliation. As I mentioned several times above and will do in Chapter Four, some method by which revealed liberals and other religious citizens can deal with particular substantive conflicts between their religious and civic obligations does need to be developed. Nevertheless, there is at least one other worry that one might raise: given the difference between agenda-setting norms and resolution norms in the phased account, it is permissible for a citizen to argue that a proposal should be included on the deliberative body’s agenda on a religious or
comprehensive basis that he knows cannot serve as a public justification for that proposal. Indeed, this permission is essential for including reasonable revealed liberals in the phased account. The revealed liberals’ direct advocacy for proposals his religion justifies is thus inherently exploratory; he may not know before deliberation whether his proposal is publicly justifiable, and he knows the grounds on which he supports and argues for the proposal are neither reasonably endorsable nor widely convincing. This may seem inappropriately awkward. Why bother even trying to get such a proposal on the deliberative agenda at all, without confidence that the proposal is publicly justifiable and hence legitimately coercible—without confidence, in other words, that one will be able to successfully shepherd the proposal through the phases of decision-making to resolution?

The apparent awkwardness of the revealed liberals’ position is not as dissimilar from the position of other citizens (reasoned liberals) as it may first seem. All citizens’ cognitive abilities are limited, all citizens make mistakes, and in that sense, all citizens who argue for a political proposal in public political discussions risk having their fellow citizens show them that their proposal is not publicly justifiable. Democratic decision-making is, in this sense, exploratory for all citizens, not just revealed liberals. Furthermore, the apparent awkwardness of the revealed liberals’ position obtains just as much for the principled adherent of a minority reasonable political conception of justice, one that leads to publicly justifiable positions her fellows nevertheless find impracticable or extreme. Such a citizen may feel more confidence than a revealed liberal that her proposals at least qualify to be resolved upon on the specific grounds she
offers to justify them, but, when she lobbies to have her proposals included on the deliberative agenda, she recognizes how unlikely it is that her deliberative body will agree to put them on the agenda, or rank-order them high enough to be addressed, or resolve upon any proposals that comes anywhere near achieving her political goals. Nevertheless, she is committed to these goals, and she continues, resolutely, to argue for them, her fellow citizens’ decision to ignore or deride her notwithstanding. It is worth considering, in this regard, the first citizens to argue for a minimum wage, or child labor laws. Surely their positions were as awkward as the revealed liberal’s. The revealed liberal, then, requires a similar commitment to his principles, and a similar willingness to strive on in the face of political setbacks, arguing to place his proposals on the deliberative agenda even when his fellows conclude that the proposal lacks the proper sort of justification for passing it as a law. The revealed liberal must act in hope, then, that his religious arguments will inspire or persuade some of his fellow citizens, who then may be able to persuade those his religious arguments do not reach. But the revealed liberal believes himself to have an overriding obligation to God to work for the political implications of his religion. Surely, then, the revealed liberal citizen has the resources to accept whatever awkwardness is inherent in the political position into which his religious obligations place him.

87 Indeed, insofar as justice as fairness demands considerably more egalitarian resource distributions than are mainstream in the United States, American Rawlsians are good examples of citizens like this, principled adherents of minority reasonable (4D) political conceptions of justice.
One final note: one might also object that, awkward or not, the revealed liberal’s approach to public political discussions is simply ineffective. She would be considerably more successful politically if she were willing to speak in terms of reasonably endorsable political values, at least in addition to her religious justifications. This is undoubtedly often the case. But it would be strange to argue for a duty that requires citizens to advocate for their political goals effectively. It is also undoubtedly the case that some, perhaps many, revealed liberals will recognize that the justifications they offer are not as effective as simple, widely accepted political values might be. But it is up to revealed liberals to decide whether political effectiveness outweighs their obligation to offer religious arguments alone, or when compromising those obligations might be justifiable. Since the revealed liberal’s obligation is compatible with Rawls’s core definition of reasonableness, it is not the political liberal’s business to suggest that they ought to compromise it.

V: Conclusion

Given the phased account of democratic decision-making, then, reasonable revealed liberals can affirm both liberal principles of justice and political liberal guidelines for public political discussions. Reasonable revealed liberals can be both citizens and saints, simultaneously fulfilling their political and religious obligations to both their fellows and their God. Clarifying the proper nature of collective decision-making...

88 For a nice analysis of how a context of religious pluralism makes religious arguments less persuasive and politically effective, see Jeffrey Stout, “Secularization and Resentment” in Democracy and Tradition, 92-117.
making in a political liberal society does not only have this implication, however important it is. This clarification also allows political liberalism to further engage religion: up until this point, I have discussed, as have others who are concerned with the relationship between religious citizens and political liberalism, how various different religious doctrines and the obligations they entail comport or fail to comport with political liberalisms’ ideal of democratic citizenship. Now that it is clear that political liberalism permits any and all reasonable religious arguments in public political discussions, the door is open for political liberals to develop a positive ethic for religious citizens’ political participation. Now political liberals may consider not only the prohibitions political liberalism imposes on religious-political activity, but also the permissions political liberalism grants to it. This exploration will address the most difficult remaining case for revealed liberals (and other citizens who take their religious obligations to be overriding and totalizing): what they should do when they are faced with a specific, substantive conflict between their religious and civic obligations. I begin this exploration in the following chapter.
CHAPTER 4. PROPHETIC WITNESSING IN THE LIBERAL PUBLIC SPHERE

In Sophocles’ Antigone, Antigone claims to commit a holy crime. She disobeys Creon’s order that her brother, Polyneices, remain unburied in order to fulfill her obligations to her brother and to the gods. Antigone’s ability to call a crime holy suggests the inescapability of conflicts between people’s differing moral commitments: to the law, to their fellows as citizens, to their family members, and to their god(s). Because these commitments do not always cohere and sometimes directly contradict each other, “holy crimes”—acts that are reprehensible given one set of commitments but laudable given another—are possible. For religious citizens in a pluralistic liberal democracy, feeling compelled to commit such “crimes” is a distinctly likely possibility—even, as I will explain below, in a well-ordered society that follows the phased account of democratic decision-making I developed in the previous chapter. Some religious citizens, after all, put overriding priority on sets of moral commitments that are not always widely shared and may conflict even with legitimate laws. In order to devise an

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account of liberal democracy that reasonable religious citizens can wholeheartedly affirm, religious citizens need some way to navigate such “holy crime” inspiring conflicts without violating their obligations to God or their fellow citizens, at least much of the time. Fortunately, as I will argue in this chapter, the phased account of democratic decision-making opens political liberalism up to resources that can provide religious citizens with just such a way.

In Chapter Three, I argued that reasonable revealed liberals could affirm a “phased” account of democratic decision-making, a conception of the guidelines for public political discussion that vary according to the phases of the decision-making process. This account explicitly allows religious justifications during agenda-setting deliberations, and it does not forbid them during the later phases, though it does require that citizens subject the proposals religious and other comprehensive arguments justify to scrutiny in order to determine whether those proposals are publicly justifiable, since the resolution norm of the phased account requires that deliberative bodies enact only publicly justifiable laws. The phased account of democratic decision-making has two important consequences: first, it reconciles a thorny conflict between political liberal citizens’ obligation to accept and act according to the liberal principle of legitimacy and revealed liberals’ religious obligation to participate in politics on religious grounds alone; second, it enables political liberals to evaluate “religious practices of political engagement” in order to develop a positive ethic to guide religious citizens’ political participation.
These are important conclusions, both for religious citizens and political liberals. But at the abstract level on which my analysis in Chapter Three operates, the significance of these two conclusions may be missed. What difference do they make in the on-the-ground political lives of religious citizens in a well-ordered constitutional democracy? The difference is considerable. The phased account of democratic decision-making allows citizens to engage in a “religious practice of political engagement” I call “prophetic witnessing” that offers reasonable religious citizens a way to deal with conflicts that might otherwise push them into committing “holy crimes,” violating their obligations as citizens in order to follow their obligations to God. Prophetic witnessing is the practice of publicly proclaiming God’s judgment of some law, practice, or public issue, as the “prophet” understands it, to the holders of political power. This practice allows religious citizens to avoid being compelled to commit holy crimes because the practice simultaneously fulfills their obligations to God and is consistent with their obligations as citizens, at least in many of the circumstances that face religious citizens of well-ordered constitutional democracies. (I argue for these claims in considerable detail below.)

I thus have two tightly related aims in this chapter. First, I begin the development of a positive, political liberal ethic to guide the political participation of religious citizens in a well-ordered liberal democracy by considering prophetic witnessing as an illustrative example of a religious practice of political engagement that is compatible with the obligations of liberal-democratic citizenship. Second, I argue that the practice of prophetic witnessing offers religious citizens a way out of many political conflicts that
would otherwise lead them to feel compelled to commit “holy crimes,” a way to satisfy their obligations to God and to their fellow citizens even when those obligations appear to conflict in some concrete political circumstance.

My argument proceeds in five steps. In the first three steps, I define the key terms necessary to establishing my two aims, the terms that appeared in quotation marks above. First (I), I offer a definition of a “holy crime” in political liberal terms, explaining the particular, substantive moral conflicts religious citizens may face in a well-ordered society that adheres to the phased account of democratic decision-making and why they may lead such citizens to feel compelled to commit a “holy crime.” Second (II), I define “religious practice of political engagement” and describe my method for analyzing them. Third (III), I consider the religious practice of political engagement I call prophetic witnessing, engaging its core source texts in the Hebrew Bible and some prominent commentaries on and appropriations of them in order to offer a definition of prophetic witnessing such that it can be coherently practiced in a modern, religiously pluralistic society. (Part of my aim in this section is to show that the social and political changes that have occurred since the time of the Hebrew Prophets need not render their witnessing practice incoherent on its own terms, despite some accounts of prophetic witnessing that suggest otherwise.) Fourth (IV) I argue that the practice of prophetic witnessing as I’ve defined it is compatible with the obligations of liberal-democratic citizenship as implied by the phased account of democratic decision-making and address plausible objections to this claim. Fifth (V), I connect my definition and argument for compatibility with Rawls’s brief discussion of witnessing’s role in the wide view of public political culture,
showing how my analysis in sections (III) and (IV) confirms, expands, and defends Rawls’s claims there. I then explore how the practice of prophetic witnessing can assist religious citizens when they are faced with substantive moral conflicts between their religious and civic obligations that might otherwise lead them to feel compelled to commit “holy crimes,” and comment on the limits of the reconciliation prophetic witnessing offers religious citizens. Prophetic witnessing does not solve all “holy crime” conflicts (indeed, since citizenship and sainthood are only perfectly reconcilable in the Kingdom of God, outside of that kingdom some such conflicts will always arise, at least some of the time), but simply having a way to deal with some such conflicts that does not require religious citizens to choose between their commitments to God and to liberal democratic political values—a way that honors their desires for religious integrity and civic virtue simultaneously—is no small conclusion.

I: Holy Crimes in a Well-Ordered Society

Antigone claims that by burying Polyneices she is committing a “holy crime,” an act that is somehow both right and wrong at the same time. How can this be? Why do such “holy crimes” remain a possibility for religious citizens, even in a well-ordered constitutional democracy? And why do they merit theoretical attention?

As I alluded to in the introduction, the idea of a “holy crime” is coherent if someone is obligated to adhere to (at least) two differing moral codes that, under some set of circumstances, instruct one to do mutually exclusive things. In Antigone’s case, she
sees herself as obligated to God and “final Justice” to bury Polyneices. But she also sees herself as obligated to obey Creon, her king, and leave Polyneices unburied. If this were not the case, Antigone could not call her planned burial of Polyneices a crime. Without Antigone’s obligation to Creon, Polyneices’s burial would simply be the right thing to do, a crime only in the most legalistic, technical sense, and Creon would, equally simply, be an unjust tyrant. But this is not the way that Antigone behaves; she expects that Creon will enforce the punishment associated with his decree and accepts her impending death. Some readers may need to moderate their revulsion toward Creon in order to understand why Antigone sees herself as bound by both the obligation to obey Creon and leave Polyneices unburied and the obligation to obey God and Justice and bury Polyneices. Without such dual conflicting obligations, Antigone’s situation would not be tragic; she would only be a rather simple martyr for her principles. Waving away Antigone’s civic obligations by imagining that she owes nothing to Creon because his decree is unjust or illegitimate thus dissolves the tensions inherent in Antigone’s situation, the way in which she is, to speak colloquially, damned if she does and damned if she does not.

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3 Antigone, 203.

4 Antigone, 202-204.

5 Jean Bethke Elshtain is the primary example of a reader who so waves away Antigone’s civic obligations. Having identified Creon with the “arrogant insistencies of statecraft” and identified the state with “unaccountable hierarchies” and “dependency relationships,” she transforms Antigone into a simple martyr; on Elshtain’s account, it is hard to see any tragic tension in Antigone’s choice. See Elshtain’s “Antigone’s Daughters,” in Anne Phillips, ed., Feminism and Politics (New York: Oxford University Press, 1998), 369, 363. For a reading of Antigone sensitive to this, and many other, complexities in the play, see Peter Euben’s “Antigone and the Languages of Politics” in Corrupting Youth.
So the possibility for holy crimes exists in circumstances where there are at least two different moral codes that the same person can affirm but that, at least in some circumstances, demand substantively conflicting, mutually exclusive things of their adherents. A well-ordered liberal democratic society does not remove the possibility of such substantive conflicts between moral codes. There will still be situations in a well-ordered society that may lead some citizens to feel, like Antigone, compelled to commit holy crimes. This is especially the case for religious citizens who put overriding priority on their obligations to God. Consider: a religious citizen of a well-ordered liberal democracy affirms a reasonable political conception of justice, and, because she lives in a well-ordered society, she sees all laws passed and policies enacted in that society as legitimate and therefore as obligating her to obey them. She also sees herself as civically obligated to support (as resolutions) only those policies that are publicly justifiable. (Indeed, if she is a citizen who takes her religion to impose totalizing and overriding obligations on her, and therefore pursues the third approach to full justification I discussed in Chapter Two, section [III], then she sees these civic obligations as religious obligations.) However, she also sees herself as obligated to obey God, no matter what other obligations may conflict with what she understands to be God’s will. Because this citizens’ comprehensive doctrine and political conception may not perfectly cohere, there remain at least two different possible forms of substantive conflict between her religion and her political conception. First (1), her political conception may justify some law or
policy that her religion cannot, and indeed, that her religion may suggest is odious.\(^6\) Second (2), her religion may justify some law or policy that her political conception cannot and may suggest is odious.\(^7\) In these circumstances, a religious citizen may feel forced to commit a “holy crime.” In case (1), she is obligated as a citizen to obey a law that she feels is odious as a believer, and may feel compelled to break the law, like Antigone. In case (2), she feels obligated as a believer to support an illegitimate law and thereby violate her obligations as a citizen.\(^8\) Cases (1) and (2) remain possibilities even if her well-ordered society adheres to the phased account of democratic decision-making. Because the resolution norm of that account remains the obligation to pass only publicly justified resolutions and the liberal principle of legitimacy applies, the type of substantive conflict described in cases (1) and (2) remain possible, even presupposing my analysis in Chapter Three.

As was the case for Antigone above, it does no good to wave away one or the other of these obligations simply because they happen to conflict under some set of circumstances. Our religious citizens’ obligation to God may be overriding to her, but this does not by itself mean that she bears no obligation to her fellow citizens to obey

\(^{6}\) Rawls briefly discusses this possibility in LP 156 n 57.

\(^{7}\) This possibility is what leads Christopher Eberle to conclude that all forms of “justificatory” (political) liberalism require a “doctrine of restraint” that requires citizens not to support policies on religious reasons alone and to reject such doctrines of restraint as unfair to religious citizens as a result. See Eberle’s Religious Conviction in Liberal Politics, 74-76, 109-151.

\(^{8}\) No political liberal claims the obligations of citizenship they defend should be legally enforced, so violating them is not technically a “crime.” But these same obligations create and maintain a political structure in which citizens govern themselves legitimately, so that repeated violations of these obligations, while not technically a crime, would undermine legitimate self government. This is a serious enough consequence that I believe it merits my use of the crime language.
legitimate laws or to only support publicly justifiable policies.⁹ And political liberals may feel that our religious citizen’s civic obligations should trump her atavistic-seeming religious views, but this does not by itself dissolve her commitment to her God. Like Antigone, she is in a tragic situation, apparently unable to satisfy her obligations to God and to her fellow citizen simultaneously.

The above remains quite abstract. Consider the following illustrative examples of situations of substantive conflict that meet the description above. They are familiar; I choose them deliberately for their contemporary political resonance.

