

Motive Matters: Liberalism & Insincerity

Michael A. Neblo
Department of Political Science
Ohio State University
neblo.1@osu.edu

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Political discourse needs more *ad hominem* arguments, or so I shall argue. This claim may seem odd, not the least because most people would agree that cynical *ad hominem* attacks have degraded the electoral and policy processes in America. At a more theoretical level, it seems odd because much of liberal democracy's attraction is thought to lie in its ability to co-opt or neutralize minor vices endemic to political life. Chief among these are hypocrisy and insincerity. In a remarkable essay, Judith Shklar has gone so far as to argue that "Hypocrisy is one of the few vices to bolster liberal democracy." (OV: p. 248) While some may not fully agree with this bold claim, most contemporary liberal theorists believe that liberal democracy is happily (or at least comparatively) robust to most cases of hypocrisy and insincerity. Institutional forms, such as requiring a public mode of justification, filter and refine the opinions of hypocrites such that, at worst, their hypocrisy or insincerity does not harm the public good. We can dispense with the messy business of examining motives when we recognize that, *ceteris paribus*, a democratically justified policy is precisely that which survives a free and fair public debate. A willingness to conform to the standards of publicity is all the sincerity we need. Belief is irrelevant if behavior meets minimum standards. Indeed, it may be misleading to even use the pejorative terms insincerity and hypocrisy since citizens are not expected to have a direct mapping between the reasons they offer in public discourse and their private convictions, as long as the public reasons are truly public.

It is true that most forms of liberalism can claim this advantage because hypocrisy and insincerity do not pose a decisive threat to their theoretical coherence. Agonistic liberalism allows us to express and challenge each other's comprehensive beliefs, so there is no need to open a gap between one's comprehensive beliefs and political

pronouncements. Similarly, comprehensive and perfectionist liberalism does not have to worry about such discrepancies, since they require us to be liberals all the way down. Libertarianism and neo-liberalism seek to minimize state coercion *simpliciter*, rather than worrying about any supposed lack of respect that obtains specifically through coercion predicated on comprehensive or insincere *rationales*. State coercion beyond that needed to protect us from violence and fraud is presumptively disrespectful, whatever the language used to rationalize it. Rorty's liberal ironists are "never quite able to take themselves seriously," helping us to avoid the temptations of hypocrisy by removing us from their near occasion.¹ And, finally, as I mentioned above, Shklar's liberalism of fear actually embraces hypocrisy and insincerity as a kind of homeopathic hedge against political cruelty, its master vice.

Despite this general liberal success in deflecting or co-opting insincerity, I want to argue that the most important liberal theory today, the late John Rawls's theory of *political* liberalism, is gravely vulnerable to a threat insincerity and hypocrisy pose for his conception of liberal democratic legitimacy. To see this, we must juxtapose two leading ideas of political liberalism. The first is what Rawls calls the fact of reasonable pluralism, and what I will refer to simply as reasonable disagreement. The idea here is that, in a free society, we should expect (and therefore accommodate as best we can) reasonable disagreement between citizens on vital matters.² Thus, as long as they meet

¹ Private Irony & Liberal Hope in CI&S p. 73; deliberative democratic liberalism is a more complicated case. For a discussion see Bachtiger et. al. (2009) and Neblo (2007).

² At least this is the historical root of liberal democracy, born out of the bloodshed of the wars of religion, and largely confirmed by subsequent experience as well. In the literature, the term "reasonable pluralism" is more common, largely because John Rawls coined it. However, Larmore (199X) points out that the metaphysical thesis of pluralism (that the good is many rather than one) is itself a controversial

certain minimal criteria of reasonableness, we are enjoined from attacking or criticizing their foundational beliefs.

But how are we to live together peaceably and efficiently if our disagreements run so deep and wide? Rawls's solution says that when we try to justify using the coercive power of the state we must refrain from appealing to reasons based on our foundational beliefs (what he calls a 'comprehensive doctrine,' Catholicism, for example), and restrict ourselves to what he calls "public reasons," which are those that I can reasonably expect everyone to recognize as carrying some force. The idea here is that if I am a Catholic I cannot invoke the pope's authority to justify my position on abortion because many of my fellow citizens are not Catholic, and could not reasonably be expected to recognize the pope as an authority. However, I *can* expect that reasonable people will recognize that there is significant value in protecting human life, even if it is incipient human life. So I restrict myself to reasons like that.

But combining these two principles (the sufficiency of public reason and a commitment to accommodating reasonable disagreement) creates an immediate problem. How should we deal with the likelihood that, when people take up defensible positions on matters about which reasonable people could disagree, for many, their true reasons for doing so are nonetheless unreasonable?³

doctrine about which reasonable people can disagree. All that we can confidently infer from the historical record is that, without tyranny of some kind, reasonable people will nearly always disagree.

³ At a couple of points, Rawls addresses himself to a related question, namely whether it is hypocritical to refrain from admitting that we think that reasons issuing from our comprehensive conceptions are the strongest reasons for our position. However, there he is dealing with cases of over-determination – i.e., where our comprehensive and political considerations lead to the same conclusion. I mean to test cases where they diverge.

Take, for example, contemporary race politics in the United States. What are we to make of someone who opposes affirmative action because he or she dislikes blacks (not out of a comprehensive doctrine of white supremacy, just mundane dislike)? Absent this dislike, the person would not oppose affirmative action, or not as strongly. While reasonable people can surely disagree about the political morality of affirmative action, just as surely we would agree that our hypothetical racist is not a reasonable person exercising the public use of reason.⁴

In the realm of what Rawls calls “ideal theory,” this problem may seem trivial. We can simply define reasonable people as those who disagree *for* good reasons, not merely *with* good reasons. We can impose a sincerity constraint. Now, it turns out that it is harder to make this stipulation in Rawls’s theory than one might suppose. Consider two basic versions of a sincerity constraint. A weak sincerity constraint has three requirements: i) I must sincerely believe that the public reasons that I offer are reasonable in the sense of not being dependant on any comprehensive doctrine or doctrines; ii) I must sincerely believe that others would reasonably recognize them as such; and iii) I must sincerely believe that one could reasonably regard them as having significant argumentative weight. A speaker does not, herself, have to believe that they are the powerful or decisive political consideration, only that someone might reasonably judge them so.⁵ A strong sincerity constraint requires that I sincerely believe that the reasons

⁴ If the racist were also a white supremacist, Rawls has the resources to rule the example out as a case of an unreasonable comprehensive doctrine (though see footnote ?? below). For an application of these ideas to real cases see Neble (2009a,b).

