

RAWLS, DEMOCRACY AND THE PROBLEM OF STABILITY

by

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Abstract

Rawls, Democracy and the Problem of Stability

By

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In this dissertation I advance an internal critique of John Rawls's conception of how a democratic society marked by profound, but reasonable pluralism might nonetheless regulate itself through to public use of reason so as to be stable for the right reasons. I argue that on two points Rawls's analysis lacks then necessary critical apparatus to specify a satisfactory resolution to his own concerns. First, it sustains a psychological deficiency in that it does not pay sufficient attention to the motivational character of the kinds of norms or values that structure his conception of democratic stability. Second, it sustains a normative deficiency in that it does not pay sufficient attention to the complex nature of the pluralism of values that must be negotiated in order to account for this stability. To demonstrate these deficiencies, I first reconstruct Rawls's project as a matter of navigating problems of alienation and reconciliation. Then, I invoke the assistance of Hegel's analysis of the "actualization" of the individual will from his *Philosophy of Right* as a strategy for analyzing the success or failure of a project or reconciliation. Employing this analytical strategy, I demonstrate that Rawls's conception of public reason harbors an inherently alienating tendency for those who are motivated by the moral ideal of reciprocity that defines public reason for Rawls and that this alienating tendency stands to give rise to problems of instability. That Rawls fails to recognize this source of instability demonstrates the conception's psychologically

deficiency. Then, I propose under the heading of “reasonable reconciliation” a conception of a form of reconciliation that is possible on the Rawlsian model and a set of substantive political values (beyond the more formal values of freedom and equality of citizenship upon which Rawls focuses) that might reasonably be embraced from within public reason so as to render such reconciliation plausible. That the addition of such a set of values to the Rawlsian conception might make the difference between stability for the right reasons and instability demonstrates that the conception sustains a normative deficiency.

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to my father
and
to the memory of my mother

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Chapter 1: Introduction

1. The Legacy of John Rawls and Democratic Theory

That John Rawls was the most important political philosopher of the second half of the twentieth century now seems uncontroversial, at least in the English-speaking world. His magnum opus *A Theory of Justice* is frequently said to have revived normative political theory when it appeared in 1971.¹ In that book, he laid out and defended in comprehensive detail a liberal conception of justice that he termed “justice as fairness.” Most prominently, Rawls advocated his two, now famous, lexically ordered principles of justice. His first principle asserts that “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others,” and this distribution of liberties must be fully satisfied before anything else is distributed (TJ, 60). The second principle specifies that “social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity” (TJ, 83). What is more, perhaps equally as famous is Rawls’s argument that these principles are the best or most reasonable principles of justice, because they would be chosen by a set of idealized, hypothetical contracting agents considering such principles from an “original position” behind a “veil of ignorance” that guaranteed that their choice was made impartially.² These contributions to the tradition of liberal political thought are well worth celebrating, and many have done just that.

In this dissertation, however, I want to examine Rawls’s contributions to the field of democratic theory as distinct from his defense of liberal principles of justice. Though there has been a great deal of discussion surrounding this aspect of Rawls’s work, there is

much less of a consensus regarding the nature of his contribution. One factor that has no doubt contributed to this lack of consensus is the fact that Rawls's full-fledged engagement of questions of democratic theory emerged in his writing relatively late and at the tail end of a long and gradual series of revisions to his conception of justice as fairness. Since the issues of democratic theory that will concern me here emerge most clearly only in some of Rawls's final writings, a brief—though perhaps not uncontroversial—sketch of how Rawls's concerns turn toward questions of democracy might be useful.

As a survey of the volume of his work aptly titled *Collected Papers* (1999) reveals, Rawls began revising his view of justice as fairness shortly after *A Theory of Justice* was published. Initially these revisions took the form of modest reformulations of key points of that conception in response to his critics. Then, during the 1980's, Rawls's efforts grew in scope to focus on distinguishing the specifically political character of his conception of justice. In particular, Rawls began to articulate his conception of justice as free-standing from any comprehensive or metaphysical conception of morality or personhood. His concern was to show, as he had not in *A Theory of Justice*, that reasonable individuals could agree upon the principles of justice at the heart of justice as fairness even though they disagree about many other questions regarding the nature of the best kind of life for human beings and the like. Yet even there the main emphasis was to clarify the nature of his principles of justice and the kind of justification to which they were susceptible. It was not until the publication of his *Political Liberalism* in 1993 that questions of democratic theory began to become central for Rawls. That book included the essay "The Idea of Public Reason" (Lecture VI), in which Rawls detailed the process

of decision making by which citizens who disagree profoundly about many matters might nonetheless appeal to the commonly agreed upon conception of justice as fairness in order effectively to govern their society democratically.

In his last two revisions of his view, however, Rawls abandoned the hope that all might endorse the conception of justice as fairness. These last two writings are the “Introduction to the Paperback Edition” of *Political Liberalism* (1996) and “The Idea of Public Reason Revisited” (1997). Such unassuming titles might seem to suggest that these writing stand as a mere coda to the bulk of Rawls’s work. Yet, when he gives up on the hope that all will endorse his conception of justice as fairness, a different kind of philosophical project comes to the fore. No longer is Rawls trying to understand how abstract principle of justice might be justified. Instead, with this very late development, Rawls’s work attempts to understand the nature of what democratic politics and agreement might be like. Many of the most famous critiques of Rawls’s work tend to focus on the success or failure of Rawls to provide a defense of the distinctly liberal political order envisioned by justice as fairness, but even many of his more sympathetic commentators fail to appreciate the significance of this shift in the questions that occupy Rawls in these late writings.³ Indeed, Rawls himself tends to downplay the significance of this late shift in his thought, because he is still firmly committed to the liberal tradition.⁴ Given this, it is perhaps not surprising that Rawls’s contributions to the analysis of democratic politics have not received as much careful examination as they might and, accordingly, that no clear consensus has developed over the nature and significance of these contributions. There is certainly room to debate the best interpretation of the relation between Rawls’s final writings to his liberal conception of

justice as fairness. In this dissertation, however, my primary aim will be to contribute to the evaluation of Rawls's late project in democratic theory. The upshot of my assessment will be that while Rawls does advance questions that are fundamental to understanding the nature of democracy, on two points in particular his analysis lacks then necessary critical apparatus to specify a satisfactory answer to his own concerns. In order to specify more precisely what these points are, however, I must first elaborate the central elements of Rawls's interests in the idea of democracy.

2. Pluralism and the Problem of Stability

To introduce the problems that shall concern me here, I start with the issue that ultimately lead Rawls to give up the hope that all would come to endorse his conception of justice as fairness, and that issue is the fact of deep, but reasonable pluralism in modern society. As Rawls explains it in the original "Introduction" to *Political Liberalism*, a long-standing concern in his work is to account for how a society that is well ordered might be understood to be stable. In *A Theory of Justice*, this argument for stability (presented in Part III of that book) presupposes that all citizens have agreed to the conception of justice as fairness.⁵ In reformulating his ideas in *Political Liberalism*, Rawls came to hold, however, that the natural result of individuals using their reasoning capacities under conditions of political freedom is not agreement on any one comprehensive doctrine of the ultimate truth, whether religious, philosophical or otherwise. Rather, reasonable people tend to disagree. This is the basis of what Rawls calls the "fact of reasonable pluralism" (which I shall elaborate in detail in Chapter 2 below). This fact of reasonable pluralism, however, rendered Rawls's argument for stability in *A Theory of Justice* untenable. Rawls's project in revising his view in

Political Liberalism, then, became to account for how a society envisioned by justice as fairness, but also characterized by reasonable pluralism might nonetheless be stable over time.

This project required of Rawls the introduction of some new ideas into his work, three of which merit specific mention now. The first is a distinction between comprehensive conceptions of justice (such as justice as fairness as presented in *A Theory of Justice*) and political conceptions of justice. A political conception of justice is one that appeals only to political ideas and applies only to political matters and that is free-standing with regard to other more comprehensive doctrines. Thus, citizens who disagree profoundly about their comprehensive views might nonetheless all be able to endorse one single political conception of justice. To characterize the nature of this agreement, Rawls, in turn, introduces the idea of an “overlapping consensus.” Rather than endorse such a political conception of justice for precisely the same reasons, citizens will be expected to endorse that conception for reasons specified by their own comprehensive doctrines. Since the comprehensive doctrines citizens embrace under the fact of reasonable pluralism are expected to be profoundly different, their mutual endorsement of a political conception of justice will have the character of an overlapping consensus, and this will have to suffice for the purposes of accounting for the stability of society. In order to render this stability cogent, finally, Rawls also introduces the “idea of public reason.” This is the idea of the way a liberal democratic society makes its most important decisions and attempts to govern itself effectively as such.

As Rawls elaborates the idea of public reason in the original presentation of *Political Liberalism*, it is still subordinate to his effort to explain how justice as fairness

could be such a free-standing political conception of justice. This is evident by the three main features of that idea that Rawls emphasizes. First, public reason is defined by certain fundamental questions of constitutional essentials and basic justice of a liberal democratic constitutional scheme. Second, public reason is restricted to certain central political forums, as are central to the political deliberations of such a constitutional democratic system. In this regard, he is careful to distinguish the forums of public reason from other arenas of discourse that are found in civil society, say, and that thereby figure into what he calls the background public political culture. Third, and most tellingly, the content of public reason is defined by the content of a single political conception of justice, which is the object of an overlapping consensus of endorsements originating in a reasonable pluralism of more comprehensive doctrines. Thus, the idea of public reason at this stage of Rawls's thought still serves to explain how it is possible for the reasons articulated by a political conception of justice (ideally, justice as fairness) to regulate the stability of a liberal democratic society, instead of considerations originating in comprehensive doctrines regarding which even reasonable individuals might well disagree.

With the "Introduction to the Paperback Edition" of *Political Liberalism*, however, Rawls makes one fundamental change in his assessment of the extent of reasonable pluralism, and this change both forces the idea of public reason to center stage in his work and sets the stage for the difficulties with his account of the problem of stability that will concern me here. The change in question is that Rawls now takes the disagreements that inform the fact of reasonable pluralism to include disagreements about political conceptions of justice. Thus, no longer does public reason draw its content from

one such conception of justice, but many. Rawls declares explicitly, “It is crucial that public reason is not specified by any one political conception of justice, certainly not by justice as fairness alone. Rather, its content—the principles, ideals, and standards that may be appealed to—are those of a family of reasonable political conceptions of justice and this family changes over time” (PL, liii). Once Rawls accepts this pluralism among reasonable political conceptions of justice, the question about the stability of society must be reformulated. Rather than one conception of justice specifying the terms by which public reason is to regulate society, public reason now has the much more complicated task of negotiating the terms according to which society is thus regulated. To mark this shift, Rawls emphasizes a distinction between a society’s being stable “for the right reasons” as opposed to merely as a matter of a “*modus vivendi*.”⁶ The latter is an agreement to terms of social cooperation as a mere mode of survival or avoidance of highly undesirable consequences. For a society to be stable for the right reasons, by contrast, it must be regulated in accordance with reasons that are more positively embraced. Thus, the central problem for Rawls now becomes to specify how it is possible for a society that is deeply, but reasonably divided in many ways to regulate itself effectively such that it is stable for the right reasons, rather than merely as a matter of *modus vivendi*. In light of Rawls’s view that the fact of reasonable pluralism extends also to a plurality of political conceptions of justice, the work of accounting for the possibility of this stability must now be done by the conceptual structures of the idea of public reason.

It is also worth noting at this point that Rawls seems increasingly over his career to locate his work within the tradition of apologetic philosophy or philosophy as a

defense. In his *Lectures on the History of Moral Philosophy*, which Rawls had apparently worked on for many of the years during which he was developing the revisions to his conception of justice as fairness, he includes in this tradition both Leibniz's defense of faith and Kant's effort to bolster the disposition of individuals to deliberate morally. In such an approach to philosophy, one does not so much argue that it is necessary to hold a specific view (e.g., in the case of Leibniz, that God is just), as that it is reasonable to maintain that view if it is already one's starting point (cf., LHMP, 106). In the years after the publication of *A Theory of Justice*, society seems to have become less, rather than more like his vision of the well-ordered society. By the time of the "Introduction to the Paperback Edition" of *Political Liberalism*, Rawls seems determined simply to demonstrate that the idea of a democratic society that regulates itself according to a shared aspiration for justice, even if citizens disagree as to their conceptions of justice, represents a reasonable and intelligible possibility.⁷ He rejects the view that giving up such hope is "part of growing up, part of the inevitable loss of innocence" (PL, lx). Instead, he cites that "[t]he wars of [the twentieth] century with their extreme violence and increasing destructiveness, culminating in the manic evil of the Holocaust, raise in an acute way the question whether political relations must be governed by power and coercion alone" (PL, lxii). At a very deep level, Rawls is concerned to defend the proposition that reasoned, decent politics is possible, even in the face of very deep pluralism. It is in this light that I propose to assess the adequacy of Rawls's account of a deeply pluralistic society might be able to regulate itself democratically through the public use of reason so as to be stable for the right reasons.

In this dissertation, I will analyze the notion of the stability for the right reasons as a matter of “alienation” and “reconciliation,” terms which I shall explain in more detail in the next section. As I shall discuss in more detail in Chapter 2 below, Rawls did consider reconciliation to be one of the main tasks of political philosophy, and he even described the work of public reason in terms that suggest that he thought of it as a vehicle of reconciliation. With this as my point of departure, I will reconstruct Rawls’s account of the idea of public reason as a project of reconciliation. Based on this analysis, however, I find that Rawls’s account of how it is possible for a liberal democratic society to be stable for the right reasons is incomplete, and this incompleteness is not yet adequately appreciated in the growing literature surrounding Rawls’s work. Specifically, I will show that in two respects in particular his account is inadequate. First, Rawls’s analysis does not pay adequate attention to the motivational character of the kinds of considerations that are to count as public reasons in a liberal democracy that is stable for the right reasons. I term this problem the “psychological deficiency” of Rawls’s account of public reason. Second, Rawls’s account pays inadequate attention to the complex nature of the pluralism that must be negotiated by public reason if it is effectively to regulate for the right reasons a society characterized by the fact of reasonable pluralism. Since public reasons must ultimately be norms of some kind, I term this problem the “normative deficiency.” I will make this case by showing that internal to Rawls’s account of public reason there is a source of instability that threatens the plausibility of his view. This is a problem I shall term the “alienation of public reason.” This alienation of public reason will become evident when we pay sufficiently careful attention, as Rawls does not, to the motivational character of what counts as public reasons. I shall also argue that this

problem might be overcome. To do so, however, would require a more sophisticated account of the kinds of pluralism that public reason must negotiate and a more careful attention to the motivational character of what count as public reasons.

I have now invoked several notions that require explanation before I can launch into my assessment of Rawls's account of the idea of public reason. Among these are the notions of alienation and reconciliation, which I propose as terms of analysis for understanding the character of a society that is stable for the right reasons, and that of the "alienation of public reason," which I will show is a threat to such stability. Similarly, the terms in which I will analyze the pluralism of modern society relevant to Rawls's project deserve explanation. Accordingly, in the rest of this chapter, I elaborate these terms of analysis and the methodology and course of my investigation.

3. Alienation, Reconciliation and the Alienation of Public Reason

In order to get a better grip on the psychological deficiency of Rawls's account of the possibility of stability "for the right reasons," I begin by considering a conception of democracy that I will use throughout this dissertation as an illustration of what it would be like for a democratic society to be stable merely as a matter of a *modus vivendi*. I have in mind what we might call the "competitive-procedural" model of democracy. On this model, democratic decision making takes the form of a competition among various individuals or factions for control of political power. Such a view has been articulated theoretically, though in different ways, by Joseph A. Schumpeter (1942) and Robert Dahl (1956), two of the most influential democratic theorists of the twentieth century, but it is also a quite conventional understanding of democracy.⁸ This model is conventional both in the sense that it articulates how the political institutions or conventions of elections

structure the transfer of power from one official to another and in the sense that articulates what ordinary individuals are most likely to say defines the nature of a democratic system of government. Citizens, on this view, are construed as holders of private preferences which they seek to satisfy in the pursuit of their own individual good, and the possibility of any common public good apart from the aggregate satisfaction of these preferences is denied. Citizens, of course, are free to choose these ends without state interference and are equally entitled to express them in the ballot box and other public forums. The virtue of democratic decision making, on this model, lies in the fact that all are equally entitled to compete for positions of political leadership and the fact that periodic elections allow citizens to pitch out of office leaders who fail to satisfy their preferences sufficiently. The ends represented by a majority of votes then carry the day and are those promoted in public policy. Politics, accordingly, becomes a matter of trying to shift the private preferences of citizens so as to gain a majority.