(A) A well-ordered society begins deliberating about their society’s abortion regulations. Those laws currently give “a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester.”¹⁰ Some religious citizens eagerly support discussion of the topic, hopeful that as a result of it the law would be reformed in a direction that made abortions of choice (those that occur outside of cases of rape, incest, and where the life of the mother is at risk) illegal or much harder to obtain, even in the first trimester. However, as the deliberations proceed substantial majorities favor relaxing their society’s current abortion regulations, feeling that not only

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⁹ Eberle seems to think that a citizen’s feeling that she has an overriding obligation to God is just this sort of trump for all conflicting civic obligations, but, as my analysis in Chapter Three suggested, this leads him into serious contradictions when trying to develop a positive ethics of citizenship that does not at times conflict with this obligation.

¹⁰ This language is Rawls’s; it comes from his infamous abortion footnote—the note that inspired Finnis’s and George’s objections to public reason described in Chapter One and analyzed in Chapter Two. See PL 243 n. 32.
should a woman’s choice be unfettered during the first trimester, but that her liberty demands that current regulations on later-term abortions be relaxed. The legislature so resolves, and as a result religious citizens who feel themselves to be obligated to God to act to protect the dignity of human life at all stages, including fetuses, now find themselves civically obligated to obey and accept the political legitimacy of a law permitting what they see to be a profound moral wrong.

(B) A group of religious citizens lives in a well-ordered society that offers marriage opportunities to all people regardless of their sexual orientation. However, after considerable internal discussion and analysis of the Bible and their religious tradition, this group concludes that God demands that they work for a society in which only heterosexual unions are termed “marriages.” The religious citizens realize that they have no grounds within their reasonable political conception of justice to support this view, which they recognize as discriminatory, but they nevertheless feel religiously compelled to endorse it and work for its furtherance in their society.

Both of these situations may lead religious citizens to feel they must commit holy crimes. In these situations, religious citizens’ religious and civic obligations conflict. In example (A), religious citizens may feel that they must break the law or take other more serious action in order to prevent fetuses from being aborted; in example (B), they may feel that they must work to enact illegitimate restrictions on the marriage opportunities of their gay and lesbian fellow citizens.
The possibility of these particular, substantive conflicts between citizens’ religious and civic obligations remain, then, even after presupposing a well-ordered society that scrupulously adheres to the phased account of democratic decision-making and that is legitimate according to the reasonable political conceptions of justice the religious citizens themselves endorse. The possibility of such conflicts is worth considering because it threatens to derail at the level of particular policies the reconciliation between citizens’ religious and civic obligations the phased account of democratic decision-making offered more abstractly, at the level of norms of political participation and guidelines for public political discussions. Even though all citizens, including the religious ones, in these imagined well-ordered societies affirm the political liberal norms that guide democratic decision-making, because the outcomes of that process conflict with their religions in these specific circumstances, some religious citizens again have to choose between honoring their God and their neighbor. Notably, this applies to citizens in both the revealed liberal and reasoned liberal categories; unlike the objection to Rawls’s original (pre-proviso) guidelines for public political discussions, religious citizens in either category may find themselves in a situation of specific, substantive conflict between their religious and civic obligations. Thus, if reasonable religious citizens are to be able to whole-heartedly affirm liberal democratic norms, some approach to these situations of substantive conflict must be devised that, at least much of the time and in many circumstances, allows reasonable religious citizens to fulfill both their religious and civic obligations. I believe the practice of prophetic witnessing offers just such an approach. Before discussing the specifics of that practice, however, I must
explain what I mean by a “religious practice of political engagement” and how I will go about analyzing one of them.

II: Religious Practices of Political Engagement

What, then, is a “religious practice of political engagement?” I intend this term to name a different subject matter for political liberals interested in religion to consider. When analyzing religion, political liberals have generally followed Rawls in treating religion as a “comprehensive doctrine,” a set of moral claims that covers all or almost all areas of life. Comprehensive doctrines are religions where the doctrine relies on religious propositions in order to justify its moral views; religious propositions are those that rely on the existence of God, the authoritativeness of certain people given their relationship to God, or the authoritativeness of certain sacred texts. The question, then, of the compatibility of any given religion with liberal-democratic citizenship—a religion’s “reasonableness”—depends on what that religious “comprehensive doctrine” enjoins its adherents to believe about the political world, the moral status of their believing and differently or non-believing fellows, and the obligations that flow from those beliefs. In particular, citizens must find some way, consistent with the tenets of their religion as they understand them, of accepting fair terms of cooperation, the burdens of judgment, and the liberal principle of legitimacy.

11 This description of religious comprehensive doctrine relies on Weithman’s definition; see Religion and the Obligations of Citizenship, 122-123. For Rawls’s definition, see PL 13. For discussion of some of the problems with Rawls’s definition, see Nussbaum, “Perfectionist Liberalism and Political Liberalism” and my discussion in Chapter Two, section (II).

12 The best example of this sort of analysis is Andrew March’s Islam and Liberal Citizenship.
But religions are not only beliefs and doctrines, however important those aspects of religion are. (And by making this claim, I do not mean to denigrate analyzing religions as comprehensive doctrines; this is an important and worthwhile endeavor in which I am engaged in Chapter Two, sections [III] and [IV].) Religions are also *practices*: rituals, liturgies, habits, traditions, and the like that may either complement or be in tension with a religion’s doctrines and beliefs. Consider, for example, the early Protestants’ fierce criticisms of the Mass, relics, and the selling of indulgences as idolatrous attempts to magically control God’s grace. The early Protestants used their interpretation of Christian doctrines to criticize inherited Christian practices. But practices also affect doctrine; historical critical scholarship of both the New Testament and the Hebrew Bible points to the liturgical origin of many of the Bible’s doctrinal claims. In other words, many Christian beliefs and theological claims have their historical origin in early Christian (if not Jewish) prayer and ritual. A religion, then, is made up of at least its *doctrines*, moral, metaphysical, and otherwise, and its *practices*, ritual, liturgical, etc. These two aspects of any religion may be tightly compatible and mutually reinforcing, or the relationship may be one of significantly greater tension, as the early Protestants alleged about 16th century Christianity.

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13 For a broad overview of the Reformation that discusses this, as well as many other elements, see Charles Taylor, “Part I: The Work of Reform” in *A Secular Age* (Cambridge, MA: Harvard University Press, 2007), 25-220.

What, then, is a “practice?” While some simply assume the clarity of the term, here I adapt Rawls’s definition: a practice is “any form of activity specified by a system of rules which defines offices, roles, moves, penalties, defenses, and so on, and which gives the activity its structure.” Rawls offers games, rituals, trials, and parliaments as examples, though, with his later work in mind, the most important “practice” for Rawls is that of constitutional democracy. With Rawls’s definition of practice in mind, a religious practice is one in which the system of rules that structures the practice is itself religious, using the same broad definition as above: that system refers to God or to the authoritativeness of certain people or texts. The system of rules that structures a practice may be clearly articulated, as they are in professional sports, for example, or it may be mainly implicit, as are the social norms that govern (say) holiday greeting card exchanges. Thus a religious historian could see the development of Christian theology—the systematic exposition of Christian doctrine and belief—as a working out of the structure of rules implicit within Christian practices of worship: the Eucharist, recitation of psalms, gathering into churches. (Historical evidence—not to mention the New Testament itself—suggests that these practices did, after all, predate Christian scripture.) The possibility that the rules structuring a practice may be implicit allows practices and doctrines to mutually inform and criticize each other. Thus the early Protestants can

15 For example, the term “practice” is a key part of both Michael Walzer’s and Romand Coles’s work, but neither offers a definition of it. See Walzer, Interpretation and Social Criticism (Cambridge, MA: Harvard University Press, 1987), especially pp. 33-66; and Coles, Beyond Gated Politics, especially pp. 213-237.

allege that the rules that structure the Mass implicitly contradict proper Christian belief; later pietistic Protestants can abolish almost all liturgical elements of their religious practice as a way of emphasizing the equality of all believers before God, and Catholics and liturgical (High Church) Protestants can retain liturgies as a way of emphasizing the role of the Church community in mediating the relationship between God and his followers.

Finally, then, what is a religious practice of political engagement? As is clear from the above, there are a wide variety of different religious practices: prayer, worship rituals of various kinds, sermonizing, confession, penitence, practices of ministering and service, collective discussion of and argument about religious texts, practices of religious education, etc. A religious practice becomes a religious practice of political engagement when it seeks to comment on, criticize, or affect those aspects of society that are collectively determined: the constitution, the basic structure of society, government policy, and the like. Whether a religious practice is a practice of political engagement depends in part on the political context in which it is practiced: where religious liberty is severely restricted and religious meetings are forbidden or limited to certain specified times and locations, the simple act of gathering for worship is itself a criticism of prevailing policy and is, in that context, a religious practice of political engagement. Some religious practices are inescapably political; the practice of crusading, for example—using military force to conquer territory for a certain religion and populate it with believers or compel the inhabitants to convert—is a religious practice of political engagement no matter the political context in which it occurs. And some religious
practices become practices of political engagement when they are explicitly directed toward politics; consider the differences between prayer and prayer for the welfare of a certain political leader, party, or nation, and between giving or listening to a sermon and giving or listening to a sermon about abortion, gay marriage, war, or poverty.

How, then, does one evaluate a given religious practice of political engagement? In what follows, I consider the core source texts for the practice of prophetic witnessing (the books of the prophets in the Hebrew Bible) and some prominent commentaries on and adaptations of them in an attempt to work out the normative structure and presuppositions of the practice of prophetic witnessing. I answer questions like, who does the prophet understand himself to be? What is his relationship to God and to his audience? What is his role? What is he trying to accomplish? What obligation does being a prophet place on him? What hazards and pitfalls is the practice of prophetic witnessing subject to? Finally, since I wish to recommend the practice of prophetic witness to today’s religious citizens, I consider the applicability of the Hebrew Prophets’ practices to a constitutionally democratic society. Do the prophetic texts in the Bible offer a coherent model of political engagement for religious citizens of a modern liberal democracy? Can they coherently adopt the practice of prophetic witnessing as a way of religiously guiding their own political participation?

III: Prophetic Witnessing

What does it mean to bear prophetic witness? In this section, I develop a definition of the practice of prophetic witnessing as exemplified by its source texts in the Hebrew Bible, paying particular attention to its normative structure and assumptions. My
intention is not to develop a new interpretation of the prophetic books of the Bible, but rather to accurately convey the features of the prophets’ practice. I begin by considering the following four questions: 1) What is the role of the prophet? For whom does the prophet witness and to whom is that witnessing directed? 2) What is the aim of prophetic witnessing? What is it that the prophet is trying to accomplish? 3) What are the means that the prophet uses to accomplish that aim? 4) What obligations to God does the prophet incur when acting as a prophet? Answering these questions will give me a working definition of prophetic witnessing, which I will use as a basis for considering whether the practice remains coherent for religious citizens of a constitutional democracy. This second portion of my analysis proceeds dialogically, from within the practice of prophetic witnessing itself: I assess the merit of plausible reasons to believe that prophetic witnessing is, on its own terms, not coherent in a constitutional democracy. I conclude by assessing what implications my definition of prophetic witnessing has for the hazards of the practice; that is, how one can make judgments between better and worse forms of prophetic witnessing.

First, the prophet’s role: The prophet as he is presented in the Hebrew Bible is both a messenger and a mediator. The prophet receives a personal calling from God—a revelation—instructing him to convey some specific message to a particular audience: the

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17 I choose to use the male pronoun throughout this section. While there are female prophets recorded in the Hebrew Bible, all of the “writing prophets”—those to whom the prophetic books are attributed—were male, and it is their writings that are determinative for the practice of prophetic witnessing as I describe it here. That said, there is no reason to infer from my pronoun choice that women cannot take up the practice of prophetic witnessing.
peoples of Israel or Judah, or Israel’s or Judah’s king, or the nations that surround the two kingdoms. The prophets see themselves as speaking for God; they convey his judgments to those God judges. Thus they preface their messages with the characteristic phrase, “Thus saith the Lord.” The prophet operates, then, in a triangular network, with God, himself, and his audience at each of the corners.

What, then, was the prophets’ aim? What message did God call the prophets to convey and what effect did the prophets hope their conveying it would have? The prophets communicated God’s anger and judgment—his “pathos”—about the political, economic, and religious state of the prophets’ audience. As many scholars have suggested, the prophets were political critics. When addressing Israel and Judah, they condemned the state cult for mixing worship practices associated with Baal and other native Canaanite religions with the worship of Yahweh as dictated in their understanding of God’s covenant. They also condemned the two kingdoms for failing to adhere to the

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18 Jonah is an exception to this rule; he was the only biblical prophet sent away from Israel and Judah. When the prophets witnessed to the nations, they did so from within the two kingdoms. See, for example, Amos’s judgment of the nations, Amos 1-2, and Martin Buber’s speculative context for it, at a meeting “in front of the king’s sanctuary at Bethel,” The Prophetic Faith (New York: The MacMillian Company, 1949), 96.

19 Also consider the call experience recorded in Isaiah: a vision of God, on his throne holding court and commissioning the prophet to carry a message to the king and people. See Isaiah 6. For general discussion of prophetic call narratives and their importance, see Blenkinsopp, A History of Prophecy in Israel, 29-34.

20 “Pathos” is Abraham Joshua Heschel’s word, which means, for him, “divine attentiveness and concern.” See his The Prophets, Vol. 2 (New York: Harper Colophon, 1975), 263. For more extensive discussion of the concept, see pp. 1-47.

economic requirements of that covenant, for oppressing widows, orphans, and the impoverished. The prophets were thus concerned both with the people’s *righteousness*, in the sense of giving God his due, and with their *justice*, in the sense of giving each other, and especially the poor, their due. 22 Similarly, when addressing “the nations,” the prophets condemned cruelty: oppressive military practices, the breaking of oaths and treaties, and war in pursuit of power, glory, and oppression. In both cases—whether addressing people they held to be obligated by the covenant or the nations, the prophets demanded that the people cease the practices God condemned. They hoped their message would inspire their audience to “turn” to God, to “repent.” 23

In both cases, the prophets’ aim was explicitly political; it was directed to the people’s observance of God’s will and covenant, to right economics, right worship, and right relationships among nations. The prophets’ concerns were simultaneously religious and spiritual—concerned with their audience’s relationship to God—and moral and political—concerned with their audience’s relationships with each other. They were thus not evangelists in the modern sense, seeking to win individual souls for God. That is not the sort of “repentance” for which they sought. Rather, they were political actors, condemning in God’s name the people’s collective—*political*—disobedience and sin and aiming to awaken in them a realization of that condemnation in order to motivate them to


23 The Hebrew word is *t’shubhah*. For discussion of its meaning, see Martin Buber, *The Prophetic Faith*, 2.
change. Showing the people their own implication in sin and oppression and God’s judgment of such was designed to inspire the people to choose to turn towards God. 24

Similarly, the condemnation the prophets communicated in God’s name was not spiritual or otherworldly. They did not threaten their audiences with hellfire and damnation in the style of John Calvin or Jonathan Edwards. Again, their primary concern was not the welfare of individual souls. And their condemnation—most clearly for the pre-exilic prophets—was not apocalyptic in the sense of predicting a history-ending cataclysm and the associated promise of salvation from or after such a cataclysm, either. 25 Rather, the consequences of which the prophets warned were explicitly this-worldly and temporal. They occurred within the normal flow of history. If Israel and Judah observed the covenant, God would bless them and they would flourish as nations, enjoying economic, political, and military success. If they failed to observe the covenant, however, they could expect economic, political, and military failure as God’s punishment—specifically, the loss of national freedom to the Assyrians or Babylonians.

So the prophets proclaimed God’s judgments to the people and the nations in order to inspire them to turn to right worship and right economic and political relationships—in short, to turn toward justice. How did the prophets work to accomplish

24 As Martin Buber explains, “To be a nabi [prophet] means to set the audience, to whom the words are addressed, before the choice and decision,” The Prophetic Faith, 2.

25 Warning of impending apocalypse is admittedly closer to the pre-exilic Hebrew Prophets’ message than is warning of individual damnation, but apocalyptic literature was a later development within Hebrew prophecy that occurred after the exile. For discussion, see Blenkinsopp, A History of Prophecy in Israel, 212-221, 226-239; also consider his Opening the Sealed Book: Interpretations of the Book of Isaiah in Late Antiquity (Grand Rapids, MI: Wm. B. Eerdmans Publishing Co., 2006).
their aim? What are the means associated with the practice of prophetic witnessing? The prophets relied exclusively on public speech and on performative speech acts. Their testimony of God’s judgment was a public proclamation, in which they pleaded, cajoled, raged, criticized, threatened, and promised. The prophets also used performative speech acts: Hosea married a prostitute to dramatize Israel’s unfaithfulness to God, Isaiah gave his sons portentous names and brought them with him to confront the king, and Jeremiah walked the streets of Jerusalem wearing an ox’s yoke to dramatize Judah’s coming enslavement to Babylon. The prophet’s reliance on speech alone demonstrates an incredible faith in the power of that speech—the power of the word. As Abraham Heschel nicely puts it, the prophet “undertakes to stop a mighty stream with mere words.”