⁵ For example: “In what sense, though, must the answer of public reason itself be reasonable? In reply: the answer must be at least reasonable, if not the most reasonable, as judged by public reason alone.” PL p. 246 Also: “[P]ublic reason does not ask citizens ‘to pluck out their religious convictions’ and to think about those questions as if ‘they started from scratch, disregarding what they presently take as basic

that I offer are the strongest known coherent subset of reasons within the set of public reasons.

Despite some variation and ambiguity, most of Rawls's formulations of "the duty of civility" stop short of a strong sincerity constraint. I think that he holds back for a number of reasons, one of them being that a strong formulation of this stipulation would force him to treat many people with sincere and reasonable religious convictions much like the racist.⁶ Moreover, when Rawls moves to the "stability" phase of his argument for justice-as-fairness under political liberalism, he takes a kind of half-step out of the realm of ideal theory. When he does so, the scope of the problem that sincerity poses for political liberalism widens, and the necessary institutional remedies become more complex.

In a moment, I will present my argument for why political liberalism needs a strong sincerity constraint defined in counter-factual terms – i.e., if my judgment of the best outcome all things considered differs from the one I would come to if I were to partial out my comprehensive doctrine, I must choose the later, *even if* I sincerely believe that a reasonable person, restricted to public reasons, could support the former. Now, even though I think that political liberalism needs a strong sincerity constraint, I also think that imposing one creates problems that ramify through the rest of Rawls's theory, which may or may not be fixable with further adjustments.

premises of moral thought." PL p. 244 And: sincere glossed as ... p. 241-2 Finally, "our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political positions...are sufficient, and we also reasonably think that other citizens might reasonably accept those reasons."

⁶ The idea here is that what makes you insincere, hypocritical, or failing in one's duty of civility has nothing to do with the ugliness of one's foundational reasons, but rather that there is a gap in the counter-factual.

I will return to this set of theoretical problems later. For now, though, I want to point out that even if we can successfully incorporate a strong sincerity constraint in the abstract, when we try to *institutionalize* all of our commitments, the problem returns in full force. In voting and opinion polling, citizens are not typically called upon to justify the positions that they take, much less to do so in terms of public reason. Even when they or their elected representatives *are* required to offer public justification, there are often powerful incentives to offer only those public reasons that comport with one's comprehensive assessment. *And since, by hypothesis, reasonable people can disagree about the issue at hand, there are publicly acceptable arguments with which to do so, whether or not a particular person is being consistent or sincere (in the strong sense) in appealing to them.*⁷ What is more, there is reason to believe that this problem is ubiquitous. For virtually every issue likely to make it on to the national agenda, there is some plausible basis for reasonable disagreement (whether or not there are more than a trivial minority of people who actually disagree for those reasons). This premise is an empirical claim, of course, but one with ample support.⁸ Thus, precisely to the extent

⁷ Obviously we can invoke *logical* inconsistency as a basis for critique under the auspices of public reason. (Though Rawls might disagree: cite difference from Gamwell.) However, I am trying to point to a softer (and more common) kind of "practical" inconsistency that can be easily masked or denied using casuistic reasoning. For example, I may oppose many programs on the grounds that the federal government should not try to micro-manage the economy. However, I support subsidies to farmers (including myself) for ethanol production on the grounds that protecting the environment is too important to leave to market forces. This is not obviously inconsistent in the strictly logical sense. Most likely, however, similar rationales are available to the beneficiaries of the other programs that I have opposed, but unless we are able to question sincerity (conscious or otherwise) I can make the plausible claim that this situation (that happens to benefit me) is different.

⁸ Cite literature on motivated reasoning for non-elites, and (Jacobs & Shapiro, 2000) etc. for elites. There is one plausible, though unlikely, scenario under which public reason could have non-trivial effects. Recent research suggests that many politicians are relatively indifferent to the public rationale they offer for some policy. (Jacobs and Shapiro, 2000) Contrary to the prevailing perception, they do not use polling primarily to pander to the public's wishes. Rather, elites first decide which policies they want, and use

that we are committed to accommodating reasonable disagreement, the overt requirements of public reason need not constrain *decisions* in any meaningful way.⁹ Moreover, on the standard liberal account that requires only a weak sincerity constraint, this result holds even if *everybody is acting in good conscience*.

Framing the problem this way illustrates why my concern it is not merely Kantian hand-wringing over puritanical standards of a good will. Rather I have identified a distinctively *political* problem lying latent in the core of liberal theory: by eschewing a strong sincerity constraint on reasonable disagreement, we generate a variation on the strategic logic of the tragedy of the commons that eviscerates the practical power of public reason. That is, we all want to live in a society whose practices and institutions will accommodate our need for reasonable disagreement, but the only way to make this workable is to insist on everyone conforming to the public use of reason. However, from

polling to choose, from a large pool of plausible rationales, those that seem most effective at getting them what they want. It is not hard to imagine that citizens and interests groups can and do engage in similar behavior. So far, these findings actually illustrate the thesis advanced above. Without a sincerity constraint, public reason puts very weak constraints on what both elites decide and the mass public decides among themselves (and worse yet, we know that politicians engage in the kind of behavior that drives the problem at hand on a large scale). However, it is possible that the strictures of public reason could have a marginal effect in elite-mass relations if the rationales that are most effective at manipulating uncommitted *and* centrist opinion (those who are committed will simply follow another rationale that leads to the same conclusion, and partisans will simply adopt whatever rationale is espoused or covertly signaled by their leaders) are systematically those that do not conform to the demands of public reason. Unfortunately, this condition seems relatively unlikely precisely because uncommitted centrists are less likely to be persuaded by more partisan/sectarian rationales. Worse yet, it is a completely contingent matter as to whether this effect would promote or harm what the public would actually choose if constrained to the sincere use of public reason. Furthermore, there are good reasons to think that even if the stars align, the effect will be small, because it will only constrain those who are either disinterested, and thus less politically consequential, or those who already want to play by the rules imposed by sincere public reason to begin with. Thus, even in a best-case scenario, we are utterly dependant on people's good intentions, rather than liberalism co-opting vice via institutional strictures.