What we must now consider in order to understand why a society characterized by the competitive-procedural model of democracy is stable merely as a matter of a *modus vivendi* is something of the kinds of satisfaction or frustration we might expect citizens to take in the results of such decision making. Given the vast pluralism of modern times, it is not hard to see that a great deal of frustration will be virtually inevitable under a competitive-procedural scheme of democratic governance. So long as citizen participation is effectively limited to the activity of consumers or clients with fixed private preferences to be satisfied, it is likely that the preferences of many citizens will not be accommodated. The major social institutions structured by these decision-making processes, furthermore, will likely be experienced by many citizens as

inhospitable or downright hostile to their aspirations. It would thus seem, on this view, that there is considerable room for frustration built into the very idea of democracy at all. Any satisfaction of deep and personal ends that the institutions of such a democratic society might afford, moreover, will be merely contingent, vulnerable to the shifts of the opinions or preferences of those who constitute the numerical majority. Citizens in such a society might even give up hope all together that their social world will ever be anything other than indifferent (at best) to their striving for a good life. Such a conception of democracy harbors no ambition that a consensus on political arrangements will be permanent or endorsed by all. Politics is merely a mechanism for negotiating conflicts peacefully. Because any satisfaction citizens might take with the results of their democratic decision making is an entirely contingent matter on this view, I take this conception not to be a vision of stability for the right reasons, or at least not in any robust sense. Accordingly, I will refer to the competitive-procedural model as a conception of what it would be like for a society to be stable only as a matter of a *modus vivendi*.

In this dissertation, I will examine these frustrations that citizens might experience with the democratic governance of their society as instances of “alienation.” It must be acknowledged, however, that phenomena of alienation may arise in unlimited contexts and for many, many reasons, of which many may have nothing to do with political phenomena. Likewise, as two book-length studies by Richard Schacht of various theoretical accounts of “alienation” suggest, the literature surrounding this theme is comparably large (Schacht 1971 and 1994). A comprehensive psychology of alienation is, accordingly, well beyond the scope of this dissertation. Moreover, I also follow Schacht in holding that such a comprehensive theory of alienation is not possible.

“Alienation” is not a name for a single kind of thing, but rather what Wittgenstein calls a “family resemblance” (1953, 32 [section 67]). By contrast, however, as Schacht elaborates, “there *are* myriad alienations—alienations that have existed, that do exist, and (no doubt) that will come into existence as the human adventure continues along its many different paths” (1994, 34). Perhaps the only thing more positively that we might say about the concept of alienation as such is that it is a relational category (Schacht 1994, 35). Thus, we might describe citizens as alienated from their social world, from other citizens in their society, or even from themselves, depending upon the phenomenon we are examining. I aim here to explore only the senses of alienation that we should expect citizens of a liberal democracy to experience with respect to their democratic governance and the major institutional arrangements of their society as they are shaped democratically.

We would do well now to state also what it might be like for alienation to be overcome. With respect to the kinds of alienation that will interest me here, to overcome a form of alienation is to achieve a corresponding sense of “reconciliation.” In order to admit of a multiplicity of reconciliatory possibilities, I will characterize this notion too somewhat loosely, and primarily negatively. We ought, accordingly, to distinguish reconciliation from a sense of “resignation” (Hardimon 1994a, 23-4; cf. Rawls JAFR, 3). For one thing, if accepting uncritically an existing status quo were the only possible solution, then it is hard to see how we could genuinely overcome any form of alienation. Similarly, reconciliation is not to be understood as the same thing as defeatism. This too would hardly seem to be any way of overcoming alienation. As well, reconciliation need not be understood as being perfectly or completely satisfied with the situation at hand.

One could still experience some measure of frustration with a situation, but still meaningfully be said to be reconciled in such a way as to overcome an instance of alienation. We might illustrate this by imagining the frustrations one might experience over having to pay a large tax bill. One might be said to experience alienation from one's society or government or whomever one blames for this frustration. More importantly, however, upon investigating the use to which this tax money will be put, one might come to see it as worthwhile. This is not to say that there will no longer be frustration in paying taxes, only that one might overcome the experience of alienation so as to be reconciled to the larger tax system.

As I will elaborate in more detail, to describe the problem of stability as a matter of alienation and reconciliation is simply to paraphrase Rawls's central concern in a different vocabulary. Now, however, I would like to introduce a distinction that will point us in the direction of the psychological inadequacy of Rawls's conception of public reason that I will study in this dissertation. I invoke now a distinction that both Schacht and Hardimon develop. One may be alienated (and thus too achieve reconciliation) in two ways: objectively and subjectively (Schacht 1994, 20ff; Hardimon 1994a, 119ff). Objective alienation, on the one hand, occurs when circumstances in the world are inhospitable to an individual's activities. Schacht describes this possibility as a "dysfunction" of social relations, while Hardimon (following a Hegelian turn of phrase) says characterizes it as a matter of the social world inappropriately not being "a home." Thus, if society puts up barriers to one's participation in the workplace, for example, we would have to describe it as a matter of objective alienation. Subjective alienation, on the other, as Schacht describes it, is a matter of "dissatisfaction" with the status quo.

Hardimon, in turn, characterizes subjective alienation as a function of the individual's belief (correct or incorrect) that the world is not a home. To illustrate, an individual who refuses to believe that his tax money is spent well *only* because of his distaste for government would have to be described as subjectively alienated. Now, if subjective alienation and reconciliation are meaningful possibilities, then this suggests quite strongly that we must pay careful attention to the motivational character of the considerations that are to count within public reason as the terms according to which society is to be effectively regulated.

Indeed, taking this possibility seriously, I will show (in Chapter 4 below) that Rawls's conception of public reason harbors a form of alienation that is fundamentally subjective in nature, but which has been largely overlooked in the literature surrounding Rawls's late work. I term this the problem of the "alienation of public reason." This form of alienation, as I will argue, arises from the very core of what defines the idea of public reason at all for Rawls and, as such, is permanent to the Rawlsian conception. In the worst case scenario, it threatens to undermine citizens' motivation for participating in public reason at all, leaving them to shrug off such democratic deliberative politics.⁹ If it turns out that Rawls's conception of how citizens are to deliberate democratically so that their society is to be stable for the right reasons actually puts citizens in a situation that undermines their motivation for participating in democratic politics at all, then Rawls's view is implausible at best. It will turn out that this problem emerges when we pay more careful attention to the motivational character of what count as public reasons than Rawls himself does. If this is the case, my claim that his account harbors a psychological deficiency will thus be justified.

I will argue, however, that this alienation of public reason is not necessarily fatal to Rawls's view. But to distinguish the kind of reconciliation that is possible, whereby this alienation of public reason might be overcome, we must now turn to what I am calling the normative deficiency of Rawls's conception, i.e., his inattention to the complexity among kinds of pluralism that democratic public reason must negotiate in order for a democratic society to be stable for the right reasons.

4. The Normative Structure of Liberal Democracy

To begin to appreciate the difficulty involved in what I am calling the normative deficiency of Rawls's conception of public reason, we need to look no further than to the various comments I have already made about the conceptions of democracy to be discussed in this dissertation. Rawls, I have said, aims to account for how a liberal democratic society might be understood to be stable for the right reasons. As I will discuss further in Chapter 2 below, for Rawls, liberalism is characterized by a fundamental commitment to the values of freedom and equality. A liberal democracy, in turn, is to be understood as a scheme in which the commitment to these fundamental values of freedom and equality is expressed politically in terms of free and equal citizens deliberating about and mutually authorizing the terms of their social cooperation, including the use of coercive force when necessary. Similarly, I have also characterized the competitive-procedural model of democracy as committed to an understanding of citizens as free and equal. I will treat it as axiomatic that freedom and equality are the fundamental commitments of a liberal democracy. Yet, "freedom" and "equality" are very abstract concepts, and to specify adequately how they are to be interpreted and expressed as values of a democratic society is far from simple. It is useful to distinguish

between the idea of a “concept,” such as “freedom” or “equality,” and the “conception” which we might hold of a concept. A conception of a particular concept specifies the more determinate principles which give content to that more general concept. Thus, while we may agree that freedom and equality are ideas which a liberal democracy ought to promote, we may have starkly different conceptions of how this is to be done (cf., Rawls TJ, 5).

But the values of freedom and equality are not the only values that play a role in democratic decision making. Here we must distinguish between two kinds of values within the idea of democracy which all too frequently remain conflated, particularly among liberal treatments of democracy. The first kind of value is that which grounds the authority of democracy at all. The “grounding values of democracy,” as I shall call them, are those of freedom and equality. They represent, as suggested, the relationship among citizens of a democracy which ideally obtains when they act in their capacity as citizens, i.e., deliberating about and authorizing the exercise of political power over themselves. Different conceptions of liberal democracy, of course, might offer different conceptions of these values. The grounding values of democracy, in principle, however, are distinct from another set of values, viz., those which are endorsed by the citizens of a democracy as bases for structuring society’s most important social arrangements and fundamental policy. These latter values I shall call the “substantive political values” of a democratic society.

Here is the root of the problem: just because citizens of a democratic society are to regard themselves as free and equal (according to whatever conception), it does not follow that these are the only values which are appropriate or necessary as bases for

political decision making. Freedom and equality, of course, impose constraints upon what considerations are acceptable reasons in public deliberations. For example, the value of free and equal citizenship is clearly inconsistent with the value of hereditary hierarchical authority. Moreover, the grounding values of democracy do provide some substantive content to democratic deliberations by ruling out such values. But the values of freedom and equality cannot fully determine the outcomes of processes of democratic decision making. And where the values of freedom and equality leave off, other values become decisive. For the competitive-procedural model of democracy, this presents no problem. For, on this conception, it is the normal expectation that decisions will be made according to the private preferences of the majority of citizens. The competitive-procedural model, however, is indifferent as to what values are embraced as a matter of these private preferences.

For his part, Rawls does acknowledge that other political values are important, but he is largely indifferent as to the question of what substantive political values beyond the values of freedom and equality of citizenship are to serve as bases of democratic decision making in public reason. I suspect that what accounts for this is the very late development in his thought that saw that reasonable pluralism extends also to a pluralism of political conceptions of justice. For as long as citizens are expected to be able to agree on a single political conception of justice, their agreement upon substantive political values to ground decisions of public reason is virtually a *fait accompli*. Once it is admitted that citizens might also reasonably disagree on political conceptions of justice, however, this level of the work of public reason becomes problematic. It is here that I will show that Rawls's conception of public reason harbors a normative deficiency with

respect to the complexity of the pluralism that public reason must negotiate. Rawls fails to recognize the importance of the distinction between the grounding values of a liberal democracy and the substantive values that serve as the bases of its democratic decisions making. Though Rawls is greatly concerned to show how the grounding values of a liberal democracy are to be expressed politically in a society that is stable for the right reasons, he neglects the question of the substantive values that must serve as the bases of democratic decision making to the detriment of his argument. My analysis of the alienation of public reason will show, however, that this destabilizing tendency arises precisely from the interpretation Rawls gives of how the grounding values of freedom and democracy are to be expressed in the idea of public reason. Yet I will also show that this alienation of public reason might be overcome if the Rawlsian conception of public reason is amended with the addition of substantive political values that might serve as a basis of social reconciliation. If this is the case, then there exists a qualitative difference in the nature of the grounding values of a liberal democracy over against the substantive political values that serve as bases of democratic decisions, and it is one to which Rawls's account does not sufficiently attend. Therefore, Rawls's analysis of the normative basis for the stability of a liberal democratic society is deficient.

Before turning to a discussion of my methodology and an outline of my argument, it will be useful to say something about values in general. The term "values" is used in a multitude of different ways in everyday discourse and in philosophical and political theory. In this dissertation, I employ a general conception of "values" which does not make any final commitments to answers to metaphysical questions. I use the term "value" to refer to any of the standards which individuals use to shape and evaluate

persons, their actions, things, states of affairs or properties thereof. We may speak of values in both a “positive” sense and a “normative” sense. The positive sense is that of descriptive claims about what standards individuals as a matter of fact do use in their evaluations, etc. The normative sense is that of claims of what standards they *ought* to use. I shall also refer to values as “realized” or “expressed” in society’s major institutional arrangements and the like. My definition of the term “value” follows generally the rational attitude theory of value presented by Elizabeth Anderson in her book *Value in Ethics and Economics* (1993). According to her theory, values are rationality concepts related ultimately to our own self-understandings. Importantly, the problem of the correct ontological or metaphysical theory of values need not bother us here, for this investigation is concerned with practical questions about values. No metaphysical theory will fully determine our answers to the questions of what we ought to do in practical situations, or how a democratic society ought to organize itself.¹⁰ Whatever the answers are to these questions, individuals must still justify their actions with reasons. Similarly, I also intend my definition of “values” to include both of what in ethical theories are more traditionally called “rights” and “goods.” Rights are principles articulating respects in which individuals are to be held as inviolable or specific things to which individuals are entitled, while goods refer more broadly to other claims of value. I use the vocabulary of “values” here as a more general way to articulate both sorts of claims.

5. The Method of Reflective Equilibrium

The critique of the views of John Rawls that I undertake in this dissertation will have the character of an internal critique. That is, I will work within the terms of Rawls’s

own account to show that it lacks necessary critical apparatus to satisfy its own ambitions. One phase of this argument will show that Rawls fails to notice the problem of the alienation of public reason that threatens to undermine the coherence of his own view. More constructively, a subsequent phase will attempt to show that this alienation might be overcome, but only if Rawls's conception of public reason is amended to include an additional layer of complexity in the kinds of norms or values that democratic deliberation must negotiate in order to achieve stability for the right reasons. In order to proceed with such an internal critique, my claims must be consistent with the fundamental aims and commitments of Rawls's conception. It is fitting, therefore, that I employ also Rawls's method of reflective equilibrium. Rawls uses this method throughout his publishing career, and indeed it was this method that led him to see that it was necessary for him to revise his views, even at the very end of that career (TJ, 20ff, 1975; cf. Daniels 1996).

The method of reflective equilibrium is perhaps best characterized by stating what it does not attempt to do. It does not call for a logical deduction flowing from first principles down to particular conclusions. Nor does it take any one point or proposition to be fixed permanently beyond the possibility of revision or beyond the scope of critical scrutiny. Rather, reflective equilibrium attempts to bring our most deeply embraced ethical and political principles and commitments at various levels of abstraction or concreteness into congruence with one another. This method calls for us to work back and forth between our basic principles and particular judgments, revising and correcting them both as necessary. Rawls distinguishes our most deeply held convictions from others that might not have been the object of much sustained reflection by calling them

our “considered judgments.” The aim of reflective equilibrium is to give our considered judgments their best or most favorable philosophical presentation, while holding them always open to revision should reason for such revision come to light.

At the political level, reflective equilibrium does not pretend to be independent of historical experience. Rather, in attempting to give to our considered judgments the best possible philosophical presentation, this method has the character of being both a reconstruction of ideas that have developed historically and a defense of the best of those ideas to which we are most deeply committed. Thus, Rawls’s conception of the idea of public reason and his argument that a society might be stable for the right reasons are a part of an effort to reconstruct in the most favorable way the best of the tradition of democracy. In such an effort, we must take into account particularly the ideals that we deem to be most central to the idea of a well-ordered democratic society. Naturally, the historical experience of democratic institutions will be instructive. We should not, however, take any historical experience as decisive for such a project of ideal theory. That would mar the investigation with an unwarranted conservative tendency. Using the method of reflective equilibrium might also involve us in some empirical speculation as to the values individuals do embrace in their practical reasoning. The facts we include from such philosophical anthropology or political sociology, however, must remain general and founded upon observations available to ordinary reasonable individuals.

The method of reflective equilibrium is most obviously a part of ideal theory, and ideal theory is often contrasted with “critical theory” or other forms of theorizing which begin by investigating actual, historically developed problems. Ideal theory has been criticized by various philosophical authors as overly detached or even fundamentally

disengaged from the society in which values really matter (V. Held 1984, Young 1990, Walzer 1994; cf., Schwarzenbach 1990). While there is often a gap between ideal theory and many of the practical problems faced in modern society, that gap is not as decisive as it might seem. Recognizing that the method of reflective equilibrium requires us to reconstruct actual historically developed ideas helps to reduce this gap. In this dissertation in particular, the human experiences of satisfaction and frustration with the democratic politics and social institutions of one's society will count as general facts about life in modern society, available to the observations of ordinary reasonable individuals. If it turns out, as I think it will, that the idea of democracy entails the potential for forms of frustration, dissatisfaction and alienation, then the project of ideal theory, despite its principled contrast with critical theory, will only serve to demonstrate the need for critical investigation as a constant companion to ongoing democratic politics.