26 God tells Jeremiah, for example, that he is to have power “to pluck up and to pull down, to destroy and to overthrow, to build and to plant,” but he only instructs Jeremiah to speak the words God commands him to in order to accomplish such building and destroying.  

27 The Prophets, Vol. 1, 16.

Jeremiah 1, 7-10. Also note Ezekiel’s vision of the valley of the bones in Ezekiel 37 as evidence of this faith in the power of the word. Though often read as a prediction of the resurrection (“the ankle bone connected to the hip bone, the hip bone…”), Joseph Blenisopp points out that it can also be understood as epitomizing “the function of prophecy at a crucial moment of history.” The now post-exilic community “has lost its will to survive”—the text suggests that it is as if the community was dry bones—and that community “is vivified by the spirit activated through the word of God addressed to the community.” See A History of Prophecy in Israel, 178.

Some more recent political followers of the prophets also consider acts of civil disobedience to be one of the means by which one ought to bear prophetic witness. Martin Luther King Jr. and other Civil Rights activists are a key example here. (For analysis of the influence of the Hebrew Prophets and prophetic religion more generally on King and the Civil Rights Movement, see David A. Chappell, A Stone of Hope: Prophetic Religion and the Death of Jim Crow [Chapel Hill, NC: The University of North Carolina Press, 2004]; and George Shulman, “Martin Luther King Jr.’s Theistic Prophecy: Love, Sacrifice,
The political context of the prophets’ witnessing confirms their reliance on speech to inspire the turn for which they sought. The writing prophets all operated outside of the official political and religious institutions of Israel and Judah. As I mentioned above, their call came to them individually, by revelation. They were not ordained to their role by a priest or appointed to it by the king. Public speech was effectively, then, the only means available to them to inspire change, since they did not have direct access to the levers of state or religious power. While this may make one wonder whether the prophets’ reliance on speech was simply a consequence of their lack of coercive political or religious power, that lack also gave the prophets an important independence. Only such independent prophets had the courage to condemn the kings; the kings themselves had “prophets,” but these were nationalistic yes men who simply ratified whatever course of action the kings chose and promised divine favor for it. History vindicated the independent, critical prophets, retrospectively justifying their condemnation and leading to their, and not the court prophets’, canonization.

and Democratic Politics,” in American Prophecy: Race and Redemption in American Political Culture [Minneapolis: The University of Minnesota Press, 2008].) But this extension of prophetic witnessing from speech and performative speech acts to civil disobedience is a modern application of the prophets’ practice that does not appear in the texts themselves. I address the complications it poses to my analysis later, in section (V).

28 Weber’s is the classic analysis of the Hebrew Prophets’ independence; he distinguishes prophets from priests on the basis of the “personal call,” see The Sociology of Religion (Boston, MA: Beacon Press, 1969), 46. Also consider Ancient Judaism, 108-11, 267-269.

29 With this in mind, it is highly significant that one of the tests of a true prophet in Deuteronomy is whether or not the event the prophet predicted comes to pass, simply because history itself justified the independent prophets that later came to be canonical and refuted the more optimistic court prophets. See Deuteronomy 18:20-22; Blenkinsopp, A History of Prophecy in Israel, 148-160.
Although speech was the only means available to the prophets, their texts give good reason to believe that their reliance on it was principled. God commissions Isaiah to “go and say;” he commands Jeremiah to “go to all whom I send you and…speak whatever I command you;” he tells Ezekiel that he “shall say;” and he similarly instructs Jonah to “go…and cry out” (my emphasis). The prophet, then, was obligated to God and his audience to communicate God’s message. What the prophet’s audience did with that message was not the prophet’s responsibility. As God explained to Ezekiel, “Whether they hear or refuse to hear…they shall know that there has been a prophet among them.” God commissioned the prophets to command the people in his name to repent; God did not authorize them to compel the people to do so. Indeed, supposing that the prophets were obligated to God to not merely “cry out” in favor of repentance and obedience to God but to work to compel the people or indeed to actually convince the people to repent has extremely counterintuitive implications. There is no record of any of the writing prophets advocating for coercing their audience into repenting. Furthermore, none of the writing prophets actually succeeded, at least in their own lifetimes, in inspiring the turn to justice for which they called. Despite the warnings of Amos,

30 Isaiah 6:9; Jeremiah 1:7; Ezekiel 2:4; Jonah 1:2.

31 Ezekiel 2:5; also note Ezekiel’s own analysis of the individual’s responsibility before God in Ezekiel 18.

32 The above claim implies a distinction between the writing prophets—those whose names title the prophetic books—and the other prophets recorded in the Torah or in the historical books. Moses, of course, did coerce his people into obeying, killing those who had worshipped the Golden Calf (Exodus 32); and Elijah killed the priests of Baal (1 Kings 18).

33 In the long term, of course, the prophets were phenomenally successful—strikingly vindicating their own faith in the power of the word. It is, after all, their moral outrage and the texts it inspired that are, in many
Hosea, Isaiah, and Jeremiah (the pre-exilic prophets), the peoples of Israel and Judah did not repent and were, just as the prophets had warned, carried away captive to Assyria and Babylon. The prophets’ failure to inspire the turn for which they sought notwithstanding, there is no evidence in the Hebrew Bible (or the New Testament, for that matter) that God condemned the prophets or held them in disapproval as a result. When, for example, the people reject the prophet Samuel and sue God for a king “like the nations,” God is conciliatory. He tells Samuel that the people have rejected God, not Samuel. God does not hold Samuel accountable for the people’s rebellion or for not doing more to prevent it.

Given the above, then, I define the practice of prophetic witnessing as follows: Prophetic witnessing is publicly expressing God’s condemnation of some issue or practice to the holders of political power and the people who support them by means of controversial, critical speech and performative speech acts in order to awaken the audience’s awareness of their implication in the condemned issue or practice and inspire them to turn away from it and towards righteousness and justice. Those who bear prophetic witness have an obligation to both God and their audience to communicate God’s judgment; what the audience does with that judgment is the audience’s, not the

ways, the historical origin of both Judaism and Christianity (See Blenkinsopp’s analysis of this role in A History of Prophecy in Israel and Opening the Sealed Book). And of course, as this and other analyses suggest, their works continue to exercise considerable moral and political influence today.

34 See 1 Samuel 8:6-7.
prophet’s, responsibility. Hence the triangular image I used above. The prophet
communicates to the people on behalf of God; he does not stand between the people and
God. He calls on the people to turn toward God, not toward him.\footnote{Again, as in note 33 above, Moses is an exception here; his office is different than that of the later, writing prophets. For one discussion of this difference, see Buber, \textit{Prophetic Faith}, 58.}

As I mentioned above, my concern in this section is not just to offer an accurate
definition of the practice of prophetic witnessing, but to argue that religious citizens of
contemporary constitutional democracies can adopt the practice as a way of participating
in the political life of their societies. Even if my definition of prophetic witnessing is
accurate, it requires significantly more argument to recommend the practice for citizens
of liberal democracies. And indeed, there are several prominent accounts of prophetic
witnessing that imply that the practice would be incoherent or undesirable in a
constitutional democracy. This incoherence or undesirability, these accounts suggests,
arises not because of the practice’s compatibility or incompatibility with liberal
democratic norms and requirements of citizenship (which is the subject of the following
section) but because of the nature of prophetic witnessing itself.

Why might one believe that the practice of prophetic witnessing is incoherent on
its own terms in a constitutional democracy? The most popular reason is the assumption
that prophetic witnessing presupposes shared religious and political commitments that no
longer obtain in constitutional democracies: prophetic witnessing founders on the fact of
pluralism.
Consider, for example, Martin Buber’s description of the relationship between the prophet and the king: “We can only grasp its essential content,” he writes, “if we recognize the theopolitical supposition of the prophetic standpoint, a supposition which for the most part is not openly expressed and does not need any such expression: the commission of YHWH’s representative which is not fulfilled by the kings in Israel.” 36 In Buber’s account, it is not just the prophet but also the king who God commissions—God did, after all, select Saul and David himself, in the Biblical account—and the prophets’ criticism of the king presupposes the king being so called. The prophets’ message is thus not just “God judges you for your sins” but “God judges you for failing to live up to the responsibility he gave you.” In a constitutional democracy, however, the people and their leaders have no such theopolitical relationship. The people of course criticize their leaders for failing to live up to their commissions in one way or another, but that commission does not come from God, it comes from the people themselves. Liberal democratic citizens might, then, be able to adopt a critical stance that is analogous to that of the prophets, but they cannot practice prophetic witnessing, complete with its thick religious content, because the “theopolitical supposition” of such witnessing is absent in a constitutional democracy.

In addition to the above criticism based on Buber’s work, there is also a plausible criticism based on Michael Walzer’s. For Walzer, the prophets were “the inventors of the

36 Prophetic Faith, 67.
practice of social criticism,” a practice in which the critic attacks a society’s “public pronouncements” and “respectable opinion” on the basis of “values recognized and shared in that same society.” The prophets, then, based their criticisms on the Torah, which was the shared underpinning of political life in Ancient Israel and Judah. Indeed, Walzer connects the prophets’ practice so completely to the Torah that he denies that the prophets mediated between the people and God at all. “The law is not in heaven,” he explains, “it is a social possession. The prophets need only show the people their own hearts.” Prophetic witnessing as the Hebrew Prophets practiced it, then, cannot in any way be a model that religious citizens of a constitutional democracy can use to guide their political engagement, because the religious values on which they wish to base their political criticism are not shared in the way the Torah was in Ancient Israel. Indeed, the political practice most analogous to that of the Hebrew Prophets in a constitutional democracy is not the particularistic religious criticism of politics that would arise out of

37 Interpretation and Social Criticism, 71.

38 Ibid., 87, 89.

39 Walzer follows Max Weber here, who writes “The Torah is always the completely self-evident presupposition of all prophecy.” Ancient Judaism, 295.

40 Interpretation and Social Criticism, 74. Walzer is quoting and giving his own gloss on Deuteronomy 30:11-14, in which Moses states of the law: “Surely, this commandment that I am commanding you today is not too hard for you, nor is it too far away. It is not in heaven, that you should say ‘Who will go up to heaven for us, and get it for us so that we may hear it and observe it?’ Neither is it beyond the sea, that you should say, ‘Who will cross to the other side of the sea for us, and get it for us so that we may hear it and observe it?’ No, the word is very near to you; it is in your mouth and in your heart for you to observe.”
religious citizens’ appropriating the prophets’ example, but Walzer’s own analysis of the liberal-democratic West’s “world of common meanings.”

Both Buber’s and Walzer’s accounts suggest, then, that because prophetic witnessing presupposes either the “theopolitical supposition” of Ancient Israel or the shared religious law (Torah) on which the kingdom was based, and a constitutional democracy lacks both features, prophetic witnessing is not a coherent model for religious citizens of constitutional democracies.

I address the objection based on Buber’s work first, the one based on Walzer’s second.

The objection based on Buber’s work denies without sufficient justification that the “theopolitical supposition” does not apply to a contemporary constitutional democracy. While it is indeed the case that constitutional democracy does not depend on any such theopolitical supposition for its justification, it is not the case that it forbids such a justification. Consider again my analysis in Chapter Two, section (III). Rawls’s political liberalism expects citizens to find a way of coherently relating their comprehensive doctrines to a reasonable political conception of justice. Many citizens will affirm religious comprehensive doctrines, and the process of coherently relating those doctrines to a reasonable political conception of justice demands working out

41 See Walzer’s *Spheres of Justice* (New York: Basic Books, 1983), 28; also *Interpretation and Social Criticism*, 3-66.
the political implications of their religions—their "political theologies." So for many citizens of a constitutional democracy, there will be a “theopolitical supposition” insofar as they see their political society as accountable to God for living up to his requirements (which, as in Chapter Two, will include liberal principles of justice and the other conditions of reasonableness). For such citizens, then, prophetic witnessing remains a coherent activity, at least on Buber’s terms. Indeed, it is the nature of a democratic as opposed to a monarchical political regime that the people are more, rather than less, responsible for whatever a prophet might object to, thus making prophetic witnessing’s practice of public pronouncement of God’s judgment more, rather than less, coherent in a constitutional democracy than in a monarchy. (Please remember that I am postponing until the next section full consideration of prophetic witnessing’s compatibility with liberal democratic civic obligations.)

A critic might respond that claiming that the theopolitical supposition applies to constitutional democracies misses the point. The issue that makes prophetic witnessing incoherent is the fact that many liberal democratic citizens deny the theopolitical supposition or interpret it differently, as demanded by their differing religions or philosophical views. To respond this way, though, is to run the objection based on Buber’s work into the objection based on Walzer’s. And responding to the objection

42 I use this word in its intuitive sense—the implications of a given theology for politics—and not in the specific historical sense that Carl Schmitt, for example, uses it, in *Political Theology: Four Chapters on the Concept of Sovereignty*, Edited and Translated by George Schwab, With a Foreword by Tracy B. Strong (Chicago: The University of Chicago Press, 2005).
based on Walzer’s work is more complicated. The first plausible response is relatively straightforward, if not particularly compelling, while the second is more involved.

It is not the case that the prophets only witnessed to those who shared a commitment to organizing their lives according to the Torah. As the prophetic texts demonstrate (and as Walzer is well aware), the prophets also witnessed to the nations, communicating to them God’s judgment of their actions in international affairs. Perhaps religious citizens could take this thinner sort of prophetic witnessing as a guide for their political participation in a constitutional democracy. But, as Walzer himself observes, such international or extra-communal witnessing, at least in the biblical texts, lacks “nuance,” “subtlety,” “poetry…resonance, allusion, or concrete detail.” To see the prophet’s international witnessing as a guide, then, minimizes the content about which a contemporary religious citizen could coherently bear prophetic witness and thereby handicaps its use as a model for religious citizens’ political engagement.

On, then, to the more involved response: Begin again with the claim that it is not the case that the prophets only witnessed to those who shared a commitment to organizing their lives according to the Torah. But those who lacked such a commitment to organize their lives according to the Torah were not simply foreigners; they included the prophets’ fellows in Israel and Judah. Walzer’s account misses this, because he inappropriately


44 Interpretation and Social Criticism, 77.
takes for granted the biblical narrative’s picture of the prophet and his role, particularly as it is described in Deuteronomy. By this I do not mean to suggest that Walzer was mistaken to take what the biblical texts say about the prophets seriously, but that Walzer does not exercise sufficient care in examining the validity of the historical assumptions portions of the biblical text—particularly those the critical scholarship attributes to the “Deuteronomists”—employ when discussing the prophets. The Deuteronomists paint a picture of the people of Israel who, as Walzer presupposes, were collectively committed to remembering, teaching, and adhering to the covenant at Sinai, a people who diligently followed God’s commandment to “keep” Moses’ law “in your heart” and “Recite them to your children and talk about them when you are at home and when you are away, when you lie down and when you rise.”

But there is considerable historical evidence—particularly from the prophetic texts, but also from the historical books—that this was not at all the case. Ancient Israel and Judah did not enjoy as great a degree of religious and moral consensus as Walzer’s account suggests. Rather—and unsurprisingly—there were differing groups with differing understandings of the proper way to worship Yahweh. For some—often the groups the prophets either represented or began—Yahweh demanded the sort of absolute devotion spoken of in the prophetic texts. Others were more syncretistic, worshiping Yahweh, Baal, and other Canaanite gods, or ignoring Yahweh altogether. Of course, such syncretistic groups had to have existed, or else the prophets’ condemnation of Baal worship would have been incoherent: no prophet worth

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45 Deuteronomy 6:6-7. It is thus highly significant that Walzer quotes from Deuteronomy to establish his claim that Torah was “a social possession” (pp. 74) in Ancient Israel. See note 41 above.
his salt would condemn a sin no one in his community committed. So it is a mistake to cast Ancient Israel and Judah as monolithically united by commitment to the Torah as we read it today.\textsuperscript{46} The fact of pluralism, if of a different sort and scope than in a constitutional democracy, was a reality in the Hebrew Prophets’ historical setting, and the prophets nevertheless believed themselves called to convey God’s judgment to the people—especially, with the above context in mind, to those of the people who ignored God’s expectations of justice, did not worship him, or worshipped him in a way the prophets felt was improper.