⁹ Politics that involves repeated interactions that invoke similar principles might serve as another forum for effective public reason. However, even here, the power of casuistry makes it fairly easy to come up with a plausible argument distinguishing the two cases (see footnote 2, above) – and in any event, *any such effects rely on precisely the kinds of motive and consistency challenges that the paper is claiming liberalism must incorporate into its theoretical account.*

an individual's instrumental perspective, it is even better if we can constrain those with whom we disagree without so constraining ourselves, and without this fact being generally known.¹⁰ Ironically, the very good that we are trying to secure here, accommodation of reasonable disagreement, creates the mechanism by which it is undermined.

Put another way, each of us wants our beliefs respected and protected, and history has taught us that the best way to secure this is through living under a liberal regime. The analogy here is similar to the classic examples used to illustrate cases of political free-riding or tragedy of the commons: e.g., taxes and national defense. The structure in the present case is a bit more complex,¹¹ but we could think of the provisions of a liberal regime as protecting our political integrity in the same way that national defense protects our physical integrity. Those who dissemble in the public sphere would be analogous to draft-dodgers or tax-cheats.

However, there are two instructive disanalogies here that are worth noting. First, without being able to question sincerity and consistency, public reason cannot serve the function played by the IRS for taxes and the Selective Service Administration for the draft. And, second, insincerity and inconsistency in the use of public reason do not have to be fully conscious.¹² That is, our capacity to rationalize our motives, even to

¹⁰ If it were generally known, it would not be stable in anything but the tyrannies that the wars of religion have taught us are not in our enlightened self-interest.

¹¹ The structure is more complex because, in the present case, free riding does not undermine our ability to accommodate reasonable disagreement directly. Rather it undermines the quality and legitimacy of the liberal decision-making process, which in turn undermines the reasons for wanting our beliefs accommodated in that process in the first place.

ourselves, expands the potential range of the political problem insincerity poses to liberal theory.

Now, at this point, one might object that Rawls is making a normative argument, and he is well aware of the fact that people routinely fail to live up to their moral duties. Such failures say nothing about the validity of arguments as to which duties people, in fact, bear in their role as democratic citizens. However, throughout the intricate development of political liberalism, Rawls is admirably (though nonetheless inadequately) concerned with questions of its workability. He tries to show in broadly empirical terms that an overlapping consensus is not utopian, that he is basing his arguments on a reasonable moral psychology, that the road to political liberalism is plausible, and that once achieved it would be stably self-reinforcing,.

However, he does not go into great depth with his evidence and admits that political liberalism is falsifiable, in the sense that normative claims about what we should *do* (as opposed to what “*should be*”) ¹³ are vulnerable to faulty empirical assumptions. I would argue that everything we know about the moral psychology of the tragedy of the commons suggests that, without some method for detecting and sanctioning hypocrisy and insincerity in the public use of reason, hopes for a stable overlapping consensus of any scope are indeed utopian in the pejorative sense. ¹⁴

¹² Of course, one can make accidental mistakes on one’s taxes, but this is different from the kind of semi-active rationalization (fully culpable if not intentional?) that I want to claim characterizes important classes of political insincerity and inconsistency.

¹³ If this distinction is opaque, consider the following example. Even if I were to agree that we should never have to impose the death penalty (because society should not generate people who want to murder, and those people should not commit murder, in the first place) it does not follow that I am committed to eschewing capital punishment.

¹⁴ Cite Ostrom and others.

Here Rawls is stuck on the horns of a dilemma. On the one hand he threatens the stability of the overlapping consensus by specifically enjoining us from undertaking the kind of critiques that might stabilize the situation. He writes: “It is left to citizens individually...to settle how they think the values of the political domain are related to other values in their comprehensive doctrines.” PL p. 140 Moreover, it is “Central to the idea of public reason...that it neither criticizes nor attacks any comprehensive doctrine,” except when the doctrine itself rejects the whole idea of “a constitutional democratic regime and its companion idea of legitimate law.” p. 574 IPRrev

The second horn of the dilemma becomes apparent when we consider *why* Rawls prohibits such critiques. He writes: “[T]here are many reasonable ways in which the wider realm of values can be understood so as to be either congruent with, or supportive of, or else not in conflict with, the values appropriate to the special domain of the political...*This makes an overlapping consensus possible, thus reducing the conflict between political and other values.*” PL p. 140 Thus, if we restrict the ways in which comprehensive doctrines and political conceptions can map onto to each other, we greatly increase the conflict between political and foundational values, which contracts the scope and likelihood of achieving a stable overlapping consensus. But, as we have seen, without such restrictions, the logic of the tragedy of the commons will destabilize the overlapping consensus anyway.

[***Actually, I want this to be a secondary argument relating to Rawls’s half-step out of the realm of ideal theory, and lay the primary emphasis on the argument that even reasonable “ideal” citizens will not be willing to subject themselves to public reason with a strong sincerity constraint under the necessary range of cases. Even if Rawls is right

that “[P]ublic reason does not ask citizens ‘to pluck out their religious convictions’ and to think about those questions as if ‘they started from scratch, disregarding what they presently take as basic premises of moral thought.’ PL p. 244, Public reason does mean that those basic premises of moral thought will be *either completely impotent or completely redundant* on all of the important questions of the day. Framed this way, it seems like a lot to ask, and in an epsilon-less-than-ideal environment could cause the proviso to backfire. In part, how burdensome this “impotence or redundancy” will be is an empirical question contingent both on the distribution of thresholds for people being willing to subordinate their comprehensive doctrines, and on the relative proportion of redundancy to impotence, the latter being more difficult to take.]

So, how can liberal democratic theory deal with such situations of citizens and elites being insincere, hypocritical or inconsistent, given that we are committed to accommodating reasonable disagreement, and such accommodation provides systematic cover for *unreasonable* disagreement?

One obvious answer is that the range of such problems is much smaller than I have been suggesting, because liberalism’s commitment to accommodating reasonable disagreement is only intended to cover “fundamental matters of justice” and “constitutional essentials.” However, there are at least three related problems with this argument.

First, it is not clear that Rawls has a principled argument for why coverage should be so restricted.¹⁵ The liberal justification for accommodating reasonable disagreement

¹⁵ There is some ambiguity in Rawls’s texts, but on one interpretation, he is using “constitutional essentials” as a test case for exploring the general issue of accommodating reasonable disagreement. Thus, the restriction might not really be a restriction at all, but rather a first effort to cover an important range of cases in which Rawls believes the prospects for fairly resolving conflict are most promising. Skepticism on

hinges on the use of coercive state power. Thus, if the state threatens to invoke its coercive power through ordinary legislation, the same rationale that covers constitutional essentials should apply to less constitutionally basic questions as well. Indeed, it is easy to imagine a wide range of cases where my well-being might be more directly and gravely affected by ordinary legislation than by debate over constitutional questions. Thus, the liberal commitment to accommodating reasonable disagreement should be tied to whether state power underwrites some legal provision's ability to affect important aspects of people's lives – which is to say nearly all political questions of any moment.