A final word is in order regarding the spirit in which I take up my critique of Rawls's work. Though I will express doubts about the ultimate viability of the kind of conception of democracy Rawls attempts to envision, I believe that there is a great deal in his work that is of value and that we would do well to explore it carefully. I approach this work in the same spirit as Thomas Pogge approaches it in his book *John Rawls: His Life and Theory of Justice* (2007). Pogge elaborates, "The aim is always to treat the theory as Rawls treated it: not as a magnificent machine displayed behind velvet ropes in a museum, but as a work in progress to be used and developed, as well as improved and adjusted in the light of new arguments and objections, new knowledge and technologies, and new political developments" (xi). Thus, in taking up an internal critique of Rawls's work guided by the method of reflective equilibrium I aim to contribute ultimately to the

understanding of some of the questions that animated Rawls's continued effort to revise and improve his work. I would like my critique to stand as a friendly amendment to Rawls's work. But since an amendment becomes a friendly amendment only when accepted and that is no longer possible, I will not insist on this term. Instead, I will be satisfied to develop a conception of democratic public reason that could be safely described as "Rawlsian" by virtue of its development of ideas Rawls originally articulated and in service of the same commitments that animated Rawls's work.

6. Outline of the Argument

Let me recapitulate briefly what it is that I shall claim in this dissertation, before I outline the course of my argument. In my effort to assess the nature of John Rawls's contribution to democratic theory, I find that his account of how a democratic society that is characterized by deep, but reasonable pluralism might be understood to be stable for the right reasons is inadequate in two specific regards, but that these flaws are not necessarily fatal to his view. First, I hold that Rawls's conception is psychologically deficient in that it does not pay adequate attention to the motivational character of the considerations that are to serve as public reasons. Second, I hold that Rawls's conception is also normatively deficient in that it does not recognize the fundamental difference between, but vital importance the distinction between the grounding values of a liberal democracy and the substantive political values that ultimately must serve as bases of political decisions. I demonstrate these two deficiencies by showing that internal to Rawls's conception of public reason is a form of alienation that I call the "alienation of public reason" that undermines the motivation citizens might hold for engaging in democratic deliberative politics. I also argue, however, that this form of alienation might

be overcome to achieve a form of reconciliation to democratic public reason, but that to do so would require an analysis, absent in Rawls's conception, of how public reason might negotiate a sufficiently motivational set of substantive political values to serve as bases of its decisions. I now sketch how this argument will unfold over the course of the chapters to follow.

In Chapter 2, I turn to a more complete presentation of the ideas Rawls thinks are necessary to explaining how a liberal democratic society might be stable for the right reasons, including the political conception of citizens and the idea of the basic structure of society. In particular, I examine the ways in which his formulation of the idea of public reason is a part of a project of reconciliation. Rawls seems to understand the need for reconciliation as following directly from the pluralism of the modern social world, a phenomenon that he argues is a natural feature of liberal democracy and that he holds we should accept as normal. In order to overcome the alienation inherent in this pluralism of the modern social world, Rawls thinks that citizens must agree in public reason upon political values according to which they will regulate the most important social structures of their society. But I argue that his conception of the pluralism relevant to democratic politics obscures two types of pluralism that must be distinguished in order to develop an adequate model of reconciliation through the public use of reason. This obscured distinction leaves the Rawlsian conception of public reason at least as vulnerable to problems of alienation as the competitive-procedural model of democracy. This will become particularly evident when we press Rawls's cursory treatment of how public reason is to negotiate questions of intimate relationships and the institution of the family. That Rawls's conception of public reason fares so comparably to the competitive-

procedural model of democracy, I suggest, is enough to raise worries that there might be a deeper, more complex difficulty afoot in that conception.

In Chapter 3, in order better to understand the complexity of the problem I locate in Rawls's theory, I take up the model of reconciliation in political philosophy found in Hegel's *Philosophy of Right*. Like Rawls, Hegel understood his philosophy as a project of reconciliation and as a defense of the rationality of the modern state. The core of this project, however, is an analysis of the "actualization" of the individual free will, which entails for Hegel a careful examination of the experience of acting on norms, including the possibilities of satisfaction or alienation. With this analysis, Hegel both diagnoses a distinctly modern form of alienation and hopes to show that participation in the institutions of the modern state is nevertheless more rational than giving oneself over to the other, less rational forms of social activity available in his day. More importantly, by taking Hegel's critique of the experience of acting from norms as the core of his analysis, I read Hegel's theory of right as presented in his *Philosophy of Right* as no more than a partial political philosophy. This theory, particularly with its famous distinction between morality and ethical life, aims only to sketch the minimal normative content necessary to understand the structure of modern society. I show not only that Hegel's method of analysis is compatible with the Rawlsian method of reflective equilibrium, but also that his diagnosis of alienation and recipe for reconciliation provide a model for thinking more systematically about the difficulties I identify in Rawls's conception of public reason.

In Chapter 4, building on the insights gleaned from my reading of Hegel, I offer a further analysis of the normative structure of the Rawlsian conception of public reason

that shows a problem of alienation with striking parallels to the pattern of alienation identified by Hegel in modern society. The core of my analysis is to examine the demands that acting from the norms that define the idea of public reason for Rawls might place on citizens. I show that at its most fundamental level, Rawls's conception of public reason entails an inherently alienating tendency. Moreover, since this alienating tendency arises from the norms that one would have to embrace in order to participate in democratic public reasoning, this alienating tendency is ultimately subjective in nature. Likewise, it is also permanent to the Rawlsian conception. This alienating tendency, however, threatens to undermine citizens' motivation for participating in public reason. Accordingly, Rawls's conception of how it is that a liberal democratic society is to be stable for the right reasons is inadequate. And since this problem is rooted in an inadequate treatment of the motivational conditions of participation in public reason, my claim that Rawls's conception of public reason is psychologically deficient will be justified. As central as this alienating tendency is, it is surprising that it is not as of yet sufficiently appreciated in the growing literature surrounding Rawls's later work.

In Chapter 5, however, in order to show that this alienation of public reason is not necessarily fatal to the Rawlsian project, I develop within the structures of the Rawlsian conception of public reason a political reinterpretation of the Hegelian project of reconciliation. I first propose a conception of "reasonable reconciliation" as the kind of reconciliation that is proper to the Rawlsian conception of a modern liberal democratic society that is stable for the right reasons. Then, I consider how, with an improved focus on the importance of the institutions of the basic structure of society, public reason might articulate and order appropriate political values so as to overcome the alienation of public

reason in a way that is reasonably reconciliatory. I develop here an analysis of the two further kinds of political values that I believe are properly bases of public reason, and I consider how these must be ordered in liberal public reason. These values that I will assert are essential to liberal democratic public reason are, first, the human functional capabilities developed in the work of Martha Nussbaum (2000) and, second, a set of social political values that characterize the kinds of social interaction that liberal democratic deliberations should aim to structure. I propose that, if amended in this fashion, the Rawlsian conception of public reason might be able to demonstrate the plausibility of reasonable reconciliation and so too the possibility stability for the right reasons.

Finally, Chapter 6 serves as my concluding chapter. In light of the deficiencies I expose in Rawls's account of how a society regulated by his conception of democratic public reason is to be stable for the right reasons, I offer my final evaluation of the nature of Rawls's legacy arising from his contributions to the field of democratic theory.

Notes

¹Since I will cite some of the works of John Rawls frequently, I will refer in my citations to the following works according to the abbreviations indicated in parentheses: *A Theory of Justice* (TJ), *Justice as Fairness: A Restatement* (JAF), *Political Liberalism* Paperback Edition (PL), “The Idea of Public Reason Revisited” (IPRR), *Lectures on the History of Moral Philosophy* (LHMP).

It is perhaps a reflection of the influence and generally recognized importance of Rawls’s work that no fewer than five books have appeared in English in the last decade attempting to assess Rawls’s work and to present it to an introductory audience: Robert B. Talisse, *On Rawls* (2001); Thomas Pogge, *John Rawls: His Life and Theory of Justice* (2007); Paul Graham, *Rawls* (2007); Catherine Audard, *John Rawls* (2007); and Samuel Freeman, *Rawls* (2007b).

A brief sampling of the statements made in these books about the influence of *A Theory of Justice* might also be instructive: “Within its pages, Rawls not only reinvented and reinvigorated the enterprise of political philosophy, but also proposed a fascinating and controversial philosophical theory called ‘justice as fairness’” (Talisse 2001, 4); “It is a commonplace that Rawls’s *A Theory of Justice* brought political philosophy back to life, inspiring a flood of many thousands of articles in the journals of philosophy, political science, economics, and law” (Pogge 2007, 178); “John Rawls’s *A Theory of Justice* (1971) is one of the most influential books in moral and political philosophy published within the last one hundred years” (Graham 2007, vii); “There is a wide consensus that John Rawls is one of the major thinkers of the twentieth century in the Anglophone world.” (Audard 2007, 1); “Rawls is the foremost political philosopher of the twentieth century, and is recognized by many as one of the great political philosophers of all time” (Freeman 2007b, x).

² Perhaps one uncommon indication of the fame of these ideas is that *The New York Times* saw fit on December 2, 2002 to publish an editorial written by Martha Nussbaum on the occasion of Rawls’s death, in which the significance of Rawls’s principles of justice and the argument from the “original position” behind a “veil of ignorance” are discussed.

³ Perhaps the two most famous critiques of Rawls’s liberalism are Robert Nozick’s *Anarchy, State, and Utopia* (1974) and Michael Sandel’s *Liberalism and the Limits of Justice* (1998), the first edition of which was copyrighted in 1982. Nozick is concerned to defend a libertarian position that places some kinds of political actions (such as economic redistribution) off limits for any state. Sandel, by contrast, develops a more communitarian critique of the conception of personhood that he believes necessarily underlies Rawls’s liberal conception and thereby inappropriately blocks many legitimate claims of justice. Interestingly, both books are densely indexed, but neither index includes an entry for “democracy.”

Among the more sympathetic critics of Rawls, Thomas Pogge (2007) is an interesting case. His book is an updated version of a text that appeared in German in 1994 (xi). He presents an account of Rawls’s work that is entirely devoted to a reconstruction of Rawls’s project in the conception of justice as fairness. Though he does not indicate that the revisions that occurred in the 1990’s were a significant shift for Rawls, he does in due course consider the “still deeper difficulty” that arises when

everyone cannot be expected to agree to the same conception of justice. He couches this problem, however, as a challenge to the kind of reflective equilibrium a citizen tries to achieve when endorsing the terms of social stability. I will consider this formulation of the problem again in Chapter 4 below.

Similarly, Robert Talisse has devoted a great deal of ink to assessing what he considers to be the failure of Rawls's later work to salvage what he takes to be the very serious problems of liberalism. See, for example, his "Rawls on Pluralism and Stability" (2003).

Those who note the momentous nature of this shift in Rawls's thought include Freeman (2004) and Dreben (2003). Dreben in particular, who seems to have been a close friend of Rawls, asserts that it was not clear even to Rawls what he was doing until the Paperback Edition of *Political Liberalism*. He says of that book, "It is very misleading in the book, until you read the new introduction, the Second Introduction, and even then. [It is misleading] because the last three chapters of the book are lectures that he gave before he fully grasped what he was doing" (331f).

⁴ Rawls himself presents the "Introduction to the Paperback Edition" of *Political Liberalism*, which contains the revisions to his views that I take to be so significant, as "a Reader's Guide to the leading ideas of the book" (PL, xxvii). The essay "The Idea of Public Reason Revisited," however, begins more directly as a contribution to the understanding of the democratic theory, and the first sentence of that essay includes an footnote pointing out precisely the significant revisions introduced in the "Introduction to the Paperback Edition" (IPRR, 573n1). See also Dreben (2003) in this regard.

⁵ For a detailed analysis of this argument from *A Theory of Justice*, see Freeman (2003c).

⁶ This distinction had already appeared in the original edition of *Political Liberalism* in the context of the idea of an overlapping consensus (PL, 146f), but it now becomes central.

⁷ In *Justice as Fairness: A Restatement*, which I regard as an intermediate point toward the development of his full focus on the idea of public reason, Rawls talks about this function of political philosophy as the project of "realistic utopia." He comments, "Our hope for the future of our society rests on the belief that the social world allows at least a decent political order, so that a reasonably just, though not perfect, democratic regime is possible" (JAFR, 4).

⁸ The competitive-procedural model of democracy gained a great deal of favor in the twentieth century when it was heralded as the opposite of fascism and totalitarianism (cf., Schumpeter 1942, Dahl 1956, Popper 1962). And in comparison to the very real possibilities of such horrors, any appeal to the concepts of freedom and equality must be attractive. More recently, Ian Shapiro gives an interesting and provocative defense of the central idea of Schumpeterian political competition in his book *The State of Democratic Theory* (2003).

⁹ I owe this formulation to a seminar entitled "Democracy Shrugged?" at the Center for Place, Culture and Politics at the CUNY Graduate Center, in which I had the good fortune to be able to participate during the academic year 2005-2006.

¹⁰ As Ronald Dworkin pointedly argues, the view that moral claims would only be justified if it could be supposed that the universe contains "among its numerous particles of energy and matter" certain special particles "whose energy and momentum establish fields that at once constitute the morality or immorality, or virtue or vice, of particular

human acts and institutions and also interact with human nervous systems so as to make people aware of the morality or immorality or of the virtue or vice” is a nonstarter. Indeed, Dworkin aptly names these electron- or photon-like particles that somehow constitute the physical basis of mores “morons” (Dworkin 1996).

For two albeit different statements of the failure of various philosophical strategies to give adequate treatment to moral questions, see the respective American Philosophical Association Presidential Addresses of John Rawls, “The Independence of Moral Theory” (1975), and Virginia Held, “Moral Subjects: The Natural and the Normative” (2002).

Chapter 2: Reasonable Pluralism and Stability for the Right Reasons

In this chapter, I reconstruct Rawls's conception of how a democratic society that is characterized by profound, but reasonable pluralism is to regulate itself through the public use of reason. I lay out in detail the problem of stability as it emerged from Rawls's characterization of the idea of a "well-ordered society" and consider the new ideas that he found necessary to introduce into his conception of the stability of such a society. Within this framework, I explore, in particular, the structure of the problem posed by the fact of reasonable pluralism as a problem of alienation. Likewise, I analyze the project of achieving stability for the right reasons as a matter of achieving some form of reconciliation. Central to Rawls's project is the effort to distinguish a realm of political values that reasonable citizens might be able to endorse and that would serve as a basis for the justification of the most important decisions they make regarding their governance. It will soon become apparent, however, that there is a problem with regard to the question of what substantive political values beyond those of the freedom and equality of citizenship are to constitute this realm of the political. Though Rawls consistently acknowledges that there must be a more extensive and pluralistic set of such political values, he is oddly ambivalent about developing what these other values might be. As a result, I will argue, Rawls's conception of public reason harbors zones of indeterminacy regarding questions that it regards as fundamental to the demonstration of stability. This leaves Rawls's account at a crucial point at least no better off than the competitive procedural model I sketched in the previous chapter. It also suggests that a more searching critique might be in order.

1. Reasonable Pluralism and the Problem of Stability

In the original presentation of *Political Liberalism*, Rawls asserts in “Lecture I: Fundamental Ideas” that there are four general facts that hold true for a society that is, in his terms, “well-ordered.” Though he assumes that this is a society that agrees upon the conception of justice as fairness to regulate its main social and political institutions, these four facts frame the problem of stability as Rawls sees it throughout the last revisions in his work. The first two, to which Rawls explicitly gives names, are “the fact of reasonable pluralism” and “the fact of oppression” (PL, 36f). The last two, however, he does not name explicitly, but I shall call “the fact of majority support” and “the fact of the political culture” (PL, 38).

In the years after the publication of *A Theory of Justice*, as I have already noted, Rawls began to think it necessary to expand and modify his original presentation of justice as fairness to accommodate the thought that a wide range of profound disagreement seems to be a permanent feature of modern democracies (PL, xviii). He came to view such profound disagreement between individuals as a normal result of the use of human reason under the institutions of a free society. Since he views the free use of reason as fundamental to the idea of a liberal democratic society, not only is this disagreement permanent, it is also to be accepted as a normal feature of such societies. Accordingly, Rawls holds that some range of disagreement is reasonable, and a fundamental assumption for political theory becomes what he calls “the fact of reasonable pluralism.” As Rawls puts it, “Under the political and social conditions secured by the basic rights and liberties of free institutions, a diversity of conflicting and irreconcilable—and what’s more, reasonable—comprehensive doctrines will come about

and persist if such diversity does not already obtain” (PL, 36). This is not merely an accidental historical fact, but what we might call a normative fact, a background condition that must be taken into consideration even in ideal political theory. I call this a “normative fact,” because “*reasonable* pluralism” is not the kind of thing that can be discovered in a narrowly empirical way. Rather, it presupposes normative commitments regarding how reason should be expected to operate and the legitimate means by which at least some range of pluralism should be expected to result.¹ This fact of reasonable pluralism, then, must become a part of the problematic informing how we are to understand the idea of liberal democracy at all. This is not yet to establish what range of pluralism is to be accepted as reasonable, but only to establish that deep divisions among citizens is a problem to be addressed by any complete conception of liberal democracy.