The implications of historical biblical criticism for the objection based on Walzer’s work go even deeper. For Walzer (as, indeed, for Weber before him and for many other scholars of and commentators on the prophets), prophetic witnessing presupposes the Torah. But it is not at all clear, historically, that the Torah, at least in its current form, predated the prophetic texts, particularly those that were written before the Babylonian exile. Indeed, the influence may go the other direction; it could be the Torah, especially the economic laws recorded in Deuteronomy, which draws on the pre-exilic

\textsuperscript{46} Making this mistake is understandable. By attributing the Torah to Moses and placing it before the prophetic books in the Bible, the assemblers of the Hebrew Bible suggest that the prophets and their audience would have had the Torah in front of them to reference and discuss, and that they were—or at least should have been—ritually remembering the law as expressed in the Torah in their goings and comings. For discussion of this “Deuteronomic redefinition of prophecy,” see Blenkinsopp, \textit{A History of Prophecy in Israel}, 11-14; for analysis suggesting that not the Torah but rather a sort of early conception of natural law was the basis for the prophets’ criticisms, see Anthony Phillips, “Prophecy and Law,” in Richard Coggins, Anthony Phillips, and Michael Knibb, eds., \textit{Israel’s Prophetic Tradition: Essays in Honour of Peter R. Ackroyd} (New York: Cambridge University Press, 1982), 217-232. Walzer himself may be doubly susceptible to this mistake, since his communitarian commitments may lead him to exaggerate the scope and depth of people’s “common meanings” (see note 42 above).
prophetic texts rather than vice-versa. So while it is undeniable that the prophets presupposed some God-given law or covenant (this is required for criticizing people for breaking it) it is not clear that that law was the Torah in the form it is recorded in the Hebrew Bible or that the prophets had the specific, familiar Moses and Sinai story in mind when they spoke of it. Indeed, it may be the case that the prophets are themselves an influential historical origin of the Law of Moses, which the Deuteronomists took up and systematized during or after the Babylonian exile.

How, then, does the above brief foray into the historical criticism affect the objection based on Walzer’s work? Insofar as its description of the moral and religious plurality of Israel and Judah is correct, the prophets bore witness to a people who were not united under the Torah, and some of whom, undoubtedly, did not see the covenant at Sinai as the ground of God’s special relationship with Israel and Judah, or who interpreted that covenant in a much less exclusive way. The prophets, then, conveyed God’s judgment to a people whose “own hearts” were deeply divided. No wonder their condemnations were so controversial; no wonder they were reviled. This also suggests, however, that pluralism need not undermine the coherence of prophetic witnessing. The prophets believed that their people had a special, covenantal relationship with God. This was the ground of their critical practice. But they did not have to believe that the people

47 Again, see Blenkinsopp, *A History of Prophecy in Israel*, throughout and especially pp. 11-14, 111-121.

48 Strikingly, *none* of the pre-exilic prophets’ texts reference the “Law of Moses” specifically. In their entire corpus as recorded in the Hebrew Bible, there is only one reference to “Moses” at all, at Jeremiah 15:1, where he is given similar status to Samuel, not the preeminent status the compilers of the Torah would later assign to him. (I exclude two references to Moses in Isaiah, because they both occur in Isaiah 63, which is part of the book of Isaiah understood to have been written after the exile.)
were collectively committed to that relationship or had previously acknowledged the covenant in order to condemn them for their disobedience and rebellion. 49 The prophets, then, Walzer to the contrary, did mediate between the people and God, calling the people to turn to a covenant and a law that the prophets believed to be old and legitimate but that their audience had at least forgotten and quite possibly denied or interpreted in different ways. As it turns out, then, the religious pluralism of a constitutional democracy is not as far from the situation of the Hebrew Prophets as the objection based on Walzer’s work suggests.

Some form of religious pluralism is not the only social condition Ancient Israel and Judah share with contemporary constitutional democracies. As I noted above, a key part of the social location of the prophets was their independence from both the court and the official cult. They were neither kings nor priests, and yet their strident condemnations of the state and the cult were at least tolerated, if not, on occasion, encouraged by one ruler or another. This was a rare circumstance in the ancient political world, a world dominated by absolute, despotic empires in Egypt, Assyria, Babylonia, and

49 There is a certain contractarian (or perhaps “covenentarian”) resistance to reading the prophets in this way, one that suggests that the prophets’ condemnations would have been unwarranted and illegitimate if the people were not already united in their commitment to Torah. This resistance offers an ethical reason to prefer Walzer’s reading of the prophet’s practice, one that comports with the long tradition in the history of political thought of reading the Sinai covenant as a kind of social contract. (See, for example, Hobbes, Leviathan, Part 3, Chapter 40, “Of the Rights of the Kingdom of God, in Abraham, Moses, the High Priests, and the Kings of Judah;” Spinoza, Theological-Political Treatise, Chapter 17; and Walzer’s own discussion of it, “The Covenant: A Free People,” in Exodus and Revolution [New York: Basic Books, 1985], 71-98.) On my reading, in contrast, the prophets see the people of Israel and Judah as bound by obligations to God through no choice of their own, simply as a result of the society into which they were born and regardless of their own failure to acknowledge Yahweh. This account bears at least a passing similarity to Rawls’s assumption in developing justice as fairness, in which citizens become bound by civic obligations that stem from their own participation in a “fair system of cooperation” that they enter only by birth and exit only by death. See PL 11-22.
Persia, empires that allowed little to no dissent. Indeed, it was the relative weakness of the kingdoms of Israel and Judah that allowed the prophets and their condemnatory witnessing practice to flourish. In this sense, then, the social location of the ancient Hebrew Prophets and liberal-democratic citizens is quite similar; liberal-democratic citizens enjoy constitutionally protected rights to object and criticize, practices that the kings of Ancient Israel and Judah had to tolerate due to their own weakness. Indeed, the Hebrew Prophet’s texts can be seen as historical evidence for the existence of an ancient “public sphere” surrounding and at times criticizing, at times legitimizing, the kings and official cults of Israel and Judah.

Prophetic witnessing remains coherent in a constitutional democracy, then, because the theopolitical supposition may still obtain for religious citizens (the only citizens who would be inclined to practice prophetic witnessing anyway), because the prophets themselves operated in a much more pluralistic environment than commonly believed and than the Deuteronomistic portions of the biblical narrative suggest, and because the prophet’s social location was much more similar to that of today’s liberal-democratic citizens than their ancientness might otherwise lead one to believe.

Granting the coherence of the practice of prophetic witnessing in a constitutional democracy, one may still object that such witnessing is undesirable. Here, I imagine an

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51 I mean the term “public sphere” in the way Habermas made famous, see his *The Structural Transformation of the Public Sphere*. 
objection based on Sacvan Bercovitch’s account of the negative role prophetic rhetoric
has traditionally played in the history of American politics.⁵² This objection sees
prophetic rhetoric and the practice of prophetic witnessing throughout the history of the
United States. The Puritans practiced prophetic witnessing, as did Americans in the
Founding generation. Americans did so throughout the 19th and 20th centuries, in both
the Civil Rights Movement and the Christian Right.⁵³ But the effects of such prophetic
witnessing are not, in Bercovitch’s view, beneficial; indeed, he construes them as
trapping American politics in cycles of recommitment to middle class, liberal
individualism, anesthetizing social criticism and social critics by co-opting their dissent
into an unending, inescapable narrative of primal covenant, decline, and renewal. Martin
Luther King Jr., for example, becomes a “saint” in the pantheon of America’s civil
religion after his assassination, but as a result of that “canonization” his later criticisms of
American capitalism and imperialism—the criticisms that, arguably, motivated his
assassin—are forgotten and he becomes just another civic prophet calling America to live
up to the promise of formal equality extended in its founding documents.⁵⁴ Of course
prophetic witnessing is compatible with liberal-democratic citizenship, this objection

⁵² The relevant work here is his The American Jeremiad (Madison, WI: The University of Wisconsin Press, 1978).

⁵³ For analysis of prophetic witnessing in American history, see Andrew Murphy, Prodigal Nation: Moral
Decline and Divine Punishment from New England to 9/11 (New York: Oxford University Press, 2009);
David L. Chappell, A Stone of Hope; and James A. Morone, Hellfire Nation: The Politics of Sin in

⁵⁴ For a helpful discussion of King’s connection to the prophetic tradition and the reception of his later
criticisms of capitalism and imperialism, see George Shulman, “Martin Luther King Jr.’s Theistic
Prophecy: Love, Sacrifice, and Democratic Politics,” in American Prophecy.
claims. The prophetic narrative of primal covenant, decline, and renewal defines liberal democratic citizenship in the United States. It defines that citizenship and simultaneously stultifies it, trapping Americans in their own arrogant exceptionalism and capitalist culture.

The objection based on Bercovitch’s work provides a good opportunity to point out the differences between the practice of prophetic witnessing as I define and recommend it and the role that prophetic narratives play in American political culture and “civil religion.” The prophet in American civil religion works entirely within America’s public political culture, defined by different people at different times to include Protestant Christianity and to exclude Catholics, Jews, and Mormons, or to include the “Judeo-Christian Tradition” and exclude Muslims and secularists, or to simply include the political values of freedom and equality expressed in the nation’s founding documents. The condemnation the civic prophet expresses is of decline from these various different sets of public values; the renewal he calls for is adherence to them. This sort of prophetic rhetoric is quite different than the practice of prophetic witnessing I outline above. In the practice I outlined, a prophet communicates God’s condemnation of some practice based on her own particular religious commitments and experience, or those of her particular religious group. There is no need for her to tie her religious views into one or another version of the American civil religion’s recurring narrative of national decline and renewal, or even to express her condemnation in terms of freedom and equality (though she should be committed to these as expressed in a reasonable political conception of justice). Prophetic witnessing as I’ve defined it is a model for the public expression of
religious particularity, and as such it is a very different practice than the prophetic rhetoric that the objection based on Bercovitch’s work criticizes.

Finally, given my definition of prophetic witnessing, its coherence in a constitutionally democratic political context, and its difference from the way prophetic rhetoric has typically been used in the American civil religion, how can a contemporary religious citizen decide what constitutes better and worse forms of prophetic witnessing? What hazards is the practice of prophetic witnessing subject to, and what resources does the prophet have to deal with them?

The prophets aim, as I argued above, to turn their audience from implication in sin and oppression to righteousness and justice. But the very controversy their condemnations cause can so alienate their audience as to prevent their audience from wanting anything to do with the prophet or the prophet’s God. Many people are offended when they are told they are wicked, sinful, or morally improper. To the prophet, his audience is simply invested in denying their own sinfulness and guilt—and it is the prophet’s responsibility to call them out on it. But by virtue of that calling, the prophet is thrust into an incredibly difficult situation. He is compelled by God to condemn both his audience’s behavior and their desire to minimize or deny the sinfulness of that behavior, but by that very condemnation he may undermine his overall aim to get them to cease the practices he finds sinful. How can the prophet navigate such a situation?

The book of Jonah offers a humorous counterexample of prophetic witnessing that can be read as an answer to this question. Jonah, as is well known, was unwilling to follow God’s calling to prophesy to Nineveh. After being chastised by a few nights in
the “belly of a fish,” however, Jonah relents and follows God’s call, travelling to Nineveh and communicating God’s message, albeit sullenly, to the people there. Then Jonah is disappointed when the people of Nineveh repent and God rescinds the destruction of which Jonah prophesied. Jonah had hoped to watch God destroy the city; he felt Nineveh’s repentance made him appear to be a fool.55

As a negative example, an example of how one ought not bear prophetic witness, Jonah’s story suggests that a prophet should care more about helping his audience turn towards justice than about his own personal credibility and the literal fulfillment of the particular condemnation he feels compelled to convey. He should see his role as warning the people of the consequences of their actions and God’s anger about them, rather than predicting God’s inevitable action in history. Indeed, Jonah points out a significant hazard in the practice of prophetic witnessing: so convinced of the righteousness of his message and the sins of his audience, it is all too easy for the prophet to rejoice in, instead of dreading, the dire implications of God’s condemnation. Jonah’s story suggests that, “I can’t wait for God to destroy these miserable sinners” is not an appropriate attitude for one bearing prophetic witness.56 The prophet’s attitude toward the condemnation he communicates should be one of dread and misgiving, combined with recognition of his

55 For helpful analysis of the book of Jonah, see Blenkinsopp, A History of Prophecy in Israel, 240-246. Jonah also acts as a negative counterexample in Michael Walzer’s analysis in “The Prophet as Social Critic,” in Interpretation and Social Criticism.

56 This suggests that much of what might be termed prophetic witnessing among right-wing Christian groups in the US is, following Jonah, an example of how not to bear prophetic witness. For discussion of prophetic rhetoric in the American Christian Right, see Andrew Murphy, “Taking America Back: The Christian Right Jeremiad,” in Prodigal Nation, 77-106.
own sins and imperfections. With this message of the book of Jonah in mind, it is entirely appropriate that both the Jewish and Christian traditions attribute the book of Lamentations to Jeremiah, as the grief over Jerusalem’s destruction he is said to express there balances out Jeremiah’s strident and unrelenting condemnations of Judah in the book of Jeremiah itself. Without such connection with and affection for a prophet’s audience, it is all too easy for the audience to condemn the prophet as a self-righteous, arrogant bore, instead of listening to him and valuing his moral, spiritual, and religious sensitivity.

Furthermore, the Biblical texts suggest that prophets (or citizens who choose to bear prophetic witness) should be well prepared to fail to change the hearts of their audiences. The Biblical texts suggest that prophetic witnessing is not an appropriate practice for those who seek either approbation or appreciation from their audience; they are unlikely to get them. It is appropriate, though, for those who feel so committed to matters of religious, moral, or political principle that they are prepared to accept rejection and intense criticism in response to their integrity and the public proclamation of its basis and justification, without giving up their connection with and affection for the very audience who fails to live up to those principles. If those who choose—or feel compelled—to bear prophetic witness wish to do so well, then, they stand in the difficult position of condemning people without allowing their strident commitment to the wickedness of the practices they condemn to overwhelm their commitment and connection to the people who currently practice them and who will likely continue to practice them, the prophets’ witnessing notwithstanding.
IV: Prophetic Witnessing and the Obligations of Liberal-Democratic Citizenship

Above, I offered a definition of the practice of prophetic witnessing and argued that religious citizens of a constitutional democracy can coherently practice it. This, however, does not address the separate question of whether prophetic witnessing violates the obligations religious citizens bear as liberal-democratic citizens. In this section, I argue that it does not. Prophetic witnessing is compatible with the obligations of liberal-democratic citizenship implied by the phased account of democratic decision-making I developed in Chapter Three. It is, therefore, a religious practice of political engagement that political liberals can endorse and recommend. Prophetic witnessing should be a key part of a positive, political liberal ethic for religious citizens’ political participation.

Recall the definition of prophetic witnessing I offered in the previous section: A citizen practices prophetic witnessing when she publicly expresses God’s judgment of some issue or practice to the holders of political power and the people who support them by means of controversial, critical speech and performative speech acts. She does so in order to awaken her fellow citizens’ awareness of their implication in the condemned issue or practice and to inspire them to turn away from it and towards righteousness and justice, as she understands them.

Consider Rachel the Religious Environmentalist (I choose a relatively congenial example to start with): Rachel becomes convinced, after studying scripture and the teachings of her religious leaders, that the consumption practices of her society are deeply
sinful.\textsuperscript{57} God, she comes to believe, created the earth as a home for both people and the incredibly diverse biological world of which they are a part. Furthermore, God made men and women responsible for the care of that world. God, she concludes, expects people to live in harmony with the biological world, to care for it, conserve it, and preserve it. When Rachel considers her and her fellow citizens’ consumption practices, she is struck by the yawning gap between those practices and God’s mandates. She considers the vast amounts of fossil fuels she and her fellows consume as sinful, since those fuels are extracted and used at astronomical environmental costs, with severe consequences for the climate, air quality, and future sustainability. She feels similarly about the prevalent use of synthetic fertilizers in agriculture and the amount of resources and space consumed by suburban sprawl. God, Rachel comes to feel, has called her and her religious community to bear witness against her society’s environmental sins. She feels compelled to awaken her fellow citizens to the reality of their own implication in deeply unsustainable and indeed sinful consumption practices. So she begins bearing prophetic witness against such consumption. She speaks out in public, proclaiming that God condemns driving gas-guzzling SUVs, eating non-organic foods, and living in sprawling suburban housing developments. She plans, with like minded members of her religious group, a protest outside of her state capitol to call attention to proposed

legislation that will make it easier for oil and gas companies to explore in an environmentally sensitive region of her state.

Rachel is clearly practicing prophetic witness, as I defined it above. She is publicly proclaiming God’s condemnation of her society’s consumption practices in hopes of inspiring her fellows to turn away from them. And, just as clearly, Rachel does nothing that has violated her obligations as a liberal-democratic citizen, given the phased account of democratic decision-making. Consider Rachel’s aim: she wishes to “awaken her fellow citizens” to their implication in consumption practices she believes are sinful and further believes that God condemns as sinful. Her prophetic witnessing is designed to get her fellow citizens thinking about their consumption practices, the consequences of those practices, and—especially—the moral and religious justification (or lack thereof) of those practices. She does so by being powerfully controversial: condemning her society’s consumption practices as a sin against God. Undoubtedly, she will offend some of her fellow citizens, who do not take kindly to being condemned as sinners for driving SUVs or for eating non-organic foods, and who deeply disagree with Rachel about the proper moral and religious evaluation of their consumption. Indeed, some of Rachel’s fellows may claim that Rachel is a hypocrite, since she too benefits from the same practices she condemns. And others may suggest that Rachel is self-righteous and therefore morally suspect and perhaps even sinful. But Rachel’s actions, in part because they are controversial and in part because she has honestly expressed the depth and justification of her environmentalism, have helped her to achieve part of her aim: she and her fellow citizens are talking about their consumption practices. They have indeed been
awakened. Her witnessing has helped put her society’s consumption practices on the deliberative agenda, both due to her principled and controversial claims and to the warm reactions they inspired.\textsuperscript{58}

Recall that in the phased account of democratic decision-making, arguments from reasonable religions and comprehensive doctrines are acceptable justifications at the agenda-setting phase of deliberation. Because one of the main aims of prophetic witnessing is to call people’s attention to a certain issue or practice and to arouse their concern about it, it is a practice that is particularly well suited to the agenda-setting phase of deliberation. Rachel is not so much concerned (at least at this point in the deliberation process) about the specifics of how consumption practices are to be reformed; she simply wants her citizens to recognize that they need to be. In other words, prophetic witnessing’s principled reliance on controversial speech and performative speech acts (like Rachel’s protest) makes it an apt practice for agenda-setting deliberations.