Rawls does acknowledge this problem: “Some will ask: why not say that all questions in regard to which citizens exercise their final and coercive political power over one another are subject to public reason?...To answer: my aim is to consider first the strongest case where the political questions concern the most fundamental matters. If we should not honor the limits of public reason here, it would seem we need not honor them anywhere.” PL p. 215

For my purposes, though, this is a non-answer, since I accept the liberal principle of legitimacy, and grant the great value of honoring public reason. I am interested in testing the coherence of Rawls's argument. I.e., does the logic of the argument compel him to subject so much to the constraints of public reason (that is, to exclude comprehensive doctrines to such an extent) that political liberalism's acceptability, and thus the burden of the second part of the argument for stability, is threatened.

public reason being able to handle a wider range of “ordinary” cases may be implicitly predicated on the kind of concerns that I am analyzing in this paper, but in my view, the answer is not to jettison our commitment to accommodating reasonable disagreement for such cases, but rather strengthening our conception of public reason to allow broader sincerity and consistency challenges. Indeed, this idea may be implicit in Rawls's notion of “liberal friendship” [???], though he demurs from following out the institutional implications of this normative idea.

Despite “grant[ing] that it is usually highly desirable to settle political questions by invoking the values of public reason,” Rawls does claim (without argument) that there are some cases where restricting ourselves to public reason would be unreasonable. (p. 230) Even if we grant his claim, though, showing that not all cases should be subject to public reason is a long way from justifying a restriction to constitutional essentials and matters of basic justice.

However, even if Rawls can come up with a principled rationale not to link the constraints of public reason to the coercive use of force, any reasonable reading of “matters of basic justice” still leaves us with an enormous range of national level policy questions covered. Rawls wants to deny this claim, insisting that contracting his scope to constitutional essentials and matters of basic justice constitutes a severe and consequential qualification. (e.g., PL p. 244, on Greenwalt interpreting his requirements as “far stronger” than they are.) However, even on his own terms, it seems that the range of questions subject to public reason is much larger than he allows for. To see this, notice that these two categories, Constitutional essentials and matters of basic justice, are derived from his two principles of justice. Consider only the second half of the second principle: the difference principle stipulates that policies should be constructed such that all inequalities in basic goods redound to the benefit of the least well off member of society. Now, I want to prompt a little thought experiment: pause and try to list all of the political issues implicated just by the difference principle:...[what would it take to make “all inequalities redound to the benefit of the least well off”]...I suspect that it is easier to list those issues that are *not* implicated – like whether Congress should declare June, national Asparagus month, and little else.

As a matter of fact, at various points, Rawls himself states or implies that each of the following fall under the rubric of constitutional essentials or matters of basic justice: raising the retirement age for Social Security, the scope and depth of coverage under Medicare and Medicaid, abortion policy, spending on foreign aid, campaign finance reform, education policy, and our role within the United Nations. p. 580 IPRrev If we extrapolate to matters of comparable domain and moment, we might add: the question of funding “faith based initiatives,” affirmative action, gay marriage, massive budget deficits (via the just savings principle), the Patriot Act and anti-terrorism measures, the rollback or permanence of top bracket tax cuts, and inheritance/death taxes (via the difference principle).¹⁶

Thus, if instantiating the two principles of justice adequately delimits “constitutional essentials and matters of basic justice” then the range of issues covered by public reason looks much larger than demurely invoking such seemingly severe qualifiers would connote. This point only gains force the further we are from a well-ordered society, and thus becomes crucial when we try to think of how to use the theory as a regulative ideal. We cannot dispose of the insincerity challenge by pretending that its range is limited to constitutional conventions and semi-centennial moments of dramatic policy overhaul.

Thus, it seems that we are on the horns of another dilemma. If public reason must cover all cases of the state using its coercive power to affect important aspects of people’s lives, then the stability dilemma discussed above becomes especially acute. That is, either opportunities for free-riding will be ubiquitous, or people’s fundamental

¹⁶ [Applies to both official and citizens in discussion and voting, etc... PL p. 215 Get hypocrisy quote.]

values will constantly conflict with their political values, both of which make a stable overlapping consensus even less plausible.

On the other hand, there is some textual evidence for the idea that Rawls really does intend a *very* narrow understanding of what public reason covers – i.e., that we are committed to democracy, constitutionalism, the rule of law, individual rights, and a minimal social safety net, *not* the myriad of policies and provisions that operationalize these basic commitments. However, in this case we are stuck on the other horn of the our second dilemma – i.e., on this view political liberalism is pretty uninteresting. Since, by hypothesis, parties to the overlapping consensus are already committed to these ideas, public reason’s only role is to state them in terms that do not rely on any comprehensive doctrine. Since our commitment to these principles is over-determined, we are asked only to hold back from mentioning one set of determinants. Indeed, doing so is not very burdensome, does express a certain minimal kind of respect, and is the object of an overlapping consensus. However, this picture does not seem so much like a normative goal as a taxonomic criterion.

From this perspective, Richard Rorty’s famous, if idiosyncratic, reading of Rawls does not seem so far off the mark. According to Rorty, Rawls is not “supplying philosophical foundations for democratic institutions, but simply trying to systematize the principles and intuitions typical of American liberals.” p. 189 His project is only an “historico-sociological description of the way we live now.” p. 185. (Prior. of Dem to Phil)

To my knowledge, Rawls never explicitly repudiates Rorty, which strikes me as curious given his influence. However, he does clearly and forcefully reject the general line of argument that Rorty uses, but again, curiously, he buries it in a footnote:

“Perhaps some think that a political conception is not a matter of moral right and wrong. If so, that is a mistake and is simply false...[S]ome may think that the relevant political conceptions are determined by how a people actually establish their existing institutions – the political given, as it were...To say that the political is determined by a people’s politics may be a possible use of the term “political.” But then it ceases to be a normative idea, and it is no longer part of public reason. We must hold fast to the idea of the political as a fundamental category...and political conceptions of justice as intrinsic moral values.” fn. 91 p. 610. (IPRrev)

Now, there *is* a difference here. Rawls’s project is *not* only an “historico-sociological description of the way we live now” – it is also an apologia for the way we live now. The political is not determined by our politics, it just so happens that our politics are happily congruent with the political as a fundamental normative category. On this reading, justice as fairness might remain as a daring normative challenge, but political liberalism becomes decidedly mundane.