Further to emphasize that reasonable pluralism is in some sense a natural occurrence, Rawls names as a “related general fact” what he terms “the fact of oppression.” In the original “Introduction” to *Political Liberalism*, Rawls described the fact of reasonable pluralism as an historical development, particularly in the Protestant Reformation and beyond. He notes that on his view, “This pluralism is not seen as disaster but rather as the *natural* outcome of the activities of human reason under enduring free institutions” (PL, xxvi; my emphasis). Deep agreement that persists over time, by contrast, is likely evidence of the use of coercive force. As he explains it, “a continuing shared understanding on one comprehensive religious, philosophical, or moral doctrine can be maintained only by the oppressive use of state power” (PL, 37). Again, though Rawls asserts as an example that the Inquisition was instrumental to maintaining

the dominance of Catholicism during the Middle Ages (PL, 37), the fact of oppression, like the fact of reasonable pluralism, is not strictly an empirical fact.

To vindicate the claim of the fact of reasonable pluralism, Rawls introduces a conception of citizenship or political personhood that includes a consideration of the potential reasons for, or sources of, disagreement among citizens. Deliberations among democratic citizens, Rawls holds, are fundamentally disanalogous to theoretical reasoning as, e.g., within the natural sciences among a community of investigators where it seems that we ought eventually to reach impressive degrees of agreement. Democratic deliberations are undertaken by citizens who are to be considered as free and equal. Rawls represents these citizens as individuals possessed of two fundamental moral powers, and it is the free activity of these moral powers that will ultimately account for the deep pluralism that Rawls accepts as normal. These moral powers are the powers of “rationality” and of “reasonability” (PL, 48-54). Following Rawls’s understanding, the rational and the reasonable are two distinct ideas, neither one derivable from the other.

The rational, on the one hand, represents one’s capacity as a single individual to judge and to deliberate about ends of various kinds (e.g., egoistic, altruistic, etc.), balancing and weighing them and considering their coherence. This is also the capacity to embrace a comprehensive doctrine or a conception of the good and to form a coherent rational plan of life. To act rationally is to be able to set and rank ends for oneself and to develop a strategy for achieving those ends in the practical context of society and day to day life. But, of course, there is much room left for citizens acting rationally to arrive at vastly disagreeing positions, particularly when no constraints have yet been placed upon what one’s conception of the good must be like. The reasonable, on the other hand, has

two basic aspects. The first is that it represents more of a moral sensibility of agents “ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so” (PL, 49).

Reasonability, that is, entails a basic willingness to justify one’s views publicly and to act in good faith in accordance with what one agrees to publicly. The second aspect of the reasonable is that citizens recognize certain “burdens of judgment” as sources of reasonable disagreement meriting toleration. The idea of “burdens of judgment” articulates the fact that in the ordinary course of political deliberations rational and reasonable individuals, even when reasoning sincerely and conscientiously, very often have disagreements that arise from unavoidable and reasonable sources. The result of citizens deliberating rationally and reasonably under the burdens of judgment will be that they might, particularly over time, disagree amongst themselves more rather than less, thus deepening pluralism.

To vindicate this pluralism as *reasonable* pluralism, we must be able to understand its origin in reasonable sources, ones that we might reasonably acknowledge, and thus we should consider further the burdens of judgment that Rawls sketches. Among these reasonable sources of disagreement, Rawls outlines, on the one hand, some basic problems regarding how a group of people deliberating together determine what the relevant considerations are, even at a factual level. These include the following problems: that the evidence pertinent to a particular case may be complex and conflicting; that we may disagree about how to weigh relevant considerations; that our concepts may be vague, and their application may depend upon interpretations; and that our judgments and interpretations are generally shaped by the background of our total

experiences, which differ radically. At the more normative level, on the other hand, Rawls considers also competing normative considerations on different sides of an issue (e.g., different measures of utility) and the limited space within social institutions for representing multiple values (PL, 56f).

This short list of possible sources of reasonable disagreement, or “burdens of judgment,” should suggest that the range of disagreement within a deliberative democracy might be quite broad in scope, especially as disagreements become compounded historically. To illustrate how easily reasonable disagreements might arise, let us consider briefly the comparatively ideal case of a society deliberating cooperatively regarding what scheme of taxation might best promote its fundamental aims.² Even if we assume that these fundamental aims are settled, at every step of the way there are still complex considerations threatening controversy. The facts of how much revenue could be generated by various candidate programs would depend upon extremely complex economic calculations and rely in turn upon very hypothetical assumptions about projected economic conditions. Competing economic theories and various forms of conventional wisdom, for example, would certainly not agree in their methods or predictions. At a slightly more normative level, more confusion will result when we add that the goals of a society are also normally complex and often admit of competing interpretations and rankings of importance. This is not even to address yet the difficulties in estimating how revenues raised would be most effectively marshaled to promote very general goals. What, e.g., are the best ways to control poverty, protect the environment or promote patriotism? Even supposing that citizens could reach an agreement to try one scheme of tax programs, when that scheme came up for renewal the debate would

become even more complex as the prior considerations and concerns would be raised in evaluation of the program's effectiveness and as new options would get discussed for new ways to fund the society's (perhaps revised) goals.

It is not hard here to imagine that political debates on such an issue would quickly become polarized and that factions might even develop along many different lines of disagreement. And this is even a case in which cooperation and compromise are practical necessities. When we turn to deliberations about what are less cooperative subjects, we must see that more rather than less pluralism must be expected, and it is here that the problem that really concerns Rawls the most comes fully to light. If vast degrees of disagreement and pluralism can arise from reasonable sources in relatively cooperative deliberations, then we should expect pluralism at least as profound to characterize citizens' conceptions of the good. This, however, calls into question the very possibility of sustained social cooperation at all among such profoundly disagreeing individuals. The result or implication of this line of thought is that we should expect that citizens, even when acting reasonably and rationally, will become divided or alienated from one another. This is the fact of reasonable pluralism, and it must now be understood as an intrinsic feature of any democracy not characterized by the fact of oppression.

The fact of reasonable pluralism should not be taken to imply, of course, that all disagreement within or surrounding actual political discussions arises from reasonable sources. But recognizing the effect in principle of the burdens of judgment is enough to lead us to understand that the pluralism that Rawls addresses might be vast and profound and that a significant range of pluralism is reasonably to be expected to develop over time. Not everybody would agree with Rawls in calling the full range of such sources of

disagreement reasonable. Some might hold that the burdens of judgment identified by Rawls are too extensive, while others might think them not extensive enough. But it is not my aim here to take issue with this point.³ Sorting out at the empirical level which moments of disagreement are reasonable and which not, of course, might well be intractable. Nonetheless, citizens' disagreements divide them from each other, and it is not immediately clear how these differences—reasonable as we may assume them to be—are to be overcome.

It is here that we may begin to appreciate the problem of stability as it emerges for Rawls. He cites what he calls a “general fact” that characterizes a well-ordered society. Though he does not explicitly name it as he did the first two such facts considered here, I will call this the “fact of majority support.” Rawls states it saying, “an enduring and secure democratic regime, one not divided into contending doctrinal confessions and hostile social classes, must be willingly and freely supported by at least a substantial majority of its politically active citizens” (PL, 38). The problem, of course, is that given the fact of reasonable pluralism, it is not clear what the basis of this willing and free support for the democratic regime. Whatever this basis for support will turn out to be, it will have to be for Rawls “a public basis of justification for a constitutional regime” that “can be endorsed by widely different and opposing though reasonable comprehensive doctrines” (PL, 38). Originally, this basis of support was to be a single political conception of justice, ideally justice as fairness. But if we depart from the presentation Rawls makes in 1993 and move to the final revision to his view of reasonable pluralism that appeared first in the “Introduction to the Paperback Edition” of *Political Liberalism*, the problem becomes more complicated, because Rawls became convinced that it is

unreasonable to expect that all reasonable and rational citizens will embrace even the same conceptions of justice to guide the deliberations of their society.⁴

Regarding the basis of this support, we must now turn to what Rawls calls the “fourth general fact” about a well-ordered society, the fact I am calling “the fact of the political culture.” Curiously, he introduces this fact in a footnote to what I am calling the fact of majority support.⁵ As Rawls states it, “This is the fact that the political culture of a democratic society, which has worked reasonably well over a considerable period of time, normally contains, at least implicitly, certain fundamental intuitive ideas from which it is possible to work up a political conception of justice suitable for a constitutional regime” (PL, 38n41). An important element of Rawls’s project, as we shall shortly see, lies in his distinguishing the domain of the political as a specific realm of ideas within which the tasks of political justification are to take place.⁶ Rawls is here indicating that he views the background political culture of a society as a source of the kinds of political values that will serve as the public basis of justification for a democratic regime, the “right reasons” according to which such a society will be stably regulated. We will eventually have to ask, however, whether or not the fact of reasonable pluralism, when it is expanded to include also multiple conceptions of justice, will not leave us with a larger difficulty about how to identify appropriate political values as a basis of public justification.⁷

2. The Domain of the Political, Overlapping Consensus and Reconciliation through the Public Use of Reason

With this discussion of reasonable pluralism on the table, we must now turn to how it is that Rawls conceives of such a society being able to forge a basis for the public

justification of its governance. A society that is able so to justify its governance Rawls comes to describe as “stable for the right reasons” (PL, xliii).⁸ This kind of stability, of course, is contrasted from a mere *modus vivendi*. Whereas the profound pluralism that Rawls embraces represents a form of alienation of citizens from each other with potentially deep implications, his notion of stability for the right reasons represents a form of reconciliation. In order to understand these ideas adequately, however, we must first introduce a number of other ideas that Rawls found necessary to introduce into his work as he revised his view of justice as fairness and began more broadly to take on democratic themes. First among these ideas is the idea of public reason. In order to understand how public reason is to operate, in turn, we must also consider the notion of a “domain of the political” that is “free-standing” from more comprehensive doctrines and the idea of an “overlapping consensus” as the kind of endorsement such political values might receive in a deeply pluralistic society. Only then will we be adequately in a position to appreciate the kind of reconciliation Rawls seems to envision.

Public reason, as Rawls understands it, is the reasoning distinctive of a modern democratic society which is both liberal and deliberative. As such, his conception of public reason articulates both an idea that is part of the idea of a liberal democracy and an ideal regarding how its citizens are to relate to one another (IPRR, 574ff). As a part of the idea of liberal democracy, the idea of public reason sets out the structure and function of democratic deliberations in the larger context of a conception of a liberal deliberative democracy. The ideal of public reason articulates the nature of the goals to which such a democracy aspires and the norms that properly govern citizens’ participation in it. Beginning with the idea of public reason, for Rawls, a society’s reason in general is the

way that it sets its ends, prioritizes those ends and makes its plans accordingly (PL, 213). In a democracy, the society's reason should be understood as public in three particular ways: it is the reason of citizens as such, it is about the public good and fundamental political justice, and it invokes only considerations that qualify as a bases for public justification (IPRR, 575).

As Rawls lays it out in "The Idea of Public Reason Revisited," which was his last and most favored statement of his view, public reason has "five aspects," and these aspects carefully limit and delineate the scope of public reason (IPRR, 574). The first two aspects of public reason define that public reason has certain central forums. These aspects are that it is limited to a specific range of political questions and that it applies most strictly to certain individuals. In delineating these aspects, Rawls is distinguishing public reason from the other kinds of discourses or debates that takes place in what he terms the "background culture," which included the political culture of a society in both its public and nonpublic aspects (IPRR, 575ff). Thus, Rawls holds the decisions of the judiciary, and particularly a supreme court, as the best exemplar of public reason (PL, 231-40). This is because the courts in a constitutional democracy are under an obligation to restrict their decisions to the content of legitimate law and to address such decisions publicly to citizens as such. Also among the other proper forums of public reason, though usually less exemplary, are the deliberations of legislatures, the addresses of the executive of government, speeches made by candidates for public office and even the platforms of political parties (IPRR, 575). As well, public reason entails standards for the way that citizens in a deliberative democracy ought to vote. For despite the fact that democracies must employ secret ballots in order to protect the integrity of public voting,

it is in the voting booth, if nowhere else, that citizens must reason as citizens about the good of the public and must ultimately have their reasoning count publicly. Though it would be too demanding to try to prescribe the way individuals communicate when it comes to voting and making overtly political speeches, citizens of a liberal democracy should generally conduct themselves “as if they were legislators” (IPRR, 577).⁹

The forum of public reason is, furthermore, limited to the most fundamental political questions of a democracy, which are questions of “constitutional essentials and matters of basic justice” (IPRR, 575). Constitutional essentials are those matters which are enumerated in the constitution of the society. The most important of the constitutional essentials, for Rawls, are the basic liberties that are accorded to all citizens. Here Rawls characteristically claims that these are already familiar from the background public political culture of democratic societies, and he offers no systematic enumeration of or account of the possibilities of disagreement as to what should count as such basic liberties or what should not count. The question of matters of basic justice is broader in scope than just matters of constitutional essentials. Basic justice includes, according to Rawls, at least three things: determination of a decent social minimum, questions of distributive justice and determination of the fair meaning of the basic political liberties articulated constitutionally (PL, 228ff). Importantly, matters of basic justice will also turn out to be questions related to what Rawls calls the “basic structure of society.” This is the idea, consistently a focus of all of Rawls’s work, of the main political and social institutions of society and how they fit together as a single social system that defines institutionally the meaning of the basic political liberties (cf., PL, 11; IPRR, 599).

The last three aspects of the idea of public reason, according to Rawls, arise from the nature of citizenship in a constitutional democratic regime, and we find here a limitation on the scope of public reason with respect to the kinds of values citizens are to appeal to in answering its central questions. The third aspect limits the content of public reason to what is “given by a family of reasonable political conceptions of justice.” Citizens drawing on these ideas, in turn, are to apply them specifically to “discussions of coercive norms to be enacted in the form of legitimate law for a democratic people.” And, finally, citizens are to check that their reasoning based on their political conceptions of justice “satisfy the criterion of reciprocity,” which Rawls says articulates the standard of democratic legitimacy (IPRR, 574f). Thus, Rawls maintains that stability for the right reasons requires that citizens limit their proposals and deliberations in public reasoning to political values that can qualify as reasonable candidates for bases of public reasons.

As Rawls understands the relationship among citizens acting reasonably, citizens are each to propose terms of social cooperation based in what they individually believe to be the most reasonable political conception of justice. This entails for Rawls a moral standard regarding the kinds of proposals one ought to make in public reasoning, which he calls the “criterion of reciprocity.” Rawls elaborates this as follows:

The criterion of reciprocity requires that when those terms are proposed as the most reasonable terms of fair cooperation, those proposing them must also think it at least reasonable for others to accept them, as free and equal citizens, and not as dominated or manipulated, or under the pressure of an inferior political or social position (IPRR, 578).

It is clear that this criterion of reciprocity is a further specification of the idea of the reasonability of citizens. It articulates how the virtue of reasonability should be expressed in a deliberative context in which disagreement must be negotiated.

Importantly, though the content of public reason is drawn from political conceptions of justice and it is directed specifically to questions where claims of justice will most obviously arise, the standard of justification articulated by the criterion of reciprocity aims public reason only at the determination of legitimacy, not justice. Thus, if the criterion of reciprocity is met by citizens reasoning together publicly, we should only be able to expect citizens to regard the outcomes as legitimate. Rawls terms this thought the “idea of political legitimacy,” and he articulates it as follows:

Our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions—were we to state them as government officials—are sufficient, and we also reasonably think that others might also reasonably accept those reasons (IPRR, 578).

Rawls’s use of the word “sufficient” to describe the way public reason should support political actions merits two comments. The first point worth noticing is that it carries the demand that political actions really are justifiable by reason, even though this idea of legitimacy does not require that every political action be the subject of deliberation. An action taken by a political leader might still satisfy this standard even if it were not explicitly justified in advance. The second point is that these reasons ideally must be sufficient for all citizens, even though they disagree about other matters. Put in slightly different Rawlsian terms, political action must be informed by reasons that all parties could in principle agree upon as sufficient for the purpose. Thus, in public reason, the standard of reasonability takes the place of the idea of truth in other forms of inquiry. As Rawls puts it, “The idea of the politically reasonable is sufficient unto itself for the purposes of public reason when basic political questions are at stake” (IPRR, 613).