Furthermore, given the obligations to God that come with the practice of prophetic witnessing, Rachel has fulfilled her obligation to God even if, as it turns out, those who disagree with her end up winning the day and there are no improvements (from Rachel’s perspective) to the consumption practices in her society. Indeed, Rachel would have fulfilled her obligations to God even if her fellows had chosen to ignore her witnessing entirely. Rachel has stood up and publicly expressed the judgment she came

\textsuperscript{58} Rachel does not just aim to get her fellows talking about their consumption practices. She wants to change those practices. But successfully placing them as an issue on the deliberative agenda is unambiguously a step in that direction.
to feel God had put into her, and so—at least insofar as the practice of prophetic witnessing is concerned—she has fulfilled her obligation to God. Rachel will, of course, continue to condemn the current consumption practices of her society, but, at least as far as the practice of the biblical prophets is concerned, she need not deny the political legitimacy of the laws her opponents have enacted, violate them, or take more extreme measures in order to force the hand of those she feels are sinning against God. Given the definition of prophetic witnessing above, she has done all that God asks of her. Rachel may, of course, come to feel that the political and environmental situation is dire enough to merit more extreme measures. But if she does so, she departs from the practice of prophetic witnessing as I define it.

It is easy to criticize my use of Rachel the Religious Environmentalist in order to argue for the compatibility of prophetic witnessing and liberal democratic norms, though, because Rachel advocates for positions that many political liberals likely feel are publicly justifiable on their own terms: policies to reduce greenhouse gas emissions and the use of synthetic fertilizers are not policies that stretch the substantive boundaries of political liberal legitimacy. These are not policies that require religious arguments to justify them. So it may seem that the substantive agreement on policy between many political liberals and Rachel the Religious Environmentalist calls into question my positive evaluation of the practice of prophetic witnessing.

Consider, then, a less congenial example: Adam the Anti-Porn Activist. Adam becomes convinced, after studying scripture and the teachings of his religious leaders, that the making and viewing of pornography of any kind is deeply sinful. Adam comes
to believe that God intended human sexual relationships to be kept sacred and intimate. Performing sex for the purposes of arousing or entertaining others not physically involved in the act degrades sex by destroying its intimacy. Buying and selling videos or images of people having sex then further degrades it by turning what should be a sacred, intimate act into a commodity, sold for a profit and consumed for a price. For Adam, then, the pornography industry is doubly condemned, as they seek profit by selling images and videos of sex, paid for and performed explicitly for the purpose of arousing or entertaining others. Adam is sympathetic to the position of feminists who argue for government regulation of the pornography industry, but he sees his position as more radical than theirs. He condemns not just pornography that encourages violence against women or depicts women performing degrading sex acts, but all performance of sex for the purposes of arousing or entertaining others not physically involved in the act.

Furthermore, Adam believes that, because his society’s legislature could, if there were sufficient political will, outlaw pornography but thus far has chosen to leave the industry basically unregulated (the laws on the books in his society only mandate that pornographers place warnings at the beginnings of their films and the entrances to their websites stating that they contain “adult content” and should only be viewed by legal


60 In other words, Adam denies the distinction MacKinnon draws between pornography as the “graphically explicit subordination of women,” and erotica, as “sexually explicit materials premised on equality” is relevant for the moral and political evaluation of “adult entertainment.” See “Pornography, Civil Rights, and Speech,” 465-466.
adults), that he and all of his fellow citizens are implicated in the pornographers’ sins, whether they consume pornography or not. So Adam publicly proclaims what he sees to be God’s condemnation of the making, distribution, and use of pornography. Hoping to awaken his fellow citizens to their own implication in the impunity of the pornography industry, he declares that the pornographers are mired in sin, and that his society stands condemned before God for failing to put a stop to them. He gathers together a group of former pornography performers who have experienced religious conversions and left the industry (not always in that order) to protest outside of the legislature as well as around adult bookstores; Adam even targets internet service providers who, he argues, should at least do more to prevent children from being exposed to pornography.

Adam, like Rachel, is clearly practicing prophetic witnessing; he too is publicly proclaiming God’s condemnation of a practice he believes to be deeply sinful in hopes of inspiring his society to turn away from pornography and towards a society that treats sex in the sacred and intimate way he believes God demands. However, unlike Rachel, Adam’s position is not one that easily accords with the policy preferences of many political liberals; on its face, it appears much closer to one of the set of policies that may require religious arguments for their justification. Indeed, to publicly justify a proposal like Adam’s, one would need to be able to show that reasonably endorsable political values like liberty and equality are jeopardized by the production and consumption of pornography, even in cases where the sex acts performed are voluntary and do not degrade any person involved or symbolize the degradation of people of some gender,
class, race, or sexual orientation. This is a high bar to clear, and as a result it is more likely that Adam’s specific proposal will turn out to lack a public justification than it is that Rachel’s concern to prevent further oil and gas exploration or regulate the use of synthetic fertilizers will lack such a justification. Adam’s proposal is thus more similar to the set of proposals that it would be illegitimate for a constitutional democracy that followed the phased account of democratic decision-making to enact than Rachel’s proposal is. As a result, Adam the Anti-Porn Activist provides a particularly important example in considering whether the practice of prophetic witnessing is compatible with the obligations of liberal democratic citizenship.

Assuming the obligations of liberal democratic citizenship given by the phased account of democratic decision-making, Adam, like Rachel, does not violate his civil obligations by practicing prophetic witness. Like Rachel, Adam’s aim is to “awaken his fellow citizens” to their implication in the degradation and commodification of human sexual relationships in the pornography industry, and, like Rachel, his use of deeply controversial religious language (“God condemns society for allowing pornography”) is in pursuit of that goal. When his fellows react strongly in defense of leaving

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I do not mean to be taking a position here on whether the complete restriction on the creation, distribution, and consumption of pornography for which Adam advocates is publicly justifiable or not. It certainly is not on the grounds that Adam has offered for it, which depends on his religious convictions. However, feminist arguments against pornography could perhaps provide a public justification of Adams view, if one could convincingly show that all performance of sex for the purposes of arousing or entertaining others not physically involved inherently degrades women such that they are not treated as political equals to men. Though this seems a difficult argumentative burden to meet. Even if this argument did not go through, however, Mackinnon’s and other feminist’s arguments against pornography may publicly justify more regulation of the pornography industry than is current in the United States today, for example.
pornography production, distribution, and consumption unfettered, Adam has still
achieved part of his aim: his prophetic witnessing has gotten his citizens talking about the
state of pornography regulation in his society. Adam has contributed to putting
pornography regulations on his society’s deliberative agenda.

Also like Rachel, Adam can consider his obligation to God fulfilled even if his
fellow citizens reject his call for outlawing pornography or even if, as deliberations
proceed, his fellows choose to relax the restrictions currently on the books (or, indeed,
even if his fellows ignore him entirely). Adam has communicated the message he feels
called to deliver; he has done all that God expects of bearers of prophetic witness.
Assuming that Adam takes the biblical practice of prophetic witness as exemplary for his
own religious-political activity, Adam need not, then, feel compelled to take coercive or
violent action against pornography producers, distributors, or consumers (for example);
he can accept the political legitimacy of the current pornography regulations in his
society even while decrying them as morally bankrupt. Adam could, of course, come to
feel that the political and moral situation of his society is dire enough to demand more
extreme measures. But when he does so, he leaves the biblical practice of prophetic
witnessing, as I have defined it, behind.

The argument, then, for the compatibility of prophetic witnessing and the
obligations of liberal democratic citizenship holds both for substantive positions, like
Rachel’s, that comport with many political liberals’ policy commitments, and for
substantive positions, like Adam’s, that do not. Because part of prophetic witnessing’s
aim, as a religious practice of political engagement, is getting issues and practices on the
public agenda so that citizens have the opportunity to consider them and choose to turn away from them, and because arguments drawn from reasonable comprehensive doctrines are permissible in agenda-setting deliberations, prophetic witnessing is a permissible religious practice of political engagement for religious citizens to use when participating in agenda-setting deliberations.

Concluding that prophetic witnessing is compatible with the obligations of liberal democratic citizenship is, however, no small or uncontroversial claim. I am, after all, arguing that it violates no duties of liberal democratic citizenship (duties which are commonly understood to forbid citizens from supporting political positions on religious reasons alone) for citizens to publicly proclaim God’s condemnation of their fellows’ choices, some of which are quite personal, and many of their society’s broader political, social, and economic practices on religious grounds alone.

To forestall some likely objections, remember the qualifications I have built into this claim. I am presuming, as per my analysis in Chapters Two and Three, that the religious citizens who are bearing prophetic witness are reasonable. They affirm reasonable political conceptions of justice, including liberal principles of justice, the guidelines for public political discussions articulated in the phased account of democratic decision-making, the liberal principle of legitimacy, the burdens of judgment, and fair terms of cooperation. As Rachel and Adam both accept, then, religious citizens who

\[62\] One might argue that prophetic witnessing violates the burdens of judgment, since a reasonable person ought to recognize that his fellow citizens disagree about the existence of God and what he mandates of people, a citizen ought not to argue publicly on such grounds. To argue this, though, is to exaggerate the implications of the burdens of judgment as I interpret them (see Chapter Two, section [I]). The burdens of
bear prophetic witness recognize that their witnessing does not by itself provide sufficient justification for passing a resolution and coercing their fellow citizens. They understand that their arguments have not publicly justified their positions. Furthermore, as I emphasized in both cases, all the practice of prophetic witness demands of Rachel and Adam is to communicate God’s condemnation of some practice through speech and performative speech acts. Rachel and Adam both understand, then, that not only do the obligations of liberal democratic citizenship forbid them from coercing others on the basis of religious justifications alone, such coercion stands outside of and is not required by the religious practice of political engagement—prophetic witnessing—that guides their political activity.

The various reasonableness qualifications built into my position, then, provide a crucial measure for judging between permissible and impermissible forms of prophetic witnessing. So, for example, while it is permissible for Rachel and Adam to practice prophetic witnessing (since they are both reasonable and affirm reasonable religions), it is not permissible for “Chris the Christian Reconstructionist,” who condemns in God’s name his society’s extension of full religious liberty to Jews, judgment are part of an argument for the liberal principle of legitimacy, which forbids coercion on the basis of religious reasons alone and enjoins a deliberative body to publicly justify all coercive laws it passes. One can accept this and simultaneously argue on religious grounds in an exploratory manner, as I argued in Chapter Three. Prophetic witnessing aims, in part, to get issues and proposals on to a society’s deliberative agenda, and since I presume the citizens practicing it accept the liberal principle of legitimacy, it has the required exploratory quality. Those practicing prophetic witness know how God feels about the practice they condemn. They want their deliberative body to take up the proposal in order to determine whether the state may legitimately take action to address the practices they believe God condemns.
Muslims, and Atheists, to do so.\textsuperscript{63} Rachel’s and Adam’s witnessing arises from their conscientious and reasonable\textsubscript{(2D)} religious convictions; Chris’s witnessing may be conscientious, but because his religious commitments are not reasonable\textsubscript{(2D)}—that is, they are not compatible as he understands them with liberal principles of justice or norms of reciprocity—his prophetic witnessing violates the obligations of liberal democratic citizenship.\textsuperscript{64} It is the \textit{practice} of prophetic witnessing, as defined above in section (III), that I am arguing is compatible with the obligations of liberal democratic citizenship. If a citizen chooses to use that practice in order to witness for a substantive position that violates the obligations of liberal democratic citizenship—a position good citizens ought not to support—then that citizen violates their obligations, not by practicing prophetic witnessing but by supporting a position he ought not to support. My argument in section (III) was not intended to suggest that a citizen may \textit{literally} follow the Hebrew Prophet’s example without violating their obligations as citizens. The Hebrew Prophets did not support full religious liberty for all (for example); a citizen who literally followed this aspect of their example would be violating his civic obligations. Thus Chris the Christian Reconstructionist may choose to literally follow Hosea and publicly marry a prostitute to

\textsuperscript{63} For discussion of Christian Reconstruction, see Clyde Wilcox, \textit{Onward Christian Soldiers}, 155-6.

\textsuperscript{64} A critic may try to claim that Adam falls into this category, too, because regulating the consumption of pornography violates the basic rights and liberties. But this is to claim that the basic rights and liberties imply a right to pornography consumption that is so essential to ideals of fair political cooperation that pornography regulation cannot even be permissibly discussed in public political discussions, which is not immediately apparent in the way that claiming that the basic rights and liberties demand full religious liberty for all is, and that citizens violate their obligations to their fellows when the propose deep restrictions on religious liberty. Such a critic, then, would need to provide an argument for the right to pornography that was sufficiently convincing and put sufficiently high priority on the value of that right to suggest that Adam’s actions are not just annoying or offensive but actually violate his obligations to his fellow citizens.
symbolically condemn his society’s infidelity to God in allowing Jews, Muslims, and Atheists to “scorn” God with impunity; the basic rights and liberties protect such action. But Chris is not acting as a good liberal-democratic citizen when he does so.

The above qualifications are, however, simply an application of my analysis in Chapter Three and would apply similarly if Rachel, Adam, and Chris had decided to preach public sermons about their respective issues, explaining those issues and the religious reasons they have for believing those issues need to be addressed collectively, instead of bearing prophetic witness by communicating God’s judgment of their society’s collective sins. Thus, there may be reasons why one might accept my argument for the permissibility of religious justifications during agenda-setting deliberations but deny that practicing prophetic witness is permissible—objections, in other words, that are based on liberal-democratic norms and directed specifically against prophetic witnessing rather than against religious arguments in general.

I see one plausible objection of this sort. (Remember that I addressed objections based on incoherence or undesirability in the previous section.) This objection argues that prophetic witnessing is so offensive that it is not respectful of those the prophet condemns, and as such is not compatible with the obligations of liberal-democratic citizenship that call citizens to mutually respect each other.

To flesh out this objection, consider the differences between making a religious argument for a political position in the public sphere and bearing prophetic witness. Imagine if Rachel had simply made a religious argument for her view. She might have said something like, “Given that God says in Genesis that His creation is good and that
we have a responsibility to care for it, I believe that we need to work to cut down carbon emissions so that we can conserve and preserve the earth’s climate.” This is quite different from bearing prophetic witness; this time Rachel did not accuse her fellows of sinning against God, nor did she proclaim her society’s collective condemnation before God for their carbon emissions. It is a simple, honest statement of her religious convictions, without the threat of God’s anger or punishment, and, as such, it intuitively seems more respectful of Rachel’s fellows and less likely to offend them than her prophetic witnessing.

Is it permissible, then, for religious citizens to publicly proclaim what they see as God’s condemnation of some issue or practice and God’s condemnation of the people responsible for it? This is indeed much more likely to provoke offense than simply making a religious argument. People generally do not like to be told that they are in the wrong; they particularly do not like to be told that they are in the wrong and that God condemns them and will punish them for it. At the same time, however, there is no general injunction against being offensive in the norms of political liberal citizenship. It is clearly the case that citizens may feel offended when their fellows violate the norms of political liberal citizenship, as Rachel or Adam may feel offended by Chris’s arguing for restricting the religious liberty of Jews, Muslims, and Atheists, but here it is Chris’s advocating for an illegitimate policy, not his offensiveness, that violates the norms of liberal-democratic citizenship. Indeed, in a society characterized by moral pluralism and disagreement, it is inevitable that some people’s moral views will offend others. Some people think it is wrong to eat meat; others disagree. But political liberalism does not
forbid vegetarian citizens from criticizing or condemning their omnivorous fellows, nor does it claim that vegetarians disrespect their fellows when they so condemn them (provided, of course, that the vegetarians are not arguing that political rights and liberties ought to be determined based on citizens’ commitment to vegetarianism). Stridently condemning those who eat meat may not make such vegetarians well liked at parties, but it does not make them bad citizens.