Now, someone trying to avoid this second dilemma might try to reassert that liberals do not have to worry about such questions, and insist on the sufficiency of public reason as a matter of logic. The publicity principle is designed to require justification in public terms, and if someone can accomplish that, then his or her motives are irrelevant.

Criticism of motives is a species of argument *ad hominem*, and diverts attention away from the merits of the substantive arguments for and against.¹⁷

However, not all *ad hominem* arguments are fallacious. For example, if an obviously uninformed person makes strong, specific claims about the safety of nuclear reactors, I might reasonably respond by saying, “You have no idea what you’re talking about.” This argument is *ad hominem*, but it is also valid. Similarly, if someone makes an argument, but I have good reason to believe that he or she is not sincerely committed to the principles behind that argument, an *ad hominem* critique is potentially valid. It is not valid against whatever substantive argument they may be using as a cover, but it is valid against their taking up the position as they do in the public sphere. This distinction is crucial for Rawls, both because his conception of the burdens of judgment implies that consensus is unlikely, and because of his concern with demonstrating mutual respect through public discourse.

Recent philosophy has taught us that a statement *is* an action.¹⁸ Thus the reasons behind someone’s action can logically and socially invalidate the meaning of their statement *as an action in the public sphere*. What it cannot do (directly) is to invalidate the (manifest, as opposed to implied) propositional content of the statement. Thus, in order to bridge theory and practice, we have to try to tackle this difficult and touchy

¹⁷Note that I do not assume nor believe that all who hold animus toward some group are therefore arguing on feelings and not on facts, nor that feelings have no place in public debate. I have no (political) problem with people who merely don’t like blacks. The relevant question is whether those attitudes are the cause [understood in counter-factual terms, which, I know, has some marginal problems] of their taking up a position in the public sphere (or the intensity or manner in which they take it up), and if so, whether they can supply sincere, consistent and publicly acceptable reasons for the relevance of those feelings.

¹⁸For example, at my wedding, when I told my wife “I do,” I did not merely say that I would marry her, I *did* marry her — and precisely in virtue of my saying it (unless you think that I was being insincere, or coerced, etc...). This is part of what it means to have a Theory of *Communicative Action*.

question of the locutionary (propositional) versus illocutionary (practical) components of a speech act. This need becomes all the more acute when we recognize that, typically, the propositional content of any given set of arguments will not be fully dispositive with respect to the question at hand. (This is one version of what Rawls calls the burdens of judgment, which presumably underwrite the fact of reasonable disagreement as a corollary.)

Now it may seem that I am begging the question with respect to the liberal rejoinder. If the publicity principle is our standard, it is simply not to the point to object that people are not privately committed to the reasons that they are putting forth publicly. But then we must ask: 1) why is the publicity principle our standard; and 2) does it achieve or embody the justifications that underwrite it?¹⁹ For Mill, The Federalist, Dewey, and many other liberals, public debate is valuable in part (primarily?) because it conduces toward better decisions, typically defined as promoting the public good.²⁰ However, most contemporary liberals are in a hurry to eschew any claim that liberal procedures are designed to get at anything even remotely analogous to “truth” or “optimality.” Rather, liberal procedures embody *fair* (as opposed to correct) mechanisms of choice, and, importantly, are also a vehicle for citizens to express mutual respect. (Or perhaps liberals would say that “better” decisions are defined by what issues from fair

¹⁹ “Justifications that underwrite it” is an admittedly clumsy locution, but I wanted to avoid the language of “goals” since many liberals might reasonably argue that the connotation of “goals” is misleading for deontological or libertarian justifications.

²⁰ The Federalist was not always enamored with specifically public debate in our contemporary usage, but their reasoning was the same even when confined to debate that was public only in the sense of free and fair argumentation among elites.

procedures that express mutual respect, without any other independent criteria of “better.”)

However, once we jettison any pretense to searching for “better” decisions, there is a multiplicity of “fair” mechanisms, such as picking randomly or majority rule without the constraints of public reason. Presumably, Rawls chooses public reason from among these fair procedures because it also allows us to express mutual respect. However, I fail to see how having the majority’s will imposed upon me via polite lies shows me any kind of respect worth having. Indeed, it strikes me as a gratuitous form of disrespect.

Now, it is crucial to be clear that I only intend for this argument to apply to a specific set of cases, namely those situations wherein some social decision would have been *reversed* if people were constrained to making decisions on the basis of arguments to which they were sincerely committed.²¹ (And for purposes of morality, we might want to apply this criterion at the individual level as well.) In contrast, if some policy were over-determined in the sense that the majority was sincerely committed to the publicly acceptable arguments, but held publicly unacceptable views that lead to the same conclusion, then I believe there *is* a kind of respect expressed by limiting one’s justification to the publicly acceptable rationale. The same is true in instances where public reason operates as it should. For example, if the constraints of public reason cause someone to support some policy, even though they bear animus toward the group that the policy is designed help, then we do have a kind of valuable respect, not vitiated by the “hypocrisy” involved (if that is even how we would want to characterize such behavior).

²¹ That is for purposes of political theory. For moral theory, one might apply this idea at the individual level – i.e., cases where one’s personal decision would be overturned if they were denied access to their comprehensive values, whether or not doing so changed the social decision – i.e., such reversals could cancel each other out.

Thus, my argument excludes a specific range of cases. Nonetheless, I want to stress that the potential scope of the remaining cases is distressingly large and consequential.

Public policy asks us what to do. Public reason asks us why we should do it. Typically there will be more “why’s” than “what’s” and herein lies the problem. The constraints of public reason might significantly contract the number of “why’s,” but, unless we stipulate sincerity and consistency, it need do nothing to the “what’s.” Or, to be more precise, public reason cannot alter the distribution of people over the “what’s” (and hence the final decisions). I am *not* claiming that the democratic majority must agree on a single “why.”²² Rather, my concern lies with the causal role (defined counter-factually) of the publicly unacceptable “why’s.”²³ Each member of the winning coalition around Policy X must be able to appeal sincerely and consistently to at least one decisive sub-set of the set of publicly *acceptable* reasons in favor of X. Given that public support for most live policy questions in the U.S. hinges on the 20% of less ideological²⁴ voters in the middle of the distribution, the number of people who fail to meet the conditions outlined above need not be large at all to reverse outcomes routinely.²⁵

²² Though I have several concerns about “Incompletely Theorized Agreements” (see Sunstein, 199X for a defense), for some purposes they seem a necessary concession to the complexity of democratic politics, and for other purposes, may even be desirable in themselves.