It is worth noting here that this view of legitimacy resulted when Rawls expanded his view of the extent of the pluralism he held to be reasonable in a liberal democratic

society. In the original edition of *Political Liberalism*, Rawls had specified that only political values could be cited in support of proposals in public reason. These were, of course, values inherent in a single political conception of justice. Considerations based in one's comprehensive doctrines or conception of the good, one's answer to the question of the whole Truth, he held to be illegitimate, as they would fail to recognize the burdens of judgment and thus fail the criterion of reciprocity. In the "Introduction to the Paperback Edition" of *Political Liberalism*, however, Rawls revised this position to permit considerations from one's comprehensive doctrine to be introduced provided one condition is met, which he calls "the proviso." He states this condition as follows:

Reasonable [comprehensive] doctrines may be introduced in public reason at any time, provided that in due course public reasons, given by a reasonable political conception, are presented sufficient to support whatever the comprehensive doctrines are introduced to support (PL, li-
lii).

Rawls thus came to hold other more stringent standards of qualifying one's reason in public reason to be unnecessary and that the wider range of potential reasons to specify the content of public reason is proper. The main task of public reason, of course, is to demonstrate that free and equal reasonable and rational citizens could find sufficient terms for social cooperation, even in full light of the fact that they would not expect to agree upon much else. A society may be deemed stable for the right reasons if its organization is sufficiently supported by such political considerations.

In order to see how Rawls understands that such political considerations could be sufficient as a basis of stability for the right reasons even in the face of the fact of reasonable pluralism, we must now introduce two more of the ideas. First, one of the most distinctive features of the political is that it is "free-standing" with respect to other

ideas.¹⁰ In terms of individual reasoning, for Rawls, this means that one must embrace a political conception of justice that is in principle distinct from more comprehensive views, even though one's comprehensive doctrine must certainly be expected to provide reasons for endorsing a particular political conception of justice. By this, Rawls means that a political conception, and thereby the realm of the political, should contain its own ideals which are normative within themselves for political purposes. Yet, in light of the pluralism among comprehensive doctrines and even reasonable political conceptions of justice, citizens cannot be expected to agree upon the grounds for public justification for precisely the same reasons. Accordingly, the second idea Rawls introduces is that of an "overlapping consensus." The terms of justification will be sufficient if they can be thought of as the object of an "overlapping consensus" among disagreeing, but reasonable citizens. If a sufficient majority of citizens agree enough to form such an overlapping consensus to regulate society effectively, then this accounts for the fact of majority support that characterizes a well-ordered society.

Such then is the basis for stability for the right reasons. Citizens must be able to regard the political values that are endorsed in public reason as intrinsically normative for them. To help distinguish this form of stability from stability as a mere *modus vivendi*, we should note that Rawls specifies in Lecture II of *Political Liberalism* what he calls a reasonable moral psychology. He formulates this psychology by articulating the kinds of desires citizens must be able to have in order for his conception of justice as fairness to be possible, though the same sorts of psychological capabilities might also be consistent with embracing other sorts of conceptions as well. He distinguishes three kinds of desires: object-dependent desires, principle-dependent desires and conception-dependent

desires (PL, 82-6). Object-dependent desires are desires that “can be described without the use of any moral conceptions, or reasonable or rational principles,” and we could list potentially unlimited and relatively mundane examples, such as food and drink and the like (PL, 82). Principle-dependent desires are more complicated. The force of these desires rests entirely on a principle that is entirely dependent upon citizens’ reasonable and rational nature. Rawls further subdivides this group of desires according to whether the principle upon which the desire is dependent is one of rationality or reasonability. The key difference here is whether or not the principle articulates the moral sensibility Rawls takes to be exhibited in the moral power of reasonability, but lacking in that of rationality. As examples of desires dependent upon principles of rationality, he includes the desire to take the most efficient course of action or the desire to realize the greatest good. As examples of desires dependent upon principles of reasonability, he suggests the desires to act fairly or to act justly (PL, 82f). Finally, conception-dependent desires are principle-dependent desires, but with the caveat that the choice of principle upon which one acts must be essential to articulating some more complex conception, such as a political ideal. The most obvious example here is Rawls’s case that acting from the principles of justice that define justice as fairness all contribute to realizing a conception of political citizenship (PL, 84).

We should now ask what the structure of citizens’ desires must be like for a society to be stable for the right reasons. Clearly, citizens’ must possess the principle-dependent desires necessary for political participation, but they must possess them in the right way so that ultimately the fact of majority support will obtain. In order to possess these desires in the right way, in turn, these principle-dependent desires must be a part of

articulating a political ideal that is a part of a reasonable political conception of justice. In this case, the desire would be an element of a larger conception-based desire to realize an ideal of citizenship. This desire, in turn, must be based upon a political conception of justice. In the original formulation of *Political Liberalism*, the task of conceiving of an overlapping consensus was to show that deeply conflicting, but reasonable comprehensive doctrines could all endorse the conception of justice as fairness. By the time of the Paperback Edition, however, Rawls seems to come to think that it is not reasonable to believe that all reasonable citizens will do so, without running afoul of the fact of oppression. His statements about the relationship between one's comprehensive doctrine and one's political conception of justice, however, do merit notice. He specifies, "the political conception is a module, an essential constituent part, that in different ways fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it" (PL, 144f; cf., PL 12). We may safely infer, I think, that after Rawls admits multiple political conceptions of justice, whatever set of political values it is that ultimately is the object of the overlapping consensus and the basis of public political justification must still similarly fit within and be supported by various reasonable views.

Here we also see more clearly the nature of the contrast between a society that is stable for the right reasons and one that is endorsed merely as a matter of a *modus vivendi*. Recall that Rawls specifies under the fact of majority support that "an enduring and secure democratic regime . . . must be *willingly and freely* supported by at least a substantial majority of its politically active citizens (PL, 38; my emphasis). I understand the phrase "willingly and freely" here to mean that the principle upon which the desire to

participate in politics is dependent must be an essential part of the political conception endorsed by one's comprehensive doctrine. Moreover, the principle which is essential to Rawls's conception of public reason is ultimately the criterion of reciprocity, the criterion that says that citizens will limit their proposals to those that they reasonably believe that others might reasonably accept. Thus, the desire posited as an ideal guiding citizens' participation in a society that is stability for the right reasons is a desire dependent necessarily upon a reasonable principle. In a society that is stable merely as a matter of a *modus vivendi*, however, the principle upon which one's principle-based desire to participate in politics is one of rationality, and where political participation is a merely a contingent means to the end in question. This interpretation, I believe, is consistent with what Rawls has to say about the case of the political settlement between Catholics and Protestants in the sixteenth and seventeenth centuries, his leading example of a political situation that was stable merely as a *modus vivendi*. In the wake of much violence motivated in the name of different interpretations of Christian religion, politics came to be governed by the principle of toleration, but only as a matter of a *modus vivendi*. If one sect could have gained enough strength to impose its view upon the others, it likely would have. The truce was precarious. As Rawls elaborates, "in this case we do not have stability for the right reasons, that is, as secured by a firm allegiance to a democratic society's political (moral) ideals and values" (IPRR, 589; cf., PL, xxviff). The desire to act with toleration was merely a matter of rational prudence, not inherent reasonability in Rawls's sense.

With this understanding of what it means for a society to be stable for the right reasons as opposed to merely as a matter of a *modus vivendi*, I believe we may now also

see clearly why it is that the conception I am calling the competitive-procedural model of democracy can qualify only as a vision of a *modus vivendi*. Under the competitive-procedural model, citizens are conceived of as holders of private preferences who are free to run for public office and whose votes each count equally. What motivates them to participate in politics on this scheme is some already given desire that is viewed just as a matter of preference. That is, the desire which motivates citizens so conceived is also a principle-dependent desire, but one dependent upon a principle of rationality. It is not necessarily an essential component of any specifically political conception-dependent desire. Thus, it seems that the stability of the democratic regime under the competitive-procedural model is contingent upon the character of the preferences that citizens embrace, and this is a matter of indifference to the competitive-procedural view. Within the Rawlsian framework, this would seem to qualify only as a matter of a *modus vivendi*, and certainly not as stability for the right reasons. Indeed, we might well conjecture that committed Protestants and Catholics like those described in Rawls's example of a mere *modus vivendi* (or even those similarly devoted to a secular comprehensive doctrine) would be able to characterize their democratic participation by the competitive-procedural model.

When we turn to questions of alienation and reconciliation, the first thing that we should recognize is that the fact of reasonable pluralism is itself a form of social alienation. Moreover, it also arises from within the idea of a well-ordered society. When citizens disagree, they are divided or alienated from one another by virtue of their "*incompatible* religious, philosophical, and moral doctrines" (PL, xx; my emphasis). What is more, to emphasize the depth and permanence of this alienation, after his brief

historical sketch of how such religious pluralism and the liberal tradition of toleration developed together, Rawls expresses the sense that this alienation is foundational to his view by noting, “Political liberalism starts by taking to heart the absolute depth of that *irreconcilable* latent conflict” (PL, xxviii; my emphasis). Whatever reconciliation might be possible in the face of this most basic alienation, it will not result from eliminating these profound differences, not at least without raising the specter of the fact of oppression. Reconciliation through the public use of reason should not be expected to have “absolute depth.” Nonetheless, Rawls clearly does want to mitigate the alienation of reasonable pluralism politically so as to achieve some meaningful form of reconciliation. In a society that is stable only as a *modus vivendi* (which includes one characterized by what I am calling the competitive-procedural model of democracy), the alienation of reasonable pluralism is normal, but Rawls rejects such a society as not well ordered. To be stable for the right reasons, members of society must be reconciled to each other at least with respect to the values that are to serve as the basis of their public justification of legitimate law and to the social arrangements that are effectively regulated by such legitimate law.

In this regard, Rawls includes toward the end of both the “Introduction to the Paperback Edition” and “The Idea of Public Reasons Revisited” a statement of the limits he sees to “reconciliation by public reason” (PL, lx; IPRR 612). Rawls discusses what he takes to be three major sources of conflict within modern democratic societies, and he specifies which seem to him to be able to be resolved through public reason. He identifies these sources as follows: “those deriving from irreconcilable comprehensive doctrines; those deriving from differences in status, class position, or occupation, or from

differences in ethnicity, gender, and race; and finally those deriving from the burdens of judgment.” (IPRR, 612; cf. PL, lx). We will see here that an important aspect of the reconciliation that is possible through public reason has to do with citizens’ relations to one another within the basic structure of society.

The central case reconciliation in Rawls’s presentation is clearly in the resolution of the first kind of conflict, that between citizens conflicting comprehensive doctrines insofar as it is possible. This source of conflict reflects first and foremost a form of objective alienation of citizens from one another within the social world, stemming from the fact of reasonable pluralism. Public reason as Rawls understands it cannot resolve these conflicts completely, because it is committed to valuing this pluralism for its own sake as the normal result of the use of human reason under free political institutions. It does, however, seek to mitigate these differences within the political domain through the process of public reason. If an overlapping consensus can be forged regarding a fundamental range of political values to regulate effectively the basic structure of society, then the proponents of the various conflicting comprehensive doctrines may be objectively reconciled to one another, if only within the political domain. They would be able to regard the major social institutions and norms of the social world as at least legitimate. To the extent that such an overlapping consensus is struck, society will be stable for the right reasons. To this extent, reconciliation through public reason is largely a matter of these social arrangements being objectively well ordered.

Moreover, since the process of public reason is public, these disagreeing individuals might also be subjectively reconciled to each other, because they will all be able equally to see that the basic structure is deliberately regulated in just this way and

that its institutions are not the result of a mere exercise of power. The threat of subjective alienation arises here with the suspicion that the majority might simply be imposing its comprehensive view upon society as a whole. But this danger is mitigated by the insistence upon the criterion of reciprocity governing public reason. Yet, this reconciliation is clearly not a complete reconciliation of individuals to the social world, because it extends only to the extent of what is “reasonable” in the political domain and not to a comprehensive level of the “truth” of value of human life. That is, individuals will be reconciled to the social world only to the extent of deeming it legitimate. They might not find it perfectly just or even wholly good in any comprehensive terms.

Taking the remaining sources of conflict out of Rawls’s order, we find in the third kind of conflict the clearest limits or reconciliation. This kind of conflict is that arising from the burdens of judgment. Rawls thinks these conflicts cannot be resolved politically. This is precisely because it does result from the burdens of judgment which political liberalism regards as reasonable sources of disagreement. This is not to say that no kind of reconciliation would be possible in the face of these conflicts. Any objective measures to affect reconciliation of this kind would require the use of oppressive force. At most, public reason might aid in the subjective aspect of reconciliation on this mark insofar as it calls attention again to the limited scope of the political and reasonable pluralism and the role of the burdens of judgment in producing such disagreements.

When we turn, however, to the second kind of conflict—that arising from difference in status, class position, occupation, ethnicity, gender or race—we encounter more problems. Like the first sort of conflict, this is very often an objective kind of alienation within the social world, as when individuals are denied basic liberties or

opportunities or fare less well in making use of their basic liberties because of some unjust feature of society or its institutions. In his early presentation of *Political Liberalism*, this kind of alienation would easily be addressed by the fact that the basic structure of society is to be regulated effectively by justice as fairness as Rawls's candidate for the most reasonable political conception of justice. If the basic structure of society is actually effectively regulated by this conception of justice, Rawls contends that the conflicts based in these divisions will at least be mitigated since these morally contingent features of one's identity would not then affect how one fares in attempting to make effective use of her basic liberties as a citizen. Once Rawls backs away from the thought that citizens might be expected all to embrace a single political conception of justice, however, this problem becomes more difficult. In his later description of the disposition of his view toward this kind of conflict, we find that he abstains from specifying exactly what the terms of reconciliation in the face of these conflicts might be.

He explains:

I also believe that such a society can resolve the second kind of conflict, which deals with conflicts between citizens' fundamental interests—political, economic, and social. For once we accept reasonable principles of justice and recognized them to be reasonable (even if not the most reasonable), and know, or reasonably believe, that our political and social institutions satisfy them, the second kind of conflict need not arise, or arise so forcefully. Political liberalism does not explicitly consider these conflicts but leaves them to be considered by justice as fairness, or by some other reasonable conception of political justice (IPRR, 612).

Rawls treats this kind of alienation as primarily objective and most importantly as a matter of public reason effectively regulating the basic structure. Yet, it seems almost as if this sort of alienation might be beyond the reach of principles guiding public reason to

resolve. But this cannot be, because it is precisely the charge of public reason to regulate the basic structure effectively so that society is stable for the right reasons.

While Rawls was still working under the view that citizens might all agree to his conception of justice as fairness as their common unifying political outlook, it might have seemed workable to avoid the details of all of the kinds of values that constitute the basis of public justification of legitimate law. Once he abandons this hope, however, the problem of specifying how all those values are enumerated in public reason, I believe, becomes unavoidable.

3. Two Kinds of Pluralism and the Problem of the Basic Structure

We have now seen that the fact of reasonable pluralism represents a form of alienation in which citizens are divided from each other by the differences among their comprehensive doctrines, differences that Rawls thinks have absolute depth. A democratic society marked by such pluralism might still be stable for the right reasons, but only if citizens embrace reasonable political conceptions of justice sufficient to lead them to an overlapping consensus on a domain of political values that might serve as a basis for public justification of legitimate law. In this case they would be reconciled to each other, but only politically. Rawls is clearest, however, in marking what this domain of political values is not. I believe that there is a further difficulty in specifying more positively the full range of the political values needed for a complete account of the basis for this stability for the right reasons. To exposit this difficulty, I now distinguish two kinds of pluralism that the political must negotiate: pluralism among comprehensive doctrines and pluralism among the substantive values that properly shape democratic action. These kinds of pluralism will inevitably overlap, but in principle at least they are

separable. And, as I believe, distinguishing between them will help us to see a neglected problem of Rawls's political philosophy. While Rawls understands with great clarity the problem of negotiating in a reconciliatory fashion the pluralism among comprehensive doctrines, I believe that he perilously neglects the problem of negotiating the pluralism of the substantive political values contending for the role of guiding democratic action. While Rawls still believed that citizens could reasonably forge an overlapping consensus to embrace his conception of justice as fairness, this work could easily be delegated to that conception. Once he abandons this expectation, the problem merits more careful scrutiny. In distinguishing between these two relevant kinds of pluralism, I draw the outline of the normative deficiency that this dissertation aims to identify in Rawls's account of the possibility of stability for the right reasons.

The first kind of pluralism is that among citizens' comprehensive doctrines, and it is familiar in Rawls's work. This is the pluralism among the different religious, philosophical or ethical reasons individuals cite for why life is worth living at all and how society would best be structured accordingly. Such doctrines answer questions of the whole Truth (with a capital 'T'). The pluralism among these doctrines is negotiated in Rawls's view by distinguishing the values of freedom and equality as the properly political values that define the ideal of citizens' fundamental relations to each other in proposing terms of social cooperation and policies. This does not entail that citizens must then adopt any particular comprehensive doctrine or even any given set of principles of justice. Many critics have correctly noticed that this means that Rawls's conception is not entirely neutral among comprehensive doctrines. Indeed, Rawls himself comes to call these values substantive and moral (IPRR, 582).¹¹ He clearly is

committed to the possibility of marking some such views as unreasonable and, therefore, not deserving of toleration.