What about the religious nature of prophetic witnessing’s condemnation? Is it somehow more and problematically offensive to be told “God condemns you for eating meat” than to be told “I condemn you for eating meat?” For some, it may indeed be more offensive, if, perhaps, someone believes in God and disagrees about his evaluation of vegetarianism, or if someone retains some sort of vestigial belief in God and hearing “God condemns” reminds them of unpleasant childhood Sunday School experiences. But again, if the personal condemnation does not violate the norms of citizenship, I see no reason why the religious condemnation should.

What of the threat of divine punishment? If “God condemns you for eating meat” is taken to mean “God will punish you for eating meat,” is that problematically offensive? Again, I do not see how it is. If an atheist vegetarian told me I was wrong to eat meat and predicted that I would suffer ill health as a consequence of doing so, this does not strike me as any more or less offensive than if a religious vegetarian told me that God condemns me for eating meat and would punish me with ill health as a consequence. Keep in mind that if a religious vegetarian told me that God condemns me for eating meat and would send me to hell after I died as a consequence, she would be departing from the
practice of prophetic witnessing as I defined it in section (III), since the prophets were concerned with this-worldly consequences. Even in this case, though, as long as my status as a damned-to-hell omnivore did not mean that the religious vegetarian thought that I should have less status as a citizen or was less deserving to participate in fair terms of cooperation, I do not see how the offense I might feel at being told I am going to hell disrespects me as a citizen. So the threat of divine punishment is not problematically offensive, either.\textsuperscript{65}

The offense, then, that some might feel as a result of reasonable citizens’ prophetic witnessing is not a concern for liberal-democratic citizenship. In a morally and religious pluralistic society, people need to be able to cooperate, at least politically, with those whose moral and religious views offend them. And that means that they will, occasionally, both offend and be offended.

One might try to save the offensiveness objection by claiming that prophetic witnessing is problematic because the religious person’s absolute priority on obedience to God suggests unwillingness on their part to compromise politically on the issue about which they bear prophetic witness. Prophetic witnessing is problematically offensive

\textsuperscript{65} Rousseau famously observed: “it is impossible to live in peace with those one believes to be damned. To love them would be to hate God who punishes them” (\textit{The Social Contract}, Chapter VIII, “On Civil Religion”). Both political liberalism and the practice of prophetic witnessing disagree with this observation of Rousseau’s. For Rawls, the purpose of fair terms of cooperation and of political conceptions of justice is to create a set of political values by which one can condemn the use of state power to enforce religious conformity as unreasonable without implying that, for example, the doctrine “outside of the Church there is no salvation” is false. See \textit{PL} 138. So political liberalism holds that one can live in peace with those one believes to be damned, if one is reasonable. Similarly, the practice of prophetic witnessing requires precisely the sort of love for those God condemns that Rousseau feels is impossible, as my discussion of Jonah in section (III) suggests.
because it inspires fear that the bearer of prophetic witness, who, the objection might run, is fanatically devoted to their cause, will not allow any position but the one she believes God has ordained to be the law of the land. This version of the offensiveness objection questions whether someone so committed to the righteousness of their cause can have the restraint necessary to accept political defeat and continue to cooperate politically with others who disagree. But this version of the objection assumes that when someone says, “God condemns X,” the intention “I will not rest and will do everything within my power to abolish X” is somehow inextricably part of the statement “God condemns X.” This version of the offensiveness objection sees only Jonah eagerly anticipating God’s destruction of Nineveh and not Jeremiah lamenting Jerusalem’s captivity. And the objection is right to suggest that the intention “I will not rest and will do everything in my power to abolish X” is indeed a threat to political cooperation in a liberal democratic society, since, presumably, neither laws, constitutional procedures, nor norms of citizenship hold sway over someone so committed. But, as my analysis of the practice of prophetic witnessing shows, it is a mistake to infer from the statement “God condemns X” the conclusion that the person who believes in God must not rest and must do everything in his power to abolish X. God did not require that of the prophets, and a believer who takes that position is departing from the prophet’s example, not to mention the doctrinal views of many religions, who claim, for example, that God condemns greed, but do not expect their adherents to embark on a quixotic quest to do everything in their power to abolish greed.
So the potential offensiveness of prophetic witnessing does not provide grounds to conclude that the practice of prophetic witnessing violates the obligations of liberal-democratic citizenship, as given by the phased account of democratic decision-making. Prophetic witnessing—the public proclamation of God’s judgment of some issue or practice to the holders of political power and the people who support them—is a religious practice of political engagement that is permissible in a constitutional democracy.

Prophetic witnessing is also more than just permissible in a constitutional democracy. Assuming that my articulation of prophetic witnessing’s normative structure and presuppositions are correct, the practice of prophetic witnessing coheres deeply with the normative structure and presuppositions of the practice of democratic discussion and reasoning. The prophet, after all, communicates God’s condemnation of a practice and then \textit{lets his audience decide how they will respond}. The prophet’s witnessing is not a post-hoc justification of religious coercion or a rationalization of some unjust status quo; it is an \textit{argument} directed to an audience that the prophet treats as persons who have the capacity to respond to the argument in some way: to affirm it and accept its implications for their own choices and behavior, to deny it, or even to ignore it. Admittedly, a twenty-first century epistemologist might worry about the status of the prophets’ conviction; the prophet can, after all, only offer his own personal call and revelatory experience to an interlocutor who skeptically demands, “Prove it!”\textsuperscript{66} Prophetic witnessing’s

\textsuperscript{66} For discussion of how “the impossibility of discriminating between true and false prophecy on the basis of objective and verifiable criteria” affected the development of prophecy itself, particularly in the post-exilic period, see Blenkinsopp, \textit{A History of Prophecy in Israel}, 148-160. The quoted passage is on pp. 158.
epistemological quandaries notwithstanding, the revelatory origin of their call and knowledge of God’s will does not undermine the deep respect for their audience’s moral responsibility that their principled willingness to allow that audience to turn toward God or to reject him indicates. As such, prophetic witnessing is not just as religious practice of political engagement that is compatible with liberal-democratic norms, it is also a religious practice of democratic reasoning, one that provides a powerful normative example to those religious citizens looking to the biblical traditions for guidance about how they should interact with the political world around them. 

V: Prophetic Witnessing and Holy Crimes

Finally, to complete my argument and show how prophetic witnessing can help religious citizens navigate substantive conflicts between their religious and civic obligations, I return, briefly, to Rawls’s wide view of public political culture. I do this in order to show how my discussion of prophetic witnessing above confirms, expands, and defends Rawls’s discussing of the role of witnessing in the wide view. This will set up the foundation for me to apply my analysis of prophetic witnessing to substantive conflicts between legitimate law and citizens’ religious views.

In a footnote following his discussion of the wide view of public political culture, Rawls adds to his analysis of permissible religious forms of discourse by considering what he calls “witnessing.” For Rawls, witnessing is a permissible “form of discourse”

67 I am indebted to Patchen Markell and Ariel Zylberman for pushing me to explore how prophetic witnessing is a religious practice of democratic reasoning as well as one of political engagement.
within a well-ordered society. In such a society, as I explained in section (I), a legitimate law may be passed that conflicts with the reasonable\(_{2D}\) comprehensive commitments of some citizen or group of citizens. The law thus is justified by appeal to political values draw from a reasonable\(_{4D}\) political conception of justice, but it nevertheless conflicts with some reasonable\(_{1D}\) citizens’ reasonable\(_{2D}\) religious views. In this case, Rawls claims that citizens may “express their principled dissent from existing institutions, policies, or enacted legislation,” without justifying their dissent by appeal to a reasonable\(_{4D}\) political conception of justice. Indeed, in this case the witnessing citizens may well recognize that they have no public reasons to which they can appeal in order to justify their dissent. Nevertheless, they may “bear witness to their faith” by letting their fellows “know the deep basis of their strong opposition.” Rawls believes that such witnessing is consistent with the idea of public reason because the citizens bearing witness can consistently recognize the law as legitimate and “accept the obligation not to violate it.”\(^{68}\) Rawls claims, in other words, that citizens can simultaneously witness and accept that public reason is the arbiter of legitimacy in a constitutional democracy.

Rawls’s position here is vague but suggestive. Rawls points to “witnessing” as a way for religious citizens to deal with a legitimate law that contradicts their religious convictions. But he does not explain what witnessing does for religious citizens in such circumstances. As a result, his position does not make it clear why a religious citizen in

\(^{68}\) The footnote in question is found in *LP* 156 n 57.
such a situation can accept the political legitimacy of the law and obey it while witnessing that the law is not morally or religiously acceptable.

My analysis above clarifies and confirms Rawls’s suggestion: bearing prophetic witness

enables religious citizens to fulfill their obligations to God while simultaneously accepting the political legitimacy of publicly justified laws and thereby fulfilling their obligations to their fellow citizens.

What does prophetic witnessing do for religious citizens when they are faced with a legitimate law that contradicts their religious views? Consider, again, religious citizens of the sort described in Chapter Two: they put overriding priority on their obligations to God, and those obligations include adherence to certain specified political views and action to further those views. When a law conflicts with such religious citizens’ commitments, they see themselves as bearing an obligation to God to take action. They cannot simply allow a law their religion leads them to feel is wicked or unjust to stand without criticism or condemnation, even if that law is publicly justified and is therefore politically legitimate. But in this particular case, where the conflicting law is specified as legitimate and the conflict occurs within a well-ordered society, more serious forms of political resistance, like civil disobedience, are not an option; such actions are only justified in response to illegitimate laws.

What actions, then, may such religious

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69 I use the term “prophetic witnessing” instead of just “witnessing” to suggest the practice’s origins in the Hebrew Bible. It also has the benefit of distinguishing the practice from proselytizing, which is also sometimes called “witnessing.”

70 Rawls requires that a law be illegitimate—not publicly justifiable—for citizens to be justified in using civil disobedience as a means of changing it (See A Theory of Justice, 319-346). For the purposes of my analysis here, I accept Rawls’s position.
citizens take that are consistent with their civic obligations? They may bear prophetic witness; they may publicly proclaim God’s condemnation of the law in question to the holders of political power and the people who support them. They thereby fulfill their obligation to God to act on the political implications of their religious commitments without denying public reason’s role in determining the legitimacy of law in a constitutional democracy.

How far may such prophetic witnessing go? A critic might claim that my endorsement of prophetic witnessing is deeply unsatisfying, supposing that I am instructing religious citizens to restrain themselves to mere speech, and to refrain from taking further political action against the law in question. While I deny the assumption implicit in this criticism that speech is somehow an ineffective or inefficient form of political action (remember the prophets’ own faith in the efficacy of the word), my position is consistent with religious citizens engaging in a much wider range of political action under the framework of prophetic witnessing than “mere” speech. As in the examples of Rachel and Adam above, and the examples of the prophets themselves, protest and symbolic speech are also compatible with accepting public reason as the arbiter of legitimacy in a constitutional democracy. Indeed, so too would be working through civil society and voluntary associations in order to address the issue. Furthermore, given the phased account of democratic decision-making, prophetic witnessing and other public actions and argument directed toward getting the issue in question back on the deliberative agenda are also permissible. The boundary between permissible and impermissible political action in this case forbids actions that suggest the
political illegitimacy of publicly justified laws: civil disobedience (defined, as Rawls does, as the deliberate breaking of law to call attention to illegitimate laws), violent resistance, and the like. Finally, the critical point for prophetic witnessing’s compatibility with public reason as the arbiter of legitimacy in a constitutional democracy is that those bearing prophetic witness understand God to hold them accountable for their own actions only. If they bear witness, argue, and protest but fail to persuade their fellows to change the law in question, they can rest assured that God, or at least the God of the writing prophets, is satisfied with their efforts. Failure to achieve their desired aims with speech and protest does not imply that the prophets’ God demands that they turn to more coercive means of political action.

Consider again, then, the two examples of substantive conflict I discussed in section (I) above. In each case, prophetic witnessing provides a way for religious citizens to navigate the conflict without offending their obligations to God or to their fellow citizens.

A) A well-ordered society votes to relax current laws forbidding later term abortions (those that occur after the first trimester), the opposition of some religious citizens to such legislation notwithstanding.

What options do the opposed citizens have in this situation? Presume, for the sake of argument, that so relaxing abortion regulations is publicly justified.71 The strict compliance assumption of ideal theory demands that I make this presumption; the laws of

71 Rawls did claim “a reasonable balance [of political values] may allow” a woman a right to an abortion beyond the first trimester.” PL 243 n 32.
a well-ordered society are presumed to satisfy the liberal principle of legitimacy.72

Religious citizens who are opposed to abortion may testify to God’s condemnation of the practice, as they understand it. They may protest and agitate to encourage their legislature to reconsider the issue. They may organize and create public campaigns to press their understanding of the immorality of abortions in the public sphere. Whether the opposed citizens succeed or fail to change the law, they can act in confidence that by taking some action, whether in speech, protest, or otherwise, and thereby bearing witness of God’s judgment of the law, they have fulfilled their obligations to God.

B) A group of religious citizens come to feel that God condemns their society for offering equal marriage opportunities to all regardless of sexual orientation, even though they recognize that this view is discriminatory and cannot be publicly justified.

The religious citizens in this case recognize that the reasonable political conception of justice they affirm demands equal respect for citizens, and that this, in turn, requires equal marriage opportunities for all, regardless of sexual orientation. As a result, they accept that the current law regulating marriage opportunities is politically legitimate. Indeed, even if they were to believe that restricting marriage opportunities to

72 Some may then wonder at the example I chose, asking how they could be expected to believe that a society that allowed late term abortions or, for that matter, any abortions of choice at all, could possibly be called “well ordered.” I would point out that Rawls’s final position on abortion suggests that considerably stricter regulations than are currently law in the United States may be publicly justifiable (LP 169-171, also see Michael J. Perry, “Abortion,” in The Political Morality of Liberal Democracy, 123-137). This suggests that a well-ordered society may have a range of different publicly justifiable abortion regulations. Such is the nature of democratic cooperation in conditions of reasonable pluralism: citizens do not get to stipulate in advance that they will only cooperate if political outcomes, within certain specified limits, coincide with their views, in this case whether those views are for abortion rights or against them.
heterosexual couples was publicly justified, showing this alone would not be enough to conclude that offering equal marriage opportunities to all without regard to sexual orientation is not publicly justified. It may be the case that both positions are politically legitimate. Nevertheless, prophetic witnessing and other forms of political action remain permissible options for these citizens. They may bear witness of their religious justification for restricting marriage to heterosexual couples alone. They may conduct legal protests (protests that do not involved law breaking; given Rawls’s definition, a law-breaking protest would be civil disobedience). They may organize campaigns to spread their views. They may work to convince other churches and religious organizations not to marry gay or lesbian couples. All of this is compatible with their acceptance of public reason as the arbiter of legitimacy in a constitutional democracy; none violates the requirements of liberal-democratic citizenship. And, like the citizens in case (A), they may rest assured that if they fail to change the nature of marriage law in their society, they have nevertheless fulfilled their obligations to God.

What, then, are the limits to the reconciliation prophetic witnessing offers to religious citizens who find themselves in holy crime inducing situations where legitimate law conflicts with their religious obligations? As I see it, there are two, one (1) based on the nature of the law in question, and a second (2) based on the nature of the citizens’ religious obligations.

First, then, the nature of the conflicting law: prophetic witnessing offers religious citizens a way to dissent from legitimate law in cases where that law does not require religious citizens to do things that their religion forbids or to forbear from doing things
that their religion requires. In cases (A) and (B) above, neither the new law allowing late
term abortions nor the current equal distribution of marriage opportunities require
religious citizens to get abortions or to marry gays and lesbians. And all the political
liberal account of liberal-democratic citizenship requires of them is to accept the political
legitimacy of such laws, to accept, in other words, that they do not violate fair terms of
cooperation or the burdens of judgment. In this way, the examples I picked are strikingly
different from Antigone’s situation; there, Creon’s order specifically demanded that she
forbear from burying Polyneices, something she understood her religion to require. In
cases like Antigone’s, then, prophetic witnessing is not a sufficient solution to the
conflict between citizens’ religious and civic obligations. In these cases, they must
choose, as pacifists, for example, have often had to choose between fidelity to their
religion and their loyalty to their countries. If citizens take their religious obligations to
be overriding, then, they will undoubtedly choose fidelity and conscientiously refuse to
act as the law demands. 73 One may hope that their fellow citizens will respond
empathetically to such refusal, but political liberalism does not require them to do so. A
pacifist citizen, for example, who conscientiously refuses to pay taxes during a just war
because she believes her religion to require her to avoid all implication in state-sponsored
killing is not abiding by fair terms of cooperation, and so she may legitimately be
punished. Such a citizen likely will bear prophetic witness against the war and all other

73 For discussion of conscientious refusal, see Rawls, A Theory of Justice, 323-326, 331-335.
forms of state-sponsored killing, but her prophetic witnessing will not resolve the conflict for her. She still must choose between her religious and civic obligations.