²³ [Discuss the reasons-as-causes literature here.]

²⁴ The lack of ideology in such voters only aggravates the problem, because, being non-ideological it is less likely that they will be committed to the over-determining principles that could render their decision to stick with publicly acceptable reasoning a form of respect worth having.

²⁵ [Is this the proper frame given that people in the “tails” of the distribution might also have to shift on a large scale if constrained by public reason with a sincerity provision (think of populists on some socially conservative stands)?]

If I am correct, then liberalism must base part of its claims to legitimacy on some species of the unfashionable “better choices” or quasi-epistemic criterion. In one sense, the exclusionary function of public reason seems to do just that, but only in the strictly negative sense (as in falsificationism in philosophy of science). That is, we can identify a range of arguments (not choices) that cannot be true/right/acceptable, but we make no attempt to distinguish among those left over. This seems foolish (on Bayesian as well as other grounds), and is akin to turning rank order data into binary data – why throw away information unnecessarily? Let me propose a relatively weak version of the “better reasons” criterion: choose that which a majority sincerely and consistently assesses (under the constraints of public reason) the best justified among available alternatives given present knowledge and understanding.

Why is this proposal more adequate for liberal purposes? Since we do not usually have transparently dispositive arguments on most political issues, we have to rely on at least a loose conception of the epistemic value of democratic procedures.²⁶ However, majority opinion, *in itself*, does not have a very strong claim on epistemic value or normative adequacy more generally. Liberals want to filter majority opinion through publicity procedures in order to warrant such claims. But it is hard to see why majority opinion constrained by public reason, while excluding a sincerity provision, has much more of a claim than mere majority rule, if, as we have seen, public reason as a legitimating procedure does not function as advertised. I suspect that our standard conception of liberal procedures seems so intuitively appealing because we are habituated

²⁶ Above, we have already seen that without a sincerity constraint, pure proceduralism breaks down as a justification. So it is in this context that lacking dispositive arguments throws us back upon a broadly epistemic conception.

to think that public reason, as currently formulated, is not only an appealing theoretical standard, but also an active force in modern democracies, and one that will have even greater force as its strictures are more fully observed. I see little reason to think that public reason has much of an effect at all, and more importantly, that it even *could* have a significant effect, unless we tackle the problem of sincerity and consistency.²⁷

[[Now, recall that I mean for my arguments to apply to two cases. The first is a theory that only imposes a weak sincerity constraint, even under ideal conditions – i.e., no vicious motives and everybody conforming to their duty. The second is a theory with a strong sincerity constraint, but no moral or empirical provision for detecting and sanctioning deviations from strong sincerity. (The following example falls somewhere between these two situations.)]]

To see just how impotent public reason can be without a sincerity constraint, consider the following case taken from recent American politics: Early in the last century, as blacks started to gain a modicum of electoral power, the Alabama legislature was openly looking for ways to keep blacks out of the polling booth despite federal interference. They alighted on the idea of permanently disenfranchising citizens convicted of certain crimes. Their rationale, unabashedly included in the debate records, argued that since “everyone” knows that the Negro is prone to moral turpitude, such a provision would be an especially effective way to dilute black electoral power. Their goal was quite clear throughout the discussion:

²⁷ By “could” I do not mean to imply that there is not any logical way that it could have an effect. Rather, I am claiming that the strategic considerations built into liberal theory as it stands prevent any resolution of the problem under forseably favorable conditions.

“And what is it that we want to do? Why it is, within the limits imposed by the Federal Constitution, to establish white supremacy in this State.”²⁸

The U.S. Supreme Court struck down this provision (though, astonishingly, not until 1985) on grounds that amounted to saying that the debate did not conform to the public use of reason as defined by the constitution (which looks like a well deserved victory for public reason). However, soon thereafter, the Alabama legislature got together and re-debated similar measures, this time offering only publicly acceptable rationales.²⁹ The result has been an even larger number of people permanently disenfranchised, and an even more disparate racial impact (approaching 40% of black men in Alabama will be barred from voting for the rest of their lives).³⁰

²⁸ Official Proceedings of the Constitutional Convention of the Sate of Alabama, May 21st, 1901 to September 3rd, 1901, p. 8 (1940). Quoted in the unanimous opinion of *Hunter v. Underwood* 471 U.S. 222, (1985). What is particularly fascinating about this case for political liberalism, is the suggestion that one could, theoretically, have a white-supremacist comprehensive doctrine that might still meet the criteria of “reasonable” in a technical sense. The speaker was not, of course, but a member of the 1986 legislature who had the same beliefs, but genuinely subordinated them to the rule of law, constitutional protections, etc. might be. I do not see how this case would differ from someone who, from a Christian comprehensive point of view, thought the law was a good idea because it denied the devil the ability to speak through the tongues of the wicked.

²⁹ As a post-script to this story: I know about this case because I did some research for the Carter/Ford commission on Federal Election Reform, in the aftermath of the 2000 election mess. Recall that thousands of (mostly black, Democratic) voters in Florida were wrongly denied access to the ballot-box because of an error in reporting from Texas’s penal system. The commission recommended reconsideration of felony disenfranchisement, and several states are considering repeal or modification. At this point, it looks like Alabama might be repealing.

³⁰ It appears that a combination of the new disenfranchisement provisions and more severe drug laws have led to the absolute increase. The specific nature and enforcement of those laws has led to the severe disparate impact. For example, any amount of crack cocaine, but not powder cocaine, is considered a felony on first offense. Crack is much more common in inner cities with a higher percentage of minorities. What is most distressing is that even when we control for the nature of the charge *and* the defendant’s previous history, minorities are significantly more likely to be convicted of a felony, rather than getting off or plea-bargaining down to a misdemeanor. One can only hope, if this is the word, that this later difference is due to discrepancies in the resources available to the defendants. [Cite work from NCFER task-force results.]