The second kind of pluralism, by contrast, is a pluralism among the substantive values that free and equal citizens set forth as candidates to guide democratic actions. Even as guided and constrained by the formal values of freedom and equality, democratic deliberations must appeal to many different kinds of values as bases of political action. Put again from the point of view of individual citizens, each must be motivated by a political conception of justice, and a political conception of justice must contain much more than just specification that citizens are free and equal. Such a conception must also have recourse to sufficient values to serve as a basis for justifying all of the fundamental questions of public reason. To begin to appreciate what the range of such values might be, we could start by examining carefully justice as fairness, the very conception Rawls originally anticipated would be the object of the overlapping consensus in a pluralistic, but well-ordered society. By design, this conception tends to gloss over the pluralism of substantive political values, but if we scratch at the surface we will begin to see that this pluralism is potentially vast.

Justice as fairness is a conception of justice that is procedural, formal and distributive. To say that it is a procedural conception of justice is to say that it attempts to develop procedures of decision making which will lead to results that citizens will be able to accept as reasonable. Procedural justice does not aim to be perfect, but only to achieve results that citizens might embrace as the best results in quite imperfect circumstances (TJ, 85f). To say now that justice as fairness is formal and distributive tells us something more about the kind of procedure Rawls advocates as bringing justice.

The conception is distributive in that justice as fairness is conceived as a procedure for distributing liberties, opportunities and certain kinds of goods fairly. To add that it is formal reflects that Rawls does not address specifically what particular things are distributed, but attempts to remain largely neutral in his characterization of the value of these items. His emphasis instead is on the fairness of the procedure.

These elements of justice as fairness, in turn, are reflected in the principles of justice Rawls advocates, his now famous lexically ordered principles.¹² To say that these principles are lexically ordered means that the requirements of the first must be fully satisfied before we may turn to the business of the second. As stated in *Justice as Fairness: A Restatement*, they are revised to read as follows:

- (a) Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and
- (b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle) (JAF, 42f).

It will be useful to review what Rawls hopes to accomplish here not only in terms of placing the political values of freedom and equality at the grounding level of democracy, but also of the kinds of pluralism that must be addressed thereafter.

The first principle of justice asserts most obviously the values of freedom and equality as the grounding values of democracy. By insisting that the system of basic liberties distributed by society be the most extensive that can be distributed equally to all, it holds that the values of freedom and equality are to be foundational to the idea of a democratic society. Rawls does not specify precisely what the liberties are that are to be

distributed equally, but suggests usually that they would be those already familiar in the background political culture of democratic societies. At points he does insist that certain liberties, often the liberty of conscience, are certainly on the list, but he does little more than offer a few examples. Two points merit notice regarding this strategy. First, not listing all of these liberties is consistent with Rawls's emphasis on justice as fairness as a formal conception of justice; if they are not listed, the form of their equal distribution will obviously be the salient point of focus. Second, more consistent with Rawls's later presentation, not listing the liberties exhaustively will leave it more evidently a matter for democratic citizens to negotiate politically among themselves. Rawls's main point thus far from the point of view of justice is to establish a threshold of minimal conditions for justice, which is why this principle stands first in the lexical ordering.

Of course, not everything in human society can reasonably be expected to be distributed equally, and this is particularly a problem for a conception of justice that aims to be formal in character. Such a theory must establish criteria for when and to what extent it will tolerate inequalities. The second principle of justice specifies the conditions under which justice as fairness will tolerate inequalities in society. The first condition is that these inequalities are to be qualified by universal freedom of opportunity. The second condition for permitting inequalities is set by Rawls's famous "difference principle." This establishes the quite rigorous stipulation that inequalities are to be permitted only to the extent that they make better off those in society who are least advantaged. This also establishes that even inequalities are permitted to the extent that they serve at least a minimally egalitarian ambition.

In order to satisfy the condition of the difference principle, there must be a basis for comparing and analyzing things which might be apt for unequal distribution, and the theory of “primary goods” serves this function. On Rawls’s original 1971 formulation, primary goods are “things which it is supposed a rational man wants whatever else he wants” (TJ, 92). In his most revised formulation, primary goods are “various social conditions and all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good” (JAF, 57). The list of the actual things which are to count as primary goods is left deliberately open. This is to be settled through public deliberation as concrete conditions of social life become more determinate. Again, this is consistent with Rawls’s ambition of developing a formal conception of justice and his desire to leave the content of this conception to the citizens of a society to negotiate democratically.

Within this largely formal framework, focused as it is on giving expression to the values of freedom and equality, there are nonetheless clear lines of pluralism at a more substantive level. Though Rawls never specifies exactly what all of the basic liberties distributed by the first principle of justice are we can point out with certainty that these liberties are multiple in number. For the first principle of justice requires that citizens have as extensive a set of such liberties as is consistent with everyone else having the same set. This is already to entail one kind of pluralism of political values—whatever these liberties are requires that they express basic values that are properly political. Another layer of pluralism is added when we consider that the primary goods distributed by the second principle of justice are also pluralistic. Not only are such primary goods

multiple, but they are also incommensurable at a more substantive level. Here again we get mainly examples of what the primary goods might include. In *A Theory of Justice* Rawls notes that the things that one might rationally want will include natural and social sorts of things, but he restricts the principles of justice to what can be distributed by organized political activity (TJ, 62f). Within this restricted range, some goods seem to be fairly economic in nature, while others are less so. On the less economic side, Rawls's most important candidate is what he calls the "social bases of self esteem." Again, we can see here that there is clearly a deep pluralism among these potential primary goods. Finally, it should not escape our notice that the very principles of justice themselves entail a deep kind of pluralism between things that must be distributed equally and those which an egalitarian scheme can tolerate to be distributed unequally. It seems even then on Rawls's terms, there must be a potentially vast and complex range of political values just under the surface of his treatment of the formal values of freedom and equality.

Why Rawls did not try to work out more systematically more of the substantive political values necessary to understanding how a society may be stable for the right reasons—what I am calling his ambivalence to this question—is perhaps now easy to understand: most of his thinking centered around his conception of justice as fairness as the exemplar of a liberal democratic conception of justice, which he hoped to defend as the most reasonable conception of justice for a democratic society. The problem, of course, is that Rawls came to see that reasonable pluralism extends not only to comprehensive conceptions of the good, but to political conceptions of justice as well. Thus, Rawls drops the expectation that justice as fairness could be the topic of an overlapping consensus of reasonable disagreeing citizens. But if this expectation is

dropped, then the formal resources of the procedures of distribution involved in justice as fairness are no longer available to mediate disagreements that might arise among reasonable and rational citizens. This places new importance on the work of public reason. But distinguishing as we now have between the pluralism among comprehensive doctrines and the pluralism among substantive political values, the problem turns out to be more complex than Rawls himself seems to recognize.

Yet, Rawls's presentation of the realm of the political as it emerged in the "Introduction to the Paperback Edition" of *Political Liberalism* and the essay "The Idea of Public Reason Revisited" is still largely devoted to understanding how the ideas of freedom and equality as distinctly political ideas can promote reconciliation when the social world is so deeply divided along the lines of individuals' comprehensive doctrines. But this presentation neglects, if not obscures, the problem I have been trying to articulate about the pluralism among other more substantive political values. Though Rawls does not develop this variety of pluralism systematically, there are nonetheless clear indications throughout his work of the need to articulate distinctions among more substantive political values. For one thing, we might note that, even though Rawls suggests that a "reasonable comprehensive doctrine" is one that is embraced by a reasonable person, the most important consideration is that it endorse the essentials of a constitutional democracy.¹³ Rawls takes great care to note that he does not think that all reasonable comprehensive doctrines are necessarily liberal doctrines. Rawls cites in this vein, e.g., that many adherents of Catholic comprehensive doctrine with its strong emphasis on hierarchy nevertheless endorse liberal democratic values within the political domain.

Rawls specifies that reasonable conceptions of justice must include values that meet three conditions in order to provide content to public reason:

First, a list of certain basic rights, liberties, and opportunities (such as those familiar from constitutional regimes);

Second, an assignment of special priority to those rights, liberties, and opportunities, especially with respect to the claims of the general good and perfectionist values; and

Third, measures ensuring for all citizens adequate all-purpose means to make effective use of their freedoms (IPRR, 581f).

It is not hard to see in this sketch of the minimal content of a reasonable conception of justice the general outline of Rawls's conception of justice as fairness. Beyond this, Rawls is also clear that other values must be admitted within public reason. He insists, however, that they must all be properly political. By this, Rawls means, "a value is properly political only when the social form is itself political: when it is realized, say, in parts of the basic structure and its political and social institutions" (IPRR, 584f). Rawls does not, however, make any further specification as to how public reason is to consider the merits of various political values. As far as enumerating examples, Rawls only mentions that

Examples of political values include those mentioned in the preamble to the United States Constitution: a more perfect union, justice, domestic tranquility, the common defense, the general welfare, and the blessings of liberty for ourselves and our posterity. These include under them other values: so, for example, under justice we also have equal basic liberties, equality of opportunity, ideals concerning the distribution of income and taxation, and much else (IPRR, 584).

To help emphasize my point about the breadth of this pluralism, we might cite here a few examples of values beyond freedom and equality that might also qualify as properly political that are familiar from the history of political thought and contemporary debates.

We might start with the values of defense and security from crime that underlie the “night watchman” view of the role of the state. We could add also an interest a society has in efficiency of economic distribution and function. Still others who might ask “efficiency at what?” would insist upon adding various values of social decency as a necessary corrective to the morally blind idea of economic efficiency.¹⁴ Next, liberal and libertarians alike embrace such values as liberty of conscience and freedom of speech. Still other debates would encourage embracing as properly political values various standards of honor of shared cultural traditions, promotion of family life or intimate relations or caring, concern for the environment and conservation of biodiversity, promotion of artistic excellence, pursuits of scientific inquiry, and even promotion of sporting activity and leisure time. And the list could probably go on and on.

It is not difficult to see here that the list of potentially political substantive values could become nearly boundless and that there is much room for disagreement among free and equal reasonable and rational citizens regarding what considerations should properly guide any particular political decision. But if we look even a little closer, we will find what we might call a “proliferation of pluralisms,” to borrow a term from Elizabeth Anderson’s ethical theory (Anderson 1993, 14). That is, we can divide these substantive values along several different lines. Among these values there is a pluralism in their modes of realization: some seem to require nothing more of political cooperation than that people refrain from doing something, while others seem to impose affirmative obligations of social cooperation. Freedom of speech requires (seemingly) only that people refrain from silencing others, while national defense might require great lengths of cooperation and even one’s life in military service. There is also pluralism among the

kinds of evaluative attitudes required among citizens to embrace various values: some seem only to require economic interests, while others require more ideal standards of appreciation. Both economic efficiency and promotion of a minimally decent standard of living appeal to economic appreciation, while promotion of a shared cultural heritage or the arts seems to require other forms of appreciation. We might also divide these values according to their mode of valuation, whether they are to be valued instrumentally or as ends in themselves. Efficiency seems, for example, to be only instrumentally valuable, while basic liberties seem to be ends in themselves. This proliferation of pluralisms should serve now to make the problem of the pluralism among substantive political values for a deliberative democracy unavoidable.

If we own up to this proliferation of pluralisms, the problem of reasonable pluralism takes on a new dimension that is potentially more difficult to negotiate than pluralism among comprehensive doctrines. Indeed, Rawls's ambivalence about the matter of the substantive political values beyond freedom and equality that constitute the domain of the political, I believe, comes back to haunt him if we press further what it means for a democratic society to be stable for the right reasons. Recall that one of the basic aspects of the idea of public reason is that it applies to a limited set of "fundamental questions" and that these questions are specifically those of "constitutional essentials and matters of basic justice" (IPRR, 574f). As he elaborates,

Constitutional essentials concern questions about what political rights and liberties, say, may reasonably be included in a written constitution, when assuming the constitution may be interpreted by a supreme court, or some similar body. Matters of basic justice relate to the basic structure of society and so would concern questions of basic economic and social justice and other things not covered by a constitution (IPRR574n7).

By the “basic structure” of society, in turn, Rawls means “a society’s main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next” (PL, 11).¹⁵ Moreover, as we have just seen, their realization in terms of the institutions of the basic structure is one of the things that qualifies a social value as properly political.

The idea of the basic structure of society turns out to be of central importance. But what values ought citizens to appeal to in making decisions regarding the institutions of the basic structure, the questions of basic justice? This is precisely the question of the kind of pluralism that Rawls does not explicitly address, even despite his recognition that there must be significant pluralism here. We must now ask whether or not Rawls’s hesitation to enumerate more of the substantive political values needed by public reason threatens the prospect of stability for the right reasons. I want to suggest that it does, because when treated as a problem for public reason to negotiate it turns out that what counts as constitutive elements of the basic structure is itself partly a function of what substantive political values are embraced as bases for the justification of legitimate law. To see how this plays out, I turn now to the question of how the institution of the family might fare in public reasoning.

4. Public Reason and the Family

The family as an institution has come under increasing scrutiny in contemporary political and philosophical debates. These debates, moreover, suggest that the family is a topic with respect to which citizens are alienated from one another by virtue of the conceptions of justice that they would bring to the deliberations of public reason.¹⁶ But the family, Rawls maintains, is a part of the basic structure, and there are many questions

with respect to it that therefore fall to public reason to resolve. Rawls, however, is less than clear as to how public reason is to give a thorough treatment of the family. The problem is that his conception of public reason does not offer sufficient normative guidance for citizens deliberating together and attempting to come to an overlapping consensus on fundamental questions related to the family's structure. The difficulty of specifying sufficient substantive political values for this task is serious enough when public reason is guided only by Rawls's conception of justice as fairness. When we address the matter further in light of all the pluralism that public reason must negotiate among competing reasonable political conceptions of justice, a larger problem emerges.

Rawls cites in his book *Justice as Fairness: A Restatement*,¹⁷ which is his last systematic presentation of justice as fairness, two kinds of reasons as to why the basic structure of society is to be the subject of the political conception of justice, and we can draw from this reasons why public reason more generally must be concerned with the arrangements of the basic structure of society. First, the institutions of the basic structure are the main ingredient in maintaining "background justice." Thus, the arrangements of the basic structure have an important influence on the long-term stability of society in general as a system of social cooperation over generations. This specification counters what Rawls believes to be the inherently destabilizing tendency of libertarianism to develop extremes of wealth and poverty. Second, the basic structure is also the subject of political justice, because, as Rawls says, it has a "profound and pervasive influence on the persons who live under its institutions" (JAF, 55). In this vein, of course, the configuration of the institutions of the basic structure has much to do with the practical meaning of one's basic liberties and the meaningfulness of opportunity.

Yet, Rawls, when guided by his conception of justice as fairness, has a great deal of difficulty with articulating in a satisfying way how public reason is to treat specific questions about the family. The two kinds of arguments Rawls makes regarding how public reason approaches the family stand in a problematic relation to each other (JAF, 162ff; IPPR, 595ff).¹⁸ The first and most positive is found in the analysis of the family as a “school of justice,” whereby the importance of the family for stability over generations is articulated. This strategy follows the example of John Stuart Mill and such contemporary feminists as Susan Moller Okin (IPRR, 598; cf., Mill, 173ff and Okin, 17ff). Rawls, following Okin in particular, proposes regarding the family that “one of its main roles is to be the basis of the orderly production and reproduction of society and its culture from one generation to the next” (IPRR, 595). This view has importantly called into question the justice of a system of gender hierarchy which reproduces itself over generations. As Mill observed of the family in his day, it seems to serve as a “school for despotism” (Mill, 174). This would seem to suggest that in some forms the family might over time undermine the freedom and equality of all citizens, teaching some to be tyrants and others to be subordinates. If the family fails to raise children with the appropriate political virtues, Rawls says, then public reason may criticize the institution (IPRR, 596). How specifically, Rawls does not say.

Given that Rawls admits compelling reasons for scrutinizing the family in public reason, his second kind of argument regarding how public reason is to approach injustices of the family confronts us with a frustrating problem. He suggests that at most minimal constraints may be placed upon the family, particularly with respect to its inner life. He compares the internal life of the family to the operations of associations of civil society

such as churches and universities. The way decisions are made within the family, for Rawls, is not a public form of reason, but nonpublic reason. As such, public reason cannot apply the principles of justice directly to the internal life of the family. For this zone has much to do with the exercise of the basic liberties. Importantly, Rawls also insists that nonpublic reason cannot override citizens' basic liberties. So, while churches may excommunicate its members, they may not burn them (IPRR, 597). Likewise, though one may be a member of the family, she is still a citizen with (at least in principle) all the liberties and equality of opportunity which is attached as such. Rawls denies that public reason recognizes any private realm outside of the scope of justice.