Second, the political obligations that citizens understand their religions to place on them limit the reconciliation prophetic witnessing can offer them. In short, if a citizen believes that God requires that they not just bear witness, argue, legally protest, and organize in civil society in order to pursue the political positions that their religion requires of them, but also that they break legitimate laws, violate constitutional procedures, bribe, threaten, or assassinate citizens in key positions, or engage in violent resistance, then, clearly, prophetic witness offers them little reconciliation. God, they feel, is not satisfied with “mere speech,” he demands action. But one main thesis of my analysis of the practice of prophetic witnessing is to suggest that the God of the prophets is satisfied with speech, and that there is not anything “mere” about it. The opening of the Hebrew Bible, for example, suggests that speech created the world: “And God said, ‘Let there be light’; and there was light” (my emphasis).74 The Gospel of John equates God and speech: “In the beginning was the Word, and the Word was with God, and the Word was God.”75 To suggest, then, that speech is somehow insufficient in God’s eyes, or that speech does not have enough power to act efficaciously in the world, is to depart fundamentally from the biblical traditions.76 It is unsurprising, then, that one who feels

74 Genesis 1:3.
75 John 1:1.
76 By claiming this, I am arguing that those religious citizens who accept the canonicity of the Hebrew Bible and New Testament have good religious reasons to believe that God values speech highly as a form of action in the world, and that, as a result, they need not feel civic obligations that impose restraint on
that God is not satisfied with mere speech would also not be able to take advantage of the reconciliation between religious and civic obligations that prophetic witnessing offers.

With these limits in mind, then, is the reconciliation that prophetic witnessing offers enough to prevent the real possibility of substantive conflict between citizens’ religious and civic obligations from undermining reasonable (1D) religious citizens’ ability to wholeheartedly endorse the terms of democratic cooperation? I believe that it is.

Consider the second limit I discussed above first. Citizens who feel that they are bound by religious obligations to violate legitimate laws and constitutional procedures and to use violence in order to ensure that their religiously-mandated political positions are enacted clearly do not qualify as reasonable (1D). Their fellow citizens cannot wholeheartedly cooperate with them, because they cannot trust them to abide by fair terms of cooperation in the event that they loose an election or a court case. So prophetic witnessing cannot assist citizens who deny norms of reciprocity to be reconciled to democratic cooperation. This is neither problematic nor surprising.

What, then, of the first limit? Are there likely to be enough instances where a constitutional democracy passes laws that directly mandate citizens to violate their religious obligations that religious citizens feel they cannot conscientiously accept and abide by fair terms of democratic cooperation in a religiously pluralistic society?

other forms of political action (civil disobedience, violent resistance, etc.) in some circumstances contradict their religious obligations. I do not mean to argue that there are no times when religious adherents may feel that God permits them to engage in acts of civil disobedience or violent resistance.

297
Remember that the first implication of Rawls’s core conception of reasonableness was that laws in pluralistic liberal democracy must respect citizens’ liberty of conscience and freedoms of thought and association. The vast majority of laws that specifically mandate citizens to violate their religious obligations are violations of these freedoms. Certainly Creon’s order that Polyneices’ remain unburied was just such a violation. The much more remote possibility, then, of a well ordered society’s legislature passing a law that mandates that religious citizens’ act directly against their religious obligations need not scuttle religious citizens’ wholehearted commitment to liberal democracy. And in the event that religious citizens are, occasionally, faced with such laws they can, insofar as they themselves accept the norms of reciprocity expressed in the obligations of liberal-democratic citizenship, make powerful arguments against such laws, arguments that are themselves deeply tied to those norms.

In conclusion, then, most of the times reasonable citizens are faced with laws that conflict with their religious convictions, they will not be conflicts of the sort that lie outside of their ability to bear prophetic witnessing to address them. Most such laws will be like cases (A) and (B) above, laws that allow practices some citizens’ religions forbid. And in such cases, citizens can bear prophetic witness against those practices while simultaneously accepting the political legitimacy of the laws allowing them. In such cases they can honor their God and their neighbor simultaneously.
CONCLUSION: A TALE OF THREE DEMOCRACIES

I: The Argument Thus Far

In the chapters above, I argued that the guidelines for public political discussions in constitutional democracies should be set such that religious citizens who accept norms of reciprocity, the burdens of judgment, and the liberal principle of legitimacy (citizens who are reasonable,\(^{1D}\)) may argue for political proposals solely on religious grounds (Chapter Two). The phased account of democratic decision-making shows how such citizens can be accommodated without sacrificing legitimate democratic governance in conditions of pluralism (Chapter Three). And the phased account also shows that setting the guidelines for public political discussions in an appropriately inclusive way enables religious citizens to practice prophetic witnessing, a religious practice of political engagement and democratic reasoning that can serve as a powerful normative model for religious citizens’ political participation (Chapter Four). Prophetic witnessing offers religious citizens a way to honor their God and respect their neighbors even when those obligations substantively conflict, when, for example, God expects them to work for a society that forbids abortions and gay marriages but their neighbors enact laws allowing both (to pick two completely unknown and unexamined political controversies).

The justification for developing the phased account of democratic decision-making and recommending the practice of prophetic witnessing lies in the coherence and persuasiveness of a moderated and reformulated version of the integrity objection to political liberalism, the argument that political liberalism as it is commonly understood does not allow citizens with overriding and totalizing religious obligations to live lives of
religious integrity (Chapters One and Two). A life of religious integrity, proponents of this objection claim, requires that citizens be able to argue in public political discussions on the basis of their religious convictions without being expected to translate their arguments into widely accepted political values. The solution I have proposed, however, does not only allow religious citizens to make political arguments on the basis of their deepest convictions; it offers the same opportunity to citizens who devote themselves to comprehensive philosophical doctrines or other non-religious sources of meaning. Given the phased mode of inquiry, all citizens who accept norms of reciprocity (including the burdens of judgment and the liberal principle of legitimacy) may argue for political proposals solely on the basis of their deepest convictions, whether those convictions are widely shared or able to be expressed in terms of “reasonably endorsable” political values or not. The persuasiveness of my argument above, then, depends crucially on the attractiveness of a political world in which people’s deepest convictions (again, religious or otherwise) are a part of their public political argument and advocacy.

Imagining a political world in which people’s deepest convictions are a part of their public political argument and advocacy, however, easily goes awry, and when this happens, it undermines the force of my argument and pushes debate toward one of two equally unappealing extremes. As a concluding thought experiment, then, consider the following three different imaginary democracies, each of which is characterized by a different approach to the political role of deep religious and moral convictions. This thought experiment gestures towards the likely civic associational and moral-psychological consequences of differing norms of democratic decision-making; I intend it
to evocatively communicate the upshot of my argument for adopting the phased account of democratic decision-making and accepting norms for public political discussion such that prophetic witnessing and other religious and comprehensive practices of political engagement are permissible.

**II: Democracy A**

Democracy A is a democratic polity in which widely shared, reasonably endorsable political values are the only acceptable terms of public political discussion and debate. Democracy A, in other words, scrupulously follows the guidelines for political decision-making Rawls first articulated and to which many political liberals continue to adhere, Rawls’s later, vaguer appeals to “the proviso” and the “wide view of public political culture” notwithstanding.

Public political discussions in Democracy A are not all smiles and consensus (no matter what some of Democracy A’s friends and foes allege); various political parties, citizens’ associations, think tanks and the like interpret Democracy A’s shared political values in a variety of different ways, and their differences make political decisions divisive and contentious at times. But that divisiveness does not extend beyond differences in the interpretation and application of Democracy A’s shared political values; indeed, the various different religious, moral, and philosophical views present and organized, to one degree or another, among Democracy A’s citizens all frame their political argument and advocacy in terms of those political values, which they all recognize as the only acceptable terms of political discussion and decision-making in their society.
The occasional divisiveness and contention of public political discussions in Democracy A notwithstanding, then, Democracy A’s public political discussions conceal a great deal of religious and moral difference. As a consequence of Democracy A’s political decision-making practice, there are far more different moral and religious views present among Democracy A’s citizens than there are political, moral, and religious differences present in Democracy A’s public political discussions. These broader moral and religious differences among Democracy A’s citizens inform some critical, counter-cultural groups and movements of various kinds and political orientations among those citizens. These groups’ influence, however, is limited to the background culture of Democracy A’s civil society; they operate within Democracy A’s voluntary associations, within its churches, synagogues, and mosques, and within its universities, not within its political parties, labor unions, think tanks, or other groups that directly advocate in public political discussions. Indeed, insofar as Democracy A’s universities, religious groups, and voluntary associations have political advocacy groups associated with them who do operate in public political discussions, those political advocacy groups’ goals and discourses are in quite a bit of tension with the critical, counter-cultural aspects of their sponsoring associations. They do not, after all, always orient their activities according to the same values, and it is sometimes difficult for each group to internally reconcile the political values that inform their advocacy and public image with their deeper commitments, particularly when those commitments are thought to be critical, to one degree or another, of the political values that inform their public image and by which political decisions are made.
The difficulties some voluntary associations and religious groups feel in reconciling their deeper commitments with Democracy A’s political values mirror the tensions many individual people feel between the commitments that drive their life choices and those that motivate their politics in Democracy A. Indeed, for such people, public political discussions feel disconnected from their life experiences and deepest convictions; for them, citizenship feels like an act, a charade they put on because they recognize that their neighbors expect it of them even though they do not see how the act connects to the deeper values that help them determine their identities, make important life decisions, and given them a sense of meaning and purpose. The politically inclined, reflective portion of Democracy A’s citizens in this circumstance yearn for a deeper connection with their citizenship and political institutions; they look back with some bewilderment at the passion that they are taught drove Democracy A’s early democratic movements and wonder if their political present is really the natural heir of such profound commitments. For some, this yearning simply yields political frustration and dissatisfaction; they decide they just do not like politics and choose not to be involved. For others, however, this yearning leads them to one or another form of radicalization, and they come to reject the political values that Democracy A’s citizens are supposed to share. They doubt whether a democratic polity can be deeply meaningful and begin to wonder whether people are simply constituted such that, given moral and economic liberty and political and social equality, their laziness, hypocrisy, mediocrity, and self-interest combine to create a regime that, while placid, stifles the great achievements that could otherwise be a part of political life. Some decide the path to such achievements
lies in an elite vanguard that, by virtue of its own determination, fortitude, and understanding of political realities, forges a society of perfect economic equality and material plenty; others conclude to the contrary that true political passion, meaning, and achievement is found on the side of hierarchy and aristocracy. A third group refuses to abandon Democracy A’s political values but instead imagines an alternative way of adhering to them, a democratic society in which people’s deepest convictions are the everyday currency of public political discussions and decision-making. They imagine, in other words, a polity that adheres to few, if any, substantive political decision-making norms, a polity in which shared, reasonably endorsable political values have no required role in public political discussions or decision-making. They imagine a polity like the one I call “Democracy C” below.

III: Democracy C

Democracy C is a democratic polity that adheres to only the most minimal norms of democratic decision-making: one-person one-vote, majority rule, and the like. There are no substantive measures of political legitimacy and no commitment to publicly justifying coercive laws by appeal to reasonably endorsable political values in Democracy C. As a result, the final word—insofar as it can be called a final word—on every issue in Democracy C is simply the current majority’s will. Political life is anything but placid here; indeed, radical contestation of political decisions and institutions is not just accepted, it is the daily fare of political life. In other words, arguments that claim to go to the very religious/philosophical/moral root of each political question justify or criticize every decision Democracy C makes; at issue in every decision
are not merely alternative interpretations and priority weightings of shared political values but the deepest convictions of Democracy C’s citizens— their commitments to their differing moral values and beliefs, their religions and philosophies of life, and their identities. As a result, religious, moral, and other comprehensive divisions cleave political and civic-associational life in Democracy C into well-demarcated communities; religious, associational, and political life are completely integrated for all of Democracy C’s citizens. Each voluntary association or religious group has a political party, think tank, or labor union (or all three) with which it wholly identifies as the vehicle by which their values and commitments are represented politically and, provided political success, will be inscribed into the political and institutional life of Democracy C. To the citizens of Democracy C, then, their politics makes it appear that there are no norms or commitments that do not depend for their validity and force on the prevailing political winds, no common values that prevent those who happen to enjoy majority support from doing almost anything they please.

As a result of Democracy C’s decision-making norms and practices, political life and citizenship there is normatively and psychologically exhausting. After all, quite literally everything is on the table each time a vote is called in Democracy C’s legislature, from citizens’ basic rights and liberties to the official religious or philosophical commitments of the state. Furthermore, people’s comprehensive religious and philosophical doctrines and the political identities associated with them are so tightly integrated both in their own eyes and in the eyes of their neighbors that there are no small or unimportant individual political positions. As a result, if someone departs from the
accepted position on issue X for adherents of comprehensive doctrine Y, that person’s loyalty and commitment to comprehensive doctrine Y and the entire community it organizes is immediately called into question, not just some of the time for some political issues, but consistently, for every issue of political consequence—and in Democracy C, there are quite literally no issues that are not of political consequence. The same, of course, happens in reverse when a person decides to change their comprehensive commitments; they and their neighbors assume as a matter of course that their political loyalties and values will change as well—when they do not assume that it was politics that ultimately motivated the comprehensive change in the first place. Democracy C’s decision-making practices, in other words, create a social and moral world where every personal choice and commitment is politicized.

Unsurprisingly, some citizens of Democracy C find their political life unsatisfying, though for very different reasons than citizens of Democracy A do. They find themselves yearning for a political life that is not so inevitably high-stakes, for the social, moral, and political space in which they can be free to explore different ideas, political positions, and moral views without having their comprehensive commitments and their associated identities and loyalties questioned. The more dour citizens of Democracy C may wonder if democracy is compatible with critical thinking at all, since the democracy they know seems to forestall its possibility—the stakes are too high—and so they abandon even the minimal values on which political life in Democracy C is organized. This is ironic, given that it is, after all, a group of critical citizens in Democracy A that wish they lived in Democracy C. And some of Democracy C’s
citizens, of course, yearn for more constrained decision-making practices, practices more like Democracy A’s. Dissatisfaction with Democracy C need not inevitably lead citizens’ imaginings back to Democracy A, however. Democratic decision-making need not oscillate between a practice that constrains debate to shared, reasonably endorsable political values alone and a practice that is radically unconstrained, one in which every issue is on the table all of the time. Dissatisfaction with political life in Democracies A and C should rather lead people to imagine a third democracy, Democracy B.

**IV: Democracy B**

Democracy B is a democratic polity where democratic *discussion* is nearly unconstrained; citizens feel free to and regularly justify the proposals they wish to discuss and the policies they favor on the basis of their deepest moral commitments, without necessarily discussing which reasonably endorsable political values support their proposals. However, the *resolutions* that Democracy B’s legislature passes are constrained; these Democracy B’s citizens expect to be justified in terms of reasonably endorsable political values, and, indeed, they fiercely criticize the legislature when they think it has passed a resolution for which this is not the case. In other words, Democracy B’s decision-making practices conform to the phased account of democratic decision-making I discussed in Chapter Three above; they follow the nearly uninhibited norm during agenda-setting discussions and work towards finding a publicly justifiable law or policy for each issue they discuss as deliberation moves temporally from the agenda-setting phase to the resolution phase.
What are the civic associational and moral-psychological consequences of Democracy B’s decision-making practices? They moderate the extremes of both Democracy A and Democracy C. Unlike Democracy A, it is much less likely in Democracy B that there will be a disconnect between the deep, comprehensive values that voluntary associations and religions use when they organize their associational life and the political values they employ when they advocate in public political discussions. Citizens and associations are, after all, free to advocate in public political discussions on the basis of their deepest commitments. And unlike in Democracy C, there are significantly less well-defined cleavages between some comprehensive doctrine, its adherent community, and its associated political party and program on the one hand and a differing comprehensive doctrine, its adherent community, and its associated political party and program on the other. Citizens do not feel the need to patrol the boundaries of their comprehensive groups as diligently as they do in Democracy C, because disagreements and even defections from one doctrine or political position to another do not risk the severe political consequences in Democracy B that they do in Democracy C. As a result, there is the political and social space for adherents of one comprehensive doctrine to disagree politically and to interpret their religious or philosophical tradition as supporting alternative and perhaps even contradictory political programs. There are some political issues that remain exceptionally contentious in Democracy B, and at times, when citizens change their political positions on these issues, it does become much more difficult for them to adhere to a comprehensive doctrine that is generally taken, by
adherents and observers, to hold a different view on that issue. But such issues are considerably more rare in Democracy B than they are in Democracy C.