Stanley Fish illustrates how such rationale-switching can even operate across levels – that is, how elites can communicate and co-opt portions of the public, all the while operating within the bounds of public reason under a weak sincerity constraint, or defecting with impunity under a strong constraint:

“More often than not, the audience to whom such coded messages are addressed is complicit in the transaction they enable. Not only is the code readily understood, its status as code – as something that wears a vocabulary as a disguise – is welcomed by both parties. The speaker does not deceive the audience, but tells it what it wants to hear, and, moreover, tells it in terms that allow its members to give full rein to their prejudices and yet appear to repudiate them...[Take the case of] Shawn Slater, a second-generation David Duke whose motto is ‘equal rights for all; special privileges for nobody.’ The head of the state’s Ku Klux Klan...His chief accomplishment has been to orchestrate a Klan demonstration on Martin Luther King’s birthday; the predictable counter-rally produced violence and national television coverage.”³¹

I acknowledge the *possibility* that neither racial animosity, nor protecting material advantage, nor resentment toward the federal government played any significant role in the Alabama or KKK examples. However, I am extremely dubious. *More to the point though, there is something deeply wrong with our public philosophy if it provides us no straight-forward and principled basis for even initiating debate and critique on the matter. [?Note possible confusion over the three types of cases: 1) weak/ideal, 2) strong/implementation-injunction, 3) can you have vicious comp doctrine that is*

³¹ Stanley Fish, “Speaking in Code, or, How to Turn Bigotry and Ignorance into Moral Principles,” Chapter 7 in There’s No Such Thing as Free Speech – And That’s a Good Thing. Oxford (1994). Pp. 90-100. The visual result of this confrontation sends the signal that it is irrational, violent blacks who attack peaceful demonstrators whose only crime is to call for colorblind treatment of everyone. Now, many people saw through this coding, and dismiss Slater for what he is. However, the point is that

nonetheless reasonable in the Rawlsian sense – cleaned up version of the AL example
“within the limits imposed by the Federal constitution + dif arg’s about why fel. dis.
makes sense – like the Greek conception of civic death?]

I want to stress that there is no reason to think that such examples are confined to one end of the political spectrum. For example, in recent years, courts have struck down overt attempts to gerrymander minority-majority electoral districts, only to have proponents draw (and secure) effectively identical maps, appealing to some publicly acceptable covariate of race. Whatever one thinks of such districts, it is preposterous to think that the revisions are not about race, and without a sincerity provision, opponents have no basis for critique. There are innumerable examples that raise similar questions. They range from [Michigan AfAct case?], protectionist steel tariffs from a free-trading President, to some of the establishment clause fundamentalism on the left being driven by hostility to organized religion, to Creationism being repackaged as the (scientific) “theory of intelligent design,” to Democratic representatives arguing against fuel efficiency standards by implying that traffic safety would be compromised.³² [***Will people stop

current formulations of liberal theory cannot easily account for why such a reaction is justified. Adding a sincerity constraint on accommodating reasonable disagreement makes this step obvious.

³² Democrats from MI, MD, and PA caved on this question (because of industrial and union pressure) and covered it with a safety argument that they new had a patina of truth, but was clearly bogus on the substantive level. Congress was well of aware that traffic fatalities would certainly *decline*, rather than rise, as the average weight of vehicles went down. It is true that, *ceteris paribus*, in and SUV versus a small care, one is less likely to die in any *single* accident that has already occurred. However, that information is extremely misleading. Because of the weight and stopping distance of an SUV, one is more likely to get into an accident in the first place, nearly wiping out the overall mortality advantage. Furthermore, one is *much* more likely to kill someone in the other car. Thus we are faced with a classic prisoner’s dilemma type market failure: we would all prefer to have less dangerous vehicles in general, but our best case scenario is for everyone else to have small cars, while we drive a behemoth. The result is that we bid each other up into a population of large vehicles that make all of us less safe. Thus one could justify the regulation, even before one considers the environmental question. (In fact, it is not clear that the issue is a true prisoner’s dilemma, because advertising has led people to believe that the mortality advantage in an SUV is large, when, in fact, the overall effect is very small. Republicans made the increased safety

to consider the plausibility of these examples and thus lose sight of the point?***] Again, whatever one thinks of the final disposition of such policy questions, public reason is putting no significant constraints on the process either because of failures at the level of theory or implementation. At the level of outcomes, we are barely better off than with raw majority rule. Our public philosophy should help us to think about such issues, not sweep them off the table.

What to Do About It

So far I hope to have convinced you of at least two major points: first, that political liberalism cannot make due with only a weak sincerity constraint, AND second, even *if* it provides for the strong constraint *as a moral matter*, it must not only *countenance* institutional remedies to free-riding (which might involve criticizing comprehensive doctrines and how people relate them to their political conceptions) – it must also show that institutional remedies are plausibly *available* as a practical matter, lest the overlapping consensus collapse.

Given that motives are notoriously difficult to get at, it is hardly obvious that an adequate remedy even exists. In a wonderful turn of phrase, Coleridge warns us against “the folly of all motive-mongering.” In a more scientific vein, Kathleen McGraw studied why it is so easy for politicians to manipulate public opinion with insincere moral justifications, concluding that: “1) people are not very good at detecting deception in general; 2) the mediated nature of political communication eliminates the nonverbal cues that are most predictive of deception; 3) social judgment biases...inhibit suspicion; [and]

argument as well, but for them it is more plausible that the question is over-determined. [Find cites on safety analyses.]

4) the norms of political culture constrain politicians from accusing each other of lying, so...the public is not prompted by other sources to regard moral claims with suspicion.”

p. 129

I want to very clear that I grant that we should be *very* cautious about impugning people’s motives – whether citizens or elites. Doing so can all too easily turn into arbitrarily dismissing people, recklessly playing the thought police, or ignoring the merit of arguments made by people who we don't like. Moreover, sincerity critiques themselves can be used insincerely, leading to an ugly cycle of degraded discourse. However, even if caution is warranted, we have no other choice than to do our best at maximizing the benefits and minimizing the harms. Almost every aspect of political theory is implicated in the sincerity problem. In addition to those I have discussed so far, consider the role that public reason plays in our theories of representation.