Yet Rawls thinks that the kinds of measures public reason may invoke to promote justice within areas governed by nonpublic reason are limited by the basic political liberties. For example, he cites that public reason can limit only involuntary division of labor within the family. Voluntary divisions of labor attached to such basic liberties as freedom of religion. An example of the kind of minimal constraint which he does favor seems to be divorce laws which would compensate women for the time and contributions which they make to the growth in wealth and earning power when they spend their time raising children. Herein lies the problem: public reason seems to have a legitimate interest in the work it assigns to the family, but at the same time the conception of the basic liberties as being fundamental seems to expand so easily so as to bar the way from acting upon any such legitimate interest. As Nussbaum describes it, this strategy is "honorable but difficult to apply to reality" (2000, 247). The question I wish to press is whether or not the conception of public reason has sufficient normative resources to

motivate specific decisions about social arrangements related to the family. Rawls for his part does not propose how public reason might undertake this task.

In order to get to the more basic problem, however, I want to ask a more searching line of questions than Rawls himself ever entertains in any sustained fashion. What reasons might we find for positive determinations within public reason regarding structures of the family in general? What positive forms of the family or provisions for the family—if any—might be recommended or required by public reason in service of its guiding principles of political justice? And why? This question, of course, is meant to force us to ask what political values beyond those of freedom and equality ground decisions in public reason about the questions of the family as a part of the basic structure. In his discussion in “The Idea of Public Reason Revisited,” Rawls identifies the function of the family with “the nurturing and development of [citizens a sense of justice and the political virtues that support political and social institutions] in appropriate numbers to maintain an enduring society” (IPRR, 596). But regarding what particular form the family must take Rawls seems indifferent. In a note to the sentence just quoted, Rawls elaborates:

However, no particular form of the family (monogamous, heterosexual, or otherwise) is required by a political conception of justice so long as the family is arranged to fulfill these tasks effectively and doesn't run afoul of other political values. Note that this observation sets the way in which justice as fairness deals with the question of gay and lesbian rights and duties, and how they affect the family. If these rights and duties are consistent with orderly family life and the education of children, they are, *ceteris paribus*, fully admissible (IPRR, 596, n60).¹⁹

But on this strategy the question is unresolved as to whether or not the matter of same-sex marriage is a question of justice of the basic structure. We must ask, however, Should not a matter so close to the exercise of a citizen's liberty of conscience qualify as one of

the questions of constitutional essentials and basic justice that public reason aspires to answer? The legal status of the intimate relations of citizens is seen here merely instrumentally with respect to the concern for the reproduction of future generations. Yet it seems reasonable to think that many reasonable political conceptions of justice would require intimate relations to be valued as ends, meriting special political protection or promotion as such. Rawls's conception of public reason seems not to possess adequate normative resources for this task.

In order to press this problem yet further, I suggest we entertain momentarily one possible way of resolving claims regarding the institution of the family. So long as society could be expected otherwise to reproduce itself and its culture over generations, it would seem perfectly consistent with the idea of public reason and the conception of justice as fairness to abolish the family entirely. Indeed, this is a possibility that Rawls once himself considered, though only in passing. In his consideration in *A Theory of Justice* of how best to ensure that future generations would have the sense of justice necessary to remain loyal to the principles of justice as fairness, Rawls muses:

It seems that even when fair opportunity . . . is satisfied, the family will lead to unequal chances between individuals. Is the family to be abolished then? Taken by itself and given a certain primacy, the idea of equal opportunity inclines in this direction (TJ, 511).

But then just as quickly he shies away from this possibility. Certainly, it does not seem likely that the family will ever be abolished, because too many would likely find that possibility unreasonable.

But it does seem likely that questions regarding the particular form the family should take will continue to arise. The ability of public reason to give answers to these questions that are principled rather than merely majoritarian exertions of power will

depend upon invoking relevant substantive political values. Thus, for example, the institution of marriage has long had a central role in defining what counts as a family for legal purposes.²⁰ Were we to challenge this role in one way or another, we would have to invoke relevant considerations for doing so. Advocates of same-sex marriage, of course, challenge that the law inappropriately excludes some individuals from the protections and advantages defined by law, excluding them perhaps even from the basic structure of society in general. A perhaps more radical challenge could be made to suggest that marriage is not the appropriate relationship around which to organize the institutionalization of the family. Instead, it should be organized around relationships of providing care.²¹ In the absence of appropriate substantial considerations about the place of the family as a part of the basic structure of society, however, we would do just as well to continue to take the possibility of abolishing it seriously for the purposes of public reason.

We could, of course, raise many questions like the questions about many institutions like those raised here about the family. Such questions would likewise be resolved adequately only by appeal to substantive political values beyond those of the freedom and equality of citizenship. I have suggested that citizens might reasonably feel frustration with how public reason deals with the family (or other institutions), and this will become a theme of interest in the chapters that follow. For now, however, my point has been to illustrate how the way that public reason picks out what counts as the basic structure of society is a function of the substantive political values beyond those of freedom and equality that serve in public reason as the basis for public justification of legitimate law.

5. A Larger Problem for Rawls's Conception of Public Reason

When we accept that reasonable pluralism includes the possibility that citizens might not all agree on the same political conception of justice, the problems facing public reason become broader and more complicated. Rawls introduces the idea of public reason as a way of showing how a society that disagrees about much, might nonetheless regulate itself with the confidence that it does so legitimately and in a stable and enduring way. But finding answers to some of the fundamental questions assigned to public reason depends upon invoking substantive political values beyond those of the freedom and equality of citizenship. And we have now seen that the pluralism among such values is vast. Merely insisting upon the criterion of reciprocity as the ideal or norm governing how citizens participate in public reasoning, furthermore, offers no conceptual guidance as to how to proceed. Likewise, these questions cannot be resolved by simply deferring to the idea of the basic structure of society, because what constitutes the basic structure of society is a function in large part of what substantive political values we embrace.

Here, then, lies the outline of what I am calling in this dissertation the normative deficiency of Rawls's conception of public reason. At this stage, it has the appearance of a kind of incompleteness of his view. What Rawls has done is to specify how the grounding values of freedom and equality of citizenship are to be invoked to define a domain of political values upon which citizens who disagree about much nonetheless might be able to agree about enough to justify to one another publicly their most important laws. He has also shown how these values might articulate the criterion of reciprocity as the norm that must guide citizens in their participation in public reasoning. What he has not done is to help us think more broadly about what sorts of ideals make up

the conceptions of justice that individual citizens are to bring to their participation in public reasoning. This has the effect of leaving much unspecified about the nature of the full range of values that are to constitute in public reason the basis of public justification of legitimate law. This, in turn, leaves many questions unresolved regarding the terms under which citizens are to be reconciled to the institutional arrangements of the basic structure of society and so to each other. Rawls seems indifferent towards the question of how public reason should go about negotiating this full domain of values, offering us no strategy for the task. That Rawls is indifferent toward this question, however, does not yet demonstrate that this is a normative deficiency in his conception of stability for the right reasons. For, if there is no special problem here, then whatever way citizens go about their public reasoning is just as fine as any other, and his conception of public reason would be complete enough for all practical purposes.

At most this would indicate that Rawls's conception of public reason is not the only available way for citizens in a democracy to think about their political participation. We must recall here the fact of the background political culture, which Rawls considers to be one of the four general facts characterizing a well-ordered society. The background political culture, of course, is to be distinguished sharply from the forums of public reason, but it does still play an important function relevant to public reason. Rawls considers that this political culture generally contains the ideas from which we can develop a political conception of justice (PL, 38n41). Likewise, it also serves a function in educating citizens as to the ideals that might constitute their political conceptions of justice and instilling in them the desire to act upon those ideals. This is clear when he notes that "justice as fairness connects the desire to realize a political ideal of citizenship

with citizens' two moral powers and their normal capacities, *as these are educated to that ideal by the public culture and its historical traditions of interpretation*" (PL, 85f; my emphasis). But, as Rawls seems keenly aware, the background public political culture of modern democracies also contain the elements and influences pertinent to many conceptions of justice and democratic politics, not just justice as fairness. Indeed, the competitive-procedural strategy of dealing with disagreement also has its place in the political culture of democracies and stands ready to suggest itself as a conception of democracy that is just as good as any other. And as of yet Rawls has not clearly demonstrated how citizens would achieve any greater reconciliation to the basic structure of society than under the competitive-procedural model of democracy, which sees any such reconciliation as entirely contingent to the democratic process. The competitive-procedural strategy, of course, is a vision of resignation to the majoritarian exercise of power and give up the hope for reconciliation via a principled overlapping consensus. But this does not yet challenge the viability of Rawls's conception of public reason as at least a way to construe democratic political engagement.

I want to argue, however, that there is a special problem that is internal to Rawls's view, and it is here that I turn to what I am calling the psychological deficiency of Rawls's account of how a democratic society might be stable for the right reasons. I shall argue that Rawls does not yet pay sufficient attention to the motivational character of norms and values that are to constitute public reason and to guide citizens in their participation in public deliberations. I will argue that this psychological deficiency manifests itself in two respects. First, it will be my contention that Rawls is not yet fully clear as to what is at stake in defining a realm of political values against the backdrop of

this broader background culture. In particular, he has underestimated the relevance of the normative appeal of the influences that would undermine the project of forming a public overlapping consensus on the terms in which society is to be stable for the right reasons. Second, I shall also contend that he has failed to notice that internal to his own conception is an alienating tendency that might actually tip citizens' allegiance away from participation in public reason as structured on his conception. If Rawls's conception does harbor such a form of alienation, then it risks being a recipe for political instability, not stability for the right reasons.

In order to gain insights regarding how we might bring this deeper problem to light, I turn to the analysis of the normative structure of the modern social world presented by G.W.F. Hegel in his *Philosophy of Right*.

Notes

¹ To elaborate, my use of the term “normative fact” might seem oxymoronic to many readers, but I choose the term deliberately. When Rawls discusses these general “facts” that must be taken as the starting points of his ideal theoretical consideration of democratic politics, he is not describing empirical facts about the world that can be discovered by sociology, anthropology or any other empirical investigation. Rather, he is noting certain features of the idea of a well-ordered democratic society. Again, this is not the kind of thing that can be discovered in the world empirically. Rather, the idea of a well-ordered society is something we can only conceptualize by starting with certain normative principles of justice or political legitimacy and then constructing what the other features of a society that could sustain allegiance to such principle would have to be like.

When Rawls refers simply to these “facts” about such a well-ordered society, I suspect that many readers find it misleading and simply assume that Rawls must be talking about things in the world that are empirically discoverable. Such an incorrect assumption would then easily give rise to criticisms that Rawls has misrepresented the political phenomena of the world. Sandel (1998), for instance, seems to assume that Rawls must be citing some kind of empirical fact, and as if to express his discomfort with this assumption uses scare quotes to set off the term “fact of reasonable pluralism” (202ff). To criticize the assumption he believes Rawls is making via the assertion of this “fact,” Sandel suggests that we proceed empirically. He states, “It is not clear that this further assumption is justified. We need only look around us to see that modern democratic societies are teeming with disagreements about justice” (204). Rawls, however, does not advance such an empirically based theory whereby he is guilty of assuming anything that could be refuted by such superficial observations of political debates.

My use of the term “normative fact” is intended to make it harder for readers to fail to notice that Rawls is not asserting any such empirical analysis.

² For a much more elaborate discussion about the difficulties of deliberating about taxation, see Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (2002).

³ Leif Wenar (1995) does a particularly nice job of exploring one such argument.

⁴ This decisive shift in Rawls’s thought occurred after the publication of *Political Liberalism*. It is first marked by the “Introduction to the Paperback Edition” of *Political Liberalism*, which Rawls dated December 1995 (PL, lxii). The implications of this move are more fully treated in the 1997 “Idea of Public Reason Revisited.”

As an indication of the importance of that essay, Rawls chose to include it in full in his book *The Law of Peoples with “The Idea of Public Reason Revisited”* (1999). As well, 2005 saw the publication of an “expanded edition” of *Political Liberalism*. This edition includes the essay “The Idea of Public Reason Revisited” in the volume along with a short introduction. This “Introduction to ‘The Idea of Public Reason Revisited’” consists of an unsigned editorial note and a July 14, 1998 letter written by Rawls to his editor at Columbia University Press. In that letter, Rawls proposed a “revised edition” of the book. He states, “I have incorporated at various places almost all of ‘The Idea of Public Reason Revisited,’ which was published in the *Chicago Law Review*, Summer,

1997.) He further elaborates, “I think that the Chicago article is by far the best statement I have written on the ideas of public reason and political liberalism” (2005, 438). Unfortunately, Rawls never finished the project of the revised edition. “The Idea of Public Reason Revisited” seems, then, to be his last word and most considered statement of the position.

⁵ This note appears at the end of a paragraph that begins, “Finally, a third general fact is . . .” (PL, 38n41). Rawls had started this discussion of general facts by stating, “The reason for this is that the political culture of a democratic society is characterized (I assume) by three general facts understood as follows” (PL, 36).

⁶ The idea of distinguishing a “domain of the political” was emerging in Rawls’s thinking for quite some time, as is evidenced by his 1989 essay entitled “The Domain of the Political and Overlapping Consensus.” I forgo a systematic analysis of the development of these ideas, however, as beyond the scope of this dissertation.

⁷ A terminological note here is appropriate. Rawls sometimes speaks of citizens agreeing upon “a conception” even after he admits that they might bring different reasonable conceptions of justice to their participation in public reason. As I will become apparent in the next section, a “conception” is more robust than a single principle, but falls well short of what Rawls calls a “comprehensive doctrine.” The latter is an individual’s complete view of the Truth (with a capital “T”). A conception will contain various ideals, say, about citizenship that will be expressed in action according to specific principles. To the extent that citizens do agree upon a set of values to serve as the basis of public justification of their most important laws, that set of values seems to constitute for Rawls something like a conception. I will go on to argue that the process of forging such an overlapping consensus on such a set of values involves more difficulties than Rawls addresses. To keep these difficulties closer to sight, I will avoid referring to the object of the overlapping consensus that society must form as “a conception.” I will instead refer to it via expressions such as the “basis of public justification” of legitimate law and the like.

⁸ This phrase appears only a few times and first only in the “Introduction to the Paperback Edition.” Yet, from Rawls’s references at the appearance of this phrase to other discussions, he means it to characterize the kind of stability achieved when an overlapping consensus is not merely a matter of a *modus vivendi*, a theme that is broadly discussed in his later work.

⁹ See also Bruce Ackerman’s essay “Political Liberalisms” (1994).

¹⁰ The idea of the “free-standing” nature of the political also develops over time in Rawls’s writing. It seems to have been articulated by Rawls first in 1989 in his essay “The Domain of the Political and Overlapping Consensus” (1989a). I do not pursue the course of that development here.

¹¹ Thomas Nagel is one who seems to have urged that Rawls’s conception of justice is best understood as substantive, rather than formal. See, e.g., his “Rawls and Liberalism” (2003). See as well Burton Dreben’s remarks in his “On Rawls and Political Liberalism” (2003).

¹² Rawls holds that these principles of justice proposed by justice as fairness earn an initial claim to reasonability, because they are selected as the most reasonable in the deliberations of his famous “original position.” Rawls here employs the idiom of the hypothetical social contract tradition in order to demonstrate what principles of justice

would found the most reasonable democratic society. Rawls stipulates that the parties to this hypothetical agreement are ideal citizens who are motivated by concerns of publicity and reciprocity and the desire to found a society which will be stable over generations, no matter what they might disagree upon otherwise. As Rawls repeatedly stresses, sometimes seemingly in vain, the original position is merely a device of representation, not an empirical theory of human psychology.

Since this dissertation addresses the problems that arise after Rawls abandons the hope that all citizens might agree that justice as fairness is the most reasonable political conception of justice, I do not address the design of the original position at this stage, as Rawls treated it always as a part of the conceptual structure of the particular conception of justice as fairness. I will, however, make a modest suggestion regarding its value in Chapter 5 below.

¹³ Leif Wenar (1995) discusses other possible ways of specifying the reasonable which have some textual support in Rawls's writings, but concludes that this is the most promising.

¹⁴ Cf., Murphy and Nagel (2002).

¹⁵ This focus on the basic structure is also one of the ways Rawls distinguishes liberalism from libertarian views, which hold that justice is a matter of one's liberties not being unnecessarily constrained. As he expresses this, political liberalism embraces a combination of the values of liberty and equality whereas libertarianism embraces only the value of liberty (PL, 260ff; TJ, 7ff).

¹⁶ I do not take a stand here on which of these conceptions are reasonable and which not. I do assume, however, that there is ample room for disagreement among competing reasonable conceptions of justice.