Citizenship in Democracy B is both more normatively satisfying and meaningful than in Democracy A and less normatively and psychologically exhausting than in Democracy C. There are, of course, still some citizens in Democracy B who feel like its politics is superficial, but because deep moral and religious convictions are welcome in the democratic decision-making process, people can more easily imbue their citizenship with much of the same meaning and purpose that their comprehensive commitments give to the other areas of their life. Citizenship becomes, for them, another part of their life in which they can apply the view of the world that brings them fulfillment and meaning, instead of something they feel is different or apart from that view. Their political activism thus has considerable passion and drive behind it; they can see how they share a political tradition with their conscientious forbears in Democracy B’s historical democratic movements. That said, because there are some issues and political institutions that the citizens collectively see as justified by reasonably endorsable political values, citizenship is less exhausting in Democracy B than it is in Democracy C. A citizen’s decision to take some time away from politics to think or simply to rest may mean that public political discussions lack their perspective and contribution for a while, but it does not mean that such a citizen will return to political life to find it drastically altered because adherents of some other comprehensive doctrine managed to construct a majority sufficient to profoundly alter Democracy B’s political institutions and provide their view or coalition of views public funding and endorsement or make blasphemy a
crime or whatever. On certain political issues where a citizen feels her comprehensive doctrine has a defined position that must be clearly communicated, the political stakes of citizenship may be high, but those issues arise occasionally; they are not the everyday currency of politics as they are in Democracy C. And while there will inevitably be some citizens in Democracy B who abandon their commitment to democratic political values, since citizenship can be both more meaningful than in Democracy A and is less unrelentingly demanding than in Democracy C, neither unsatisfied desire for political purpose, a sense of political hypocrisy, nor exhaustion will motivate that rejection as often in Democracy B as it did in Democracy A and Democracy C. In short, Democracy B’s decision-making practices create a political world in which citizenship can be meaningful without being exhausting, where politics can connect to citizens’ deepest convictions without politicizing citizens’ every moral commitment or change of mind.

V: The Three Democracies Compared

To conclude this brief thought experiment, let me be clear about the decision-making norms that operate in each different imaginary democracy and offer a brief, evaluative characterization of each of them. Democracy A runs according to Rawls’s early attempts to specific the proper guidelines for decision-making in a constitutional democracy. In democracy A, political values run amok, constraining people’s political advocacy and identification with their citizenship in profoundly stultifying ways. Democracy C runs according to a minimal account of democratic procedures that I see, as per my critical arguments at the end of Chapter Three, as the only coherent consequence of the alternative ethics of citizenship the religious critics have proposed to replace
Rawls’s guidelines and to accommodate religious integrity. In Democracy C, integrity runs amok, constraining people’s ability to question their own political and comprehensive commitments.¹ And finally, Democracy B follows the approach I outlined in Chapters Three and Four above. In Democracy B, political values and personal integrity are balanced, enabling comprehensive commitments and passions to motivate political advocacy and support citizenship without letting those commitments override the important role reasonably endorsable political values play in preserving democratic legitimacy and stability.

VI: Conclusion

What does imagining Democracy A, Democracy C, and Democracy B show about citizens, religious or otherwise, who desire to live lives of political integrity, lives where their comprehensive commitments shape their lives as a whole, including their political discussion and advocacy?

Comparing Democracies A, B, and C evocatively shows that it is possible to imagine a democracy in which the desire for religious and comprehensive integrity can be satisfied without sacrificing crucial commitments to liberal legitimacy and public justification and to the political and social institutions and spaces that those commitments

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¹ If Democracy C seems to some like a negative construal of “agonistic” accounts of democratic theory, it should, as I believe that the implications of the religious critics’ proposals share an unacknowledged and unexplored similarity with the ideal of agonistic pluralism, though I am unable to further explore or analyze this connection here. For proponents of various different forms of agonistic pluralism, some more and some less sensitive to the negative possible consequences of their position dramatized in Democracy C, see Chantal Mouffe, “Deliberative Democracy or Agonistic Pluralism;” William Connolly, Why I am not a Secularist; and Romand Coles, Beyond Gated Politics.
protect—most prominently in the thought experiment above, the space to question the political implications of one’s comprehensive view without necessarily abandoning one’s commitment to that view or its community of adherents. It shows that political liberals have no reason to fear religious or comprehensive arguments and justifications in public political discussions, in and of themselves. Indeed, far from fearing such arguments, comparing Democracies A, B, and C shows why political liberals should welcome religious and comprehensive arguments into public political discussions, as such arguments make it easier and more natural for citizens motivated by deep religious and comprehensive commitments to identify with their citizenship and find meaning and purpose within it. Indeed, citizenship as a social role is richer for more citizens in Democracy B than in Democracy A, without abandoning, as Democracy C does, its commitment to public justification. Furthermore, comparing Democracies A, B, and C shows that there is no reason why political thinkers should feel compelled to choose between a model of democratic discussion that is constrained to reasonably endorsable political values alone and one that is radically open and contested all the way down. To believe that the only coherent norms for democratic decision-making are those embodied in Democracy A on the one hand and Democracy C on the other is to accept a false dichotomy; it is a considerable failure of political imagination. There are other coherent, conceivable norms—those that operate in Democracy B—and those norms are not only coherent and conceivable, they lay the foundation for a political world and a conception of citizenship that is far more attractive, for religious, secular, and those citizens in-between, than is either of the other two alternatives.
Democracy B also manifests, I hasten to add, a particularly political liberal vision of democratic decision-making. While some may scoff at this claim, as political liberalism has become permanently associated in some people’s minds with rigorous constraints on contributions to public political discussions, the normative ideals that underlie my phased account of democratic decision-making all stem from sources inherent in the idea of a political liberalism. The desire to be able to live a life of religious or comprehensive integrity, after all, can be explained not only in terms of religious commitments to overriding, totalizing, God-given duties, but also in terms of Rawls’s desire that all reasonable citizens be able to affirm a reasonable political conception of justice and insert it “as a module” into their comprehensive views. He and the religious critics share the desire that citizens be able to affirm their citizenship as connected to their deepest moral, religious, and other commitments. And this same vision of coherence between comprehensive commitments and political values is the principle at work in the criticisms of Democracy A implied in my account of it above.

Given, then, that Democracy B manifests a particularly political liberal vision of democratic decision-making, there is no good reason to believe that political liberalism or Rawls, its main elaborator and proponent, is unfriendly to religious citizens (or, to specify, to religious citizens who affirm norms of reciprocity in a way that they feel is consistent with their religious convictions). Consider: in Chapter One, it was Rawls’s vision of what it means to have a society justified by a political conception of justice that

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2 *PL* 12, 145.
allowed me to argue that meaningful religious liberty and living a life of religious integrity are interconnected ideals. In Chapter Two, it was Rawls’s desire, mentioned in the preceding paragraph, that each citizen affirm a reasonable political conception of justice as consistent with their comprehensive views that allowed me to explore whether or not citizens with overriding and totalizing religious obligations were politically reasonable and conclude that many such citizens were, popular and scholarly opinions to the contrary notwithstanding (see section III especially). In Chapter Three, Rawls’s proviso and wide view of public political culture were foundationally important in conceiving of a set of guidelines for democratic decision-making that allowed citizens to make comprehensive arguments in public political discussions without sacrificing liberal legitimacy. And in Chapter Four, Rawls’s brief comments about “witnessing” confirmed my analysis of the democratic potential of prophetic witnessing as a religious practice of political engagement and democratic reasoning. Granted, Rawls’s first discussions of public reason and his associated guidelines for decision-making did much to alienate his religious readers. But those readers have not yet given full measure to the potential Rawls’s later revisions have in addressing their original concerns, potential that my phased account of democratic decision-making and analysis of prophetic witnessing indicates and develops. My views on these topics are not simply Rawls’s; I do not claim them to be such. But his views deeply inform and shape my positions and are simultaneously, as I have argued, friendly to a great many deeply religious (and deeply controversial) contributions to public political life. This friendliness puts paid to those who suggest that political liberalism as a political theory is inherently unfriendly to
religious citizens, or that it *inevitably* excludes them. Thus, as I suggested in Chapter One, while *Rawls’s* political liberalism has its well-known difficulties with religious citizens, the idea of a political liberalism, to which he was foundational in pointing the way, is crucial for imagining a religiously pluralistic, democratic society that governs itself legitimately. And indeed, with Democracy C as I described it above in mind, Rawls’s theoretical framework, suitably adjusted, does far better at meaningfully and attractively accommodating religious citizens than do the proposals of his most thorough and consistent religious critics.

There are also, however, those to whom political liberalism is most definitely not friendly, those to whom political liberalism makes no attempt to accommodate: people who deny the norms of reciprocity Rawls expresses in the ideas of fair terms of cooperation, the burdens of judgment, and the liberal principle of legitimacy. These are the people who fall into the various illiberal categorizations I developed in Chapter Two, section (IV): reasoned illiberals, unrestrained illiberals, and revealed illiberals. Political liberalism is, I note, *impartially* unfriendly to such views; it does not matter what the ground of their various illiberalsisms are, whether philosophical, religious, romantic, aesthetic, nationalistic, or whatever. Indeed, some critics do both political liberalism and religion (not to mention the broader public sphere) a disservice by adopting one or another illiberal or undemocratic position and then labeling that position religious and crying foul against political liberalism’s religious intolerance, when it is not religion that
political liberalism does not tolerate but illiberalism and authoritarianism. Political liberalism labels all such illiberal or undemocratic political views unreasonable and philosophically ignores them, refusing to engage their arguments.

It would be a mistake, however, to cast this philosophical ignoring as a more general refusal to engage illiberal or undemocratic people. The way Rawls treats illiberal and undemocratic views is in many ways political liberalism’s own prophetic moment. The concept of the reasonable, as one critic puts it, is a “moral [line] in the sand.” What the political liberal says to the illiberal or the authoritarian is not “I feel that your premises do not justify your conclusion,” or “liberal principles of justice can be vindicated by adjusting them to accommodate your criticisms in this way,” but “choose this day whom you will serve…but as for me and my [society], we will” live in political relationships of mutual respect and reciprocity. In other words, political liberals analyze the normative structure and commitments of the practice of democratic cooperation and then, effectively, bear prophetic witness (albeit in a modified, “political” version of the practice I analyzed in Chapter Four) to the illiberal and the authoritarian. “This is the nature of constitutional democratic cooperation,” the political liberal claims, “Decide whether you are in or out.” There are coherent ways for political liberals and those informed by its perspective to moderate this stance, ways for political liberals to show the

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3 If one adopts the skeptical reading of the new natural lawyers’ work I developed in Chapter 2, section (VI.1), their arguments are a good example of this sort of obfuscation.


5 The final quotation is a small adaptation of Joshua 24:15.
care and concern for the illiberal or authoritarian that Lamentations and Jonah suggests is necessary for proper prophetic witnessing, but this stance is, I believe, a strength of political liberalism rather than a weakness. Political liberalism’s prophetic stance makes the limits of religious and philosophical liberty in a political regime premised on equal liberty and reciprocal respect clear. Such clarity exposes those who refuse to accept equal liberty and reciprocal respect; it demands a response from them, and such responses may be heated. It is not surprising, then, that political liberalism’s accounts of the limits of religious liberty are controversial and offend some, but political liberals need not apologize for them. Political liberalism, as I have argued, must be more accommodating than it has been to religious citizens. It need not revise its ideal decision-making norms or account of citizenship to accommodate the undemocratic or illiberal.

There are, however, also those to whom political liberalism is less deliberately unfriendly, and to whom it is unfriendly without such an important, principled justification. Consider here religious citizens’ difficulties in navigating specific, substantive conflicts between their religious and civic obligations as I discussed in Chapter Four. Guidelines for democratic decision-making that allow religious citizens to practice prophetic witnessing help considerably here, but they do not help religious citizens with all such conflicts. Political liberals interested in religion should more carefully consider the stance a constitutionally democratic state should take to citizens who may refuse at times to comply with legitimate laws. As I briefly mentioned in

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6 This, I believe, is the role of the developing “conjecture” literature in political liberal theory; for examples see Lucas Swaine, *The Liberal Conscience* and Andrew March, *Islam and Liberal Citizenship*. 
Chapter Four, section (V), Rawls counts civil disobedience and conscientious refusal as laudable political activities when the citizens who engage in them can coherently argue that the laws that inspire their disobedience or refusal are illegitimate—when, in other words, they can publicly justify their disobedience or refusal. When considering the perspective of reasonable religious citizens, particularly those religious citizens who take their religions to impose overriding and totalizing obligations, however, Rawls’s positions seems like it may be too constrained. If a constitutional democracy passes a law that allows practices that some citizens feel are profound moral wrongs or forbids practices that they feel are profound moral rights, is a public justification necessary in order to legitimize their civil disobedience or conscientious refusal? To use the framework of the phases of deliberation I developed in Chapter Three, does it make sense to consider civil disobedience and conscientious refusal as activities that pertain to the resolution phase of deliberation alone? Can one make a convincing argument that they play an important agenda-setting role or pertain to other deliberative functions, and, if so, is a more permissive norm governing their use justified? What if, to change the case only slightly, the law that a legislature passes is legitimate according to one reasonable political conception of justice but illegitimate according to another reasonable political conception? Are citizens to be expected to allow a reasonable political conception of justice that they do not affirm guide when they may and may not engage in acts of civil disobedience or conscientious refusal? Does reverence for legitimate law and citizens’ commitments to fair terms of cooperation necessarily limit their permissible forms of dissent to those that do not involve even symbolic law breaking in such cases, or is a
more relaxed position coherent and justifiable? I do not have answers to these questions; I merely observe that a more relaxed position would be significantly more accommodating to many religious citizens than Rawls’s current one is, and that it would go far to reduce the number of insolvable conflicts between religious and civic obligations.

Finally, political liberals should also devote further attention to exploring religious practices of political engagement. My analysis of prophetic witnessing shows those who claim that public political discussions in a constitutional democracy inevitably alienate religious citizens or are necessarily unfriendly to religion that, not only are such worries overblown, a religious practice of political engagement that is both central to most monotheistic religious traditions and historically influential in the development of (at least) the United States’ constitutional democracy is deeply compatible with political liberal decision-making norms. Surely there are other traditional religious practices of political engagement that are worth exploring and that, if explored, may reveal other unexpected compatibilities and resources for religious citizens seeking religious models to guide their political participation that accord with their traditions and are appropriate in religiously pluralistic constitutional democracies. The potential research here is both broad and deep; I have plucked low-hanging fruit—prophetic witnessing is a religious practice of political engagement to which political theorists have already devoted considerable historical and theoretical attention. What about, to name only a few other possibilities, traditional Christian forms of ecclesiological organization and ministry? The Jewish ideal of tikkun olam? Muslim practices of political commentary and
criticism? The way various religious traditions’ proselytizing practices relate to those traditions’ respect for the consciences and differing traditions of those to whom they proselytize? And to suggest the potential for political liberal analysis of religious practices is not to say, by any means, that political liberal engagement with religious doctrines has been exhausted. There are many fruitful lines of potential research for political liberals interested in religious doctrine, religious practice, or both.

At the conclusion of my discussion, then, where does the relationship between religious integrity and the political liberal account of liberal democracy stand? I began my analysis by quoting Moses Seixas, the leader of a late eighteenth century Jewish Synagogue in Newport, Rhode Island, and Heber C. Kimball, the “first counselor” to the nineteenth century Mormon Church President and Prophet, Brigham Young. The experience of religious citizens in liberal democracies—their ability to live lives of religious integrity—occurs within the field these two different historical experiences demarcate. At one end—the end of conflict and choice—stands the 19th century “Mormon Question,” the United States’ federal government’s most systematic attempt to suppress a religious group in its history. Here, religious integrity and liberal democracy are in fundamental conflict, for nineteenth century Mormons felt they could not live lives of religious integrity without being able to establish a “theodemocratic” community in the Inter-mountain West, a community they could coercively govern as their religion directed. In such a context, it is no wonder that Heber C. Kimball boasted that his wives could “whip out” the United States, no wonder that conflict between the Mormon Church and the federal government ceased only when the Church gave up most of its theocratic
aspirations and the single greatest symbol of them: the practice of polygamy. At the other end—the end of compatibility—stands Moses Seixas and the Jewish experience in the United States, the experience where “liberties of conscience” and “immunities of citizenship” create a political and social environment where adherents of the single most hated and persecuted religious group in European history thrive and become citizens—co-governors of their political community in cooperation with their neighbors—for the first sustained time in more than a millennium. What separates these two strikingly different religious-political experiences?

The single most important difference between the nineteenth century Mormon experience and the American Jewish experience is, quite simply, nineteenth century Mormons’ consistent refusal to accept a political community in which they were unable to coercively govern as their religion directed—to religiously dictate the terms of political cooperation. (Jews living in the United States, for reasons particular to their own religious tradition and experience, never entertained such aspirations.) For nineteenth century Mormons, religious integrity meant, not just participating in politics on the basis of their religion, but controlling politics on the basis of their religion. And to control politics on the basis of their religion, of course, they had to deny the ability of their neighbors of other faiths to do so. A religious integrity that allows both oneself and one’s neighbors the ability to live lives of religious integrity is a religious integrity that forswears the demand to control politics on the basis of religion. Such a religious integrity, then, is not incompatible with political liberalism. Such a religious integrity demands political liberalism—a political liberalism that incorporates the phased account
of democratic decision-making and the practice of prophetic witnessing, to be sure, but a political liberalism none the same.
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