Returning to an earlier example, take the case of a legislator who believes that affirmative action is sometimes justified. Unless we take a pure “trustee” view, a legislator’s vote should typically be at least partly a function of his or her constituents’ support for some policy. Since the public opposes certain kinds of affirmative action at higher rates than just about any other policy that is likely to make it onto a legislative agenda, and because we have already stipulated that reasonable people can oppose affirmative action, it would seem that there is a strong *prima facie* case for the vast majority of legislators to oppose it. However, if our legislator had evidence that many of his or her constituents were opposing it for bad reasons and that, if they had better

knowledge and reasoned impartially, the scales would tip the other way, then he or she might have grounds to vote his or her conscience.³³

Now one might acknowledge the theoretical points that I make, but respond by arguing that the remedies implicit in my critique are so unworkable that the best way to maximize benefits and minimize harms is to give up on the idea. Short of hooking people up to polygraph machines, we have no reliable way of determining people's motives. Any attempt to institutionalize a sincerity constraint will end, at best, in failure, or at worst, in a kind of tyranny far more destructive than the problem that we were trying to solve. Furthermore, since *ad hominem* attacks have already poisoned our political culture, obfuscated crucial policy questions, and engendered public cynicism, any move to legitimate or increase such behavior would be wildly irresponsible.

I will try to respond to this challenge presently, but for the moment I only wish to point out that even if you don't think my alternative is workable, we still need to disabuse ourselves of the idea that liberalism is especially robust to hypocrisy and insincerity, that

³³ I am not suggesting that legislators should recklessly impugn the motives of their constituents. Nor am I trying to defend a general theory of representation (though I think that those on offer in our standard accounts need to be reassessed in light of the issues raised above). I am merely trying to illustrate a common set of circumstances faced by legislators, and in doing so, I am relying on the claim that if a legislator's constituency heavily opposes some proposal, and there is no reason to think that they are doing so out of ignorance or malice, then the legislator has a strong *prima facie* reason to vote against the proposal. In my view the relevant question is (usually): "What would my constituency decide if it had all of the information that I have, and was deliberating in public terms with other groups?" Thus, even if the country were 80% for some policy, if I had good reason to think that support for the policy was predicated on racism, I would have no obligation to vote for it, even if the arguments offered publicly for the policy were not racist on their face. (If I found those reasons compelling on independent grounds, however, I would be free to switch my position.) However, if I thought that if racism were neutralized, those same people would still be for the policy, but this time for good reasons, then even if I disagreed with the policy, and did not find the reasons, on balance, as compelling as the public, I would feel compelled to vote in accord with the public's wishes (unless there were extenuating circumstances of another sort). This point is related to Paul Sniderman's claim that, in race politics, affect is "more important" for liberals than for conservatives. However, I think that his interpretation of the various results is somewhat misleading.

public reason alone is a serious constraint on outcomes, and that the liberal account of legitimacy is as well supported as commonly thought.

Thus, at a theoretical level, the problem created by insincerity would be consequential even if there were no practical way to incorporate a response into our political practices. However, I think that the case for doing so is not hopeless. We need not have recourse to polygraph machines. It is true that social criticism that incorporates sincerity and consistency constraints cannot be applied mechanically and infallibly. But neither can most other interesting categories of social analysis, including whether some rationale conforms to the “public use of reason” in the first place. I can easily imagine situations (think of the KKK example above) where assessing a sincerity critique would be more straightforward than assessing whether some rationale cannot legitimately offend anyone with a “reasonable” comprehensive doctrine. Both are interpretive matters requiring judgment.

In one sense, then, sincerity and consistency-based criticism cannot be impossible (nor catastrophically dangerous) because our current political practices already contain significant doses. The press, average citizens, public interest groups, and opposing politicians all engage in such criticism, occasionally to great effect. The problem, of course, is that cynical attacks are mixed in with legitimate criticism. As a result, people sometimes forgo legitimate critique for fear of being labeled unfair or irrelevant. With limited attention, the public has tended to respond to all such criticism as “going negative,” at which point people disengage. However, no one politician can afford to avoid purposely muddying the waters while letting his or her opponents take advantage of the situation. (Ansolabehere & Iyengar, 1995) Thus, politicians are stuck in a prisoner’s

dilemma like game with each other, and as a result the public can only observe uninformative pooling equilibria in their game with politicians.

Nonetheless, it is possible that we could achieve substantial separation of the two types of criticism, and also induce a fair bit of sincerity, with only moderate amounts of targeted criticism and institutional reform. The situation is analogous to solutions to the tragedy of the commons examples that I briefly considered above, namely tax and draft compliance. It turns out that the degree of scrutiny that the IRS imposes on citizens cannot, in itself, explain the degree of compliance that we observe. (Levi, 1997) That is, the likelihood of getting caught and the attendant punishments are relatively small compared to the potential gains at a strictly instrumental level, even if one is quite risk averse. Why then do we observe so much compliance? The answer is that the average citizen gives the government “conditional consent,” which is to say that they are willing to comply, as a matter of duty, so long as they have a reasonable expectation that most others will comply as well. I will pay my fair share as long as doing so does not make me a chump because everybody else is getting away with evasion. Social life is full of similar examples in which our instrumental incentives and moral commitments interact in ways like this.

It is reasonable to think that the average politician would find the bruising attacks to which he is subjected in a negative campaign well worth avoiding, if possible. Thus, a little smart policing, analogous to the IRS, might substantially remediate the situation. There are several ways that this could happen. First, since political parties do not have the same incentives as individual candidates, anything that promoted greater party discipline could induce more compliance. Second, greater and more focused journalistic

scrutiny could make it more difficult to engage in rationale-switching with impunity, and it could deter attempts to blur the distinction between blunt *ad hominem* attacks and those that are internally related to the legitimating force of public reason. Finally, a willingness on the part of the public to make more of such distinctions, rather than writing politics and politicians off as corrupt, could serve as a powerful corrective. I do not wish to imply that there are not difficult issues of implementation with all of these suggestions, but they seem a reasonable place to start. Recall that because there are critical thresholds in such games, and because democratic majorities hinge on a marginal fraction of the public, we probably do not need sea changes in our practices to make very substantial gains in stability and legitimacy.³⁴

Thus, liberal democratic theory needs to deal with the challenge posed by insincerity, not only because of its theoretical importance, but also because by explicitly re-theorizing public reason in the context of all of these issues, we could gain greater analytical clarity on several normative issues on which we are now just muddling through. For example, philosophical analysis might help us clarify operational differences between cynical and destructive *ad hominem* attacks, and the kind that we need more of in our democracy.

³⁴ Nor is it the case that we should let concern over finding any substantial overlapping consensus hold us back. In liberal theory, decisions are justified *to the extent that* they can be defended in terms amenable to public reason. This requirement often seems to be interpreted in binary terms – a decision or a regime is either legitimate or not. By this standard, there have never been legitimate regimes. We should focus rather on maximizing legitimacy on this condition, consistent with other good and requirements that our political situation poses to us. Thus, the fact that sincerity critiques are a messy, difficult business is not entirely to the point.

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