¹⁷ I generally avoid reliance on this text in this dissertation. Though this text was published in 2001, the "Editor's Forward" by Erin Kelly makes it clear that the text is really a much older manuscript based on lecture notes prepared during the 1980's. Kelly notes that the section on the family in that text, however, is newer. She does not, however, specify a specific date for its production.

¹⁸ My assessment of this problem parallels Martha Nussbaum's treatment in her *Women and Human Development: The Capabilities Approach* (2000, 270ff).

¹⁹ This comment is consistent with Rawls's other comment regarding the structure of the family in the same essay (cf., IPRR, 587).

²⁰ See, e.g., Nancy Cott's study in *Public Vows: A History of Marriage and the Nation* (2000).

²¹ See, e.g., Martha Fineman's *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (1995).

Chapter 3: Hegel and the Evaluation of the Normative Structure of Society

At the end of the last chapter, I suggested that we might gain fresh insight into the nature of the problem of the stability of a democratic society by considering the analysis G.W.F Hegel offers of the normative structure of modern society in his *Philosophy of Right*. Hegel was certainly not an advocate of democracy, and we likely would not want to defend the same sort of political structures that Hegel defended. Yet, I believe that in his famously dense philosophical vocabulary we can find a set of analytical tools that will enrich the way we think about the work of public reason in a liberal democracy.¹ One of the chief objectives of Hegel's analysis is to reveal the rich and complex ways in which the modern social world is normatively constituted. At the core of this system of norms, however, Hegel finds a phenomenon of alienation that will have striking resemblance to the motivational deficiency I will identify in Rawls's conception of public reason. In response, moreover, Hegel also outlines the possibility of a project of reconciliation, whereby he suggests how the rationality of the most important social and political structures of the Prussian state of his day might be defended. The core of Hegel's work, however, is an analysis of what it means for individuals to act on norms and to do so freely. Reading Hegel, I believe, will help us to think in a new way about the quality of the norms that shape the most fundamental structures of modern society and how these norms should be evaluated. This, in turn, will help us address in a more rigorous way what I take to be the deficiencies in Rawls's conception of public reason.

1. Preliminaries to Hegel's Project of Reconciliation

In order to appreciate what is at stake in Hegel's project of reconciliation, we should locate the distinctive phenomenon of alienation that Hegel analyzed in between

the causes for optimism and for concern that he found in various trends that he observed in the social world around him. On the side of optimism, Hegel saw his time as holding great promise for the prospects of human freedom. At the institutional level, he thought that the major social institutions around him were largely well ordered. Though today we would likely find the early nineteenth century Prussian state to be unacceptably hierarchical, Hegel found in it cause for hope, particularly in the constitutional reforms looming over Berlin during much of the time that he was writing the *Philosophy of Right*.² More broadly, he also thought that there was a trend toward freedom even in the general attitudes of individuals. He interpreted the influence of the Protestant Reformation, for instance, as revealing to modern individuals their freedom of thought. Indeed, Hegel thought that to a wider extent than ever before modern individuals were reflective and subjected the world around them, especially the social world and its political structures, to the scrutiny of their own consciences. These were points of optimism.

But Hegel was also deeply troubled by other trends in his day, and noticing these concerns is important to grasping some of his fundamental ambitions. In addition to the advances of freedom, which Hegel associated with the positive aspects of the enlightenment movement, Prussian intellectual culture was also animated by a vigorous counter enlightenment. Various thinkers of this movement militated for the distrust of human rational capacities. To their opponents, they seemed to be moving toward the abandonment of reason altogether.³ In the “Preface” to his *Philosophy of Right*, Hegel had particularly scathing criticism for the anti-rational and romantic thinkers of his day, especially Jacob Friedrich Fries, who advocated under the banner of philosophy positions

asserting “that *truth itself cannot be known*, but that truth consists in what *wells up from each individual’s heart, emotion, and enthusiasm* in relation to ethical subjects, particularly in relation to the state, government, and constitution” (PR, Preface, 8; Hegel’s emphasis). As we turn now to the problem of alienation that most concerned Hegel, if we keep this backdrop of romantic and anti-rationalist opponents in mind, we will be in a better position to see exactly what is at stake for Hegel in his project of reconciliation and why he offers such a careful analysis of what it is like for rational individuals to act freely according to norms.

Now, in the midst of these causes for both optimism and concern, Hegel also detected a stubborn problem of alienation. Recall, as noted in Chapter 1 above, that alienation is objective, on the one hand, when it is the objective circumstances of the social world that are genuinely inhospitable to the activities of individuals in society. Alienation can also be subjective, on the other hand, when that alienation is the function of some other influence that causes individuals to fail to appreciate the otherwise hospitable social arrangements as such. But the problem of alienation that Hegel identifies is not primarily a matter of objective alienation, as Hegel thinks that the institutions of his society are more conducive to freedom than ever before. Rather, the problem is one of subjective alienation that is oddly bound up with the otherwise positive tendency noted above for modern individuals to be more reflective than ever before.

Here is how Hegel characterizes this tendency:

It is a great obstinacy, the kind of obstinacy which does honour to human beings, that they are unwilling to acknowledge in their attitudes anything which has not been justified by thought—and this obstinacy is the characteristic property of the modern age, as well as being the distinctive principle of Protestantism (PR, Preface, 15).⁴

It is in this “obstinacy,” as Hegel calls it, that we will find the conditions for a problem of subjective alienation from the social world. When the structures of the modern social world are not “justified in thought” for modern individuals, the world will be experienced as at best arbitrary or contingent, but maybe even downright unreasonable, indifferent or hostile to their activities. In either case, the social world would not seem to be hospitable to them. Hegel takes this to be a serious problem and one which deserved and required a philosophical remedy. The stakes, moreover, are quite high. For if individuals fail to see the rationality of the structures of the social world around them, those structures might be undermined. Thus, we find that at a fundamental level Hegel’s *Philosophy of Right* is structured also as a diagnosis and therapy for this form of alienation.

But Hegel’s analysis is also presented as a free-standing theory of freedom, and to appreciate how it can be both this free-standing theory of freedom and the immanent critique of the troubled condition of modern society that we have just sketched, we must now turn to Hegel’s distinctive speculative method of philosophical presentation. The normative outlook of Hegel’s philosophy is stated by his famous and controversial *Doppelsatz*, or double dictum, which proclaims “What is rational is actual; and what is actual is rational” (“*Was vernünftig ist, das ist wirklich; und was wirklich ist, das ist vernünftig.*”) (PR, Preface, 12).⁵ By now it is familiar in the secondary literature that in this easily misunderstood passage the “actual” is not coextensive with what exists.⁶ Rather, as Hegel clarifies in his *Encyclopedia*, what is actual is that which expresses its essence in its appearance, as opposed to things which possess only a contingent existence.⁷ Hegel holds that there is much rationality immanent in the social world. Yet Hegel is far from committed to saying that everything in the world is rational. Indeed, he

ridicules this view, saying “we have to presuppose that the reader has enough education to know . . . what is there is partly *appearance* and only partly actuality” (PR, 6). Thus, to identify the “actual” with the “rational” only means that part of the world is rational, not all of what appears in that world.⁸ As a methodological point, we should notice as well that the *Doppelsatz* also implies that sound thought (the rational) should attempt to recognize what is actual, i.e., the core of rationality immanent in the social world.

Here Hegel clearly has his sights set on the problem of subjective alienation. The most pressing task of philosophy, for Hegel, is to uncover what is rational in the world and to show how it might be exhibited to the free thought characteristic of reflective modern individuals in such a way that they may recognize it for themselves. The problem is that as modern individuals have become reflective, they have stood back from the social world around them to reflect upon it critically, but they have not yet recognized the rationality in it that is of value to them. Hegel describes this as abstraction from the world that does not recognize the value in the world as a “fetter of some abstraction” that prevents individuals from “finding satisfaction” in the world (PR, Preface, 14). Overcoming this kind of abstraction, however, he also describes as having the character of a form of liberation. This suggests that there might be a rational way of overcoming subjective alienation. When one has achieved this liberation through reasonable insight, one achieves a state of reconciliation to the social world. Hegel describes this state saying, “I is at home in the world [*in der Welt zu Hause*] when it knows it, and even more when it has comprehended it” (PR, 4A). I follow Michael O. Hardimon here in holding the characterization of the social world as a home to have great currency for articulating the aim of Hegel’s project of reconciliation. To feel at home someplace is

not necessarily the same thing as believing that it is perfect, but it is at very least to know one's way around and to be familiar with one's surroundings. Hegel will thus seek to demonstrate philosophically in the *Philosophy of Right* that the modern social world, defined by certain fundamental institutional structures, is in fact an environment in which modern individuals might feel at home.⁹

In the examination of the argument of Hegel's *Philosophy of Right* that follows, I will not be primarily interested in particular historical circumstances of Hegel's day, of which his analysis is an immanent critique. Instead, I will attend more to that dimension of Hegel's analysis that suggests a free-standing theory of freedom. In particular, I will study Hegel's account of individual rationality and how that rationality is both vulnerable to becoming alienated in the way that we have now sketched and nonetheless capable of achieving reconciliation to the social world. The central thread of Hegel's account is a theory of freedom that starts off with an account of the freedom of the individual will and develops into an immanent critique of the major institutional structures of modern society. In the next section, I begin with his understanding of the freedom of the will and his analysis of the nature of acting freely from norms. Then, I trace what Hegel takes to be the minimal normative conditions for modern free individuality and his argument that one of the norms most characteristic of the modern world actually occasions significant alienation. Then I turn in the fourth section of this chapter to Hegel's novel category of "ethical life" (*Sittlichkeit*) and the critique it enables of the institutions of the modern social world. Hegel understands those institutions to be normatively structured patterns of social interaction to which individuals ought to be reconciled, because he holds that acting from those socially articulated norms is necessary for the realization of the

individual freedom. That individuals are to be reconciled to the main structures of society does not mean that the social world will not still present them with various forms of frustration. Rather, Hegel's project of reconciliation will be successful if he is able to show how individuals' allegiance might be marshaled to the cause of participation in rationally structured patterns of social interaction, over against following the various forms of anti-rationalism that I have now suggested were an important concern for Hegel. Finally, I conclude this chapter with a consideration of the strategies of Hegel's analysis that we might apply to the problem of understanding the alienation of public reason.

2. The Individual Free Will and the Conditions of Its Realization in Modern Society

In order to prepare the way for Hegel's analysis of alienation, we must turn first to his analysis of the nature of individual action. To appreciate Hegel's argument we must begin, as does Hegel himself, with the claim that the proper object of the philosophical study of right is "the idea of right, that is, the concept of right together with its actualization" (PR 1).¹⁰ This is an important claim about both the subject matter of political philosophy and its proper methodology. With respect to subject matter, Hegel signals here first and negatively that political philosophy is not an empirical pursuit, but begins with something conceptual. Furthermore, even though this conceptual starting point must be developed, this development will not be a narrowly historical task. Observing that the "actual" for Hegel is in no way identical with what happens to exist makes this clear. Indeed, Hegel goes on to elaborate that just because historical facts fit with positive laws, this in no way approaches a philosophical justification of principles of right (PR 3 and 3A). Beyond this warning about what political philosophy is not, the

specification that the idea of right includes both the concept of right and its actualization indicates that for Hegel a proper philosophical understanding does more than simply clarify concepts and apply them to empirical circumstances. Instead, philosophy must study the ongoing rational or reasonable development of a conceptual starting point. With the concept of right, reason posits certain demands, and a proper philosophical investigation of this concept must study the conditions for and the possibilities related to the satisfaction of those demands.

We are now in a position to state succinctly the strategy of Hegel's argument.¹¹ First, Hegel lays out in his "Introduction" an account of what it means for humans to will or, what is for him the same thing, to act intentionally. This account is minimal, on the one hand, because it includes only very general features of human action. Yet, it is fairly robust, on the other hand, because Hegel includes in it that basic features of both the intentional character of willing or acting and an account of what it means for such willing to become actualized. Then, armed with this account of human action, Hegel embarks in the rest of the book upon a critique of what we would call in more contemporary vocabulary various conceptions of right.¹² To order these conceptions systematically, he begins with the most basic concept of right, which proves to be deficient with respect to its ability to demonstrate rationally the possibility of its own actualization, and then he proceeds to appeal to further concepts of right until the concept of right reaches a systematic coherence and a full account of its actualization is possible. The result is a systematic account of only the minimal necessary content of any adequate political philosophy.¹³ That the concepts Hegel treats are systematically related in this way constitutes for Hegel not only a critique of their various limitations, but also a defense of

their rightful character. To the extent that his analysis leads to a treatment of specific norms, it will have the character of tracking the rational interest individuals should have in those norms, if those individuals are actually motivated by the concept of right. It is important here also to notice that indefensible conceptions are left aside entirely by Hegel.¹⁴ Noticing this should help us to appreciate how Hegel's analysis is constantly poised between those features of his society that held promise for human freedom and those that he found most troubling.¹⁵

We must now turn to Hegel's analysis of the nature of human willing and how it constitutes a free-standing analysis of freedom. For Hegel, that will is free that wills itself. To will is to act intentionally, and this, in turn, consists of the activity of two capacities. The first is the capacity for what he calls "universality," or the ability imaginatively to abstract from any particular content of the will, including even one's own identity (PR, 5). This is the capacity one has to reflect abstractly from all of the particular content of the mind and to think of the pure 'I' to which all of this content belongs. The second aspect of the will is the capacity for "particularity," or the will's ability to determine itself to some particular and concrete content or end (PR, 6). Neither of these capacities by itself constitutes a complete, let alone a free will. But through the activity of both of these capacities, the will becomes what Hegel terms "individual" and thereby exercises the capacity for actuality.¹⁶

It is important to notice here that Hegel's understanding of the will denies any rigid distinction between theoretical and practical reason. When he describes the capacity of abstract universality as a moment of the will, it would seem that he is describing a theoretical mode of reasoning, but this is only one moment or aspect of the

will. Instead, Hegel holds that reason is always both theoretical and practical and that the practical aspect of reason is always primary. Two points will help to clarify Hegel's case here. First, even in practical reasoning, one's understanding of the object she is willing makes all the difference, and theoretical capacities are thereby always implicated in practical reasoning. For example, when one takes some form of medication, she usually does so with the understanding of some larger biological conception of the body and health; children (and even some adults) who lack such an understanding cannot be relied upon consistently to take needed medication without supervision. Second, even when one is engaged in theoretical contemplation, she is always constituting herself as an agent who is taking a particular object in a certain way as her own, albeit contemplatively or reflectively. Thus, as Hegel maintains, "thought and will" are no more than two different attitudes of one and the same faculty of reason. Rather, as he says, "the will is a particular way of thinking—thinking translating itself into existence, thinking as the drive to give itself existence" (PR, 4A).

By tracing the ways these capacities of the will's universality and particularity play out together, Hegel next draws our attention to the importance of appreciating that any intentional action must contain both a subjective and an objective moment or aspect. Subjectively, human action is always in principle the action of a thinking agent. Thus, in any action there is always an implicit aspect of the agent's self-awareness as the agent thoughtfully willing that action, whatever it may be. One is always aware of this action as one in which she has some sort of interest. The action is an object of *her* thinking intelligence. To this subjective moment of action, Hegel's analysis adds an objective moment by reintroducing the aspect of the particularity of any action as a necessary

aspect of any action at all. This particularity now includes the particularity of both the action and the circumstances of action, both external and internal (e.g., the empirical facts such as candy and an apple sitting on the table and the relevant desires such as my craving for chocolate). As an agent, one's understanding or thinking of her action must include the thought of the appropriateness of the action with respect to *all* of this context. That is, willing must include the thought of the appropriateness of acting on *this* desire in *this* way and in *this kind* of situation.

When we bear all this in mind, it follows for Hegel that acting always is acting in accord with a norm. And since the free will wills itself, it follows that the end of an action always is that norm which articulates the appropriateness of the action in all of these respects. Thus, for the will to actualize itself, the norm upon which the individual acts must count for that individual in such relevant respects as a reason to act. Pippin has usefully pointed out in this regard that the word "*wirklich*" in German, which is usually translated as "actual," can also be translated in this context as "effective" (1995, 427n23). For an individual will to achieve its own actualization means that it must act on norms that are broadly actual or effective for it. Thus, Hegel's analysis in the *Philosophy of Right* attempts to study systematically the minimal system of such norms necessary on an ongoing basis for an individual to act freely in the world. Hegel specifies that "the system of right is the realm of actualized freedom" (PR 4).

To round out our appreciation of Hegel's analysis of the nature of intentional action that will guide him in the rest of his book, we need to add two more observations. First, Hegel's view of freedom is dynamic in the sense that an individual's intentional acting is an ongoing part of the activity of life. To this extent, it is also relevant to the

nature of that intentional action whether or not one finds satisfaction or frustration in acting upon a particular norm. When the norm one acts upon permits one to take satisfaction in some object (and when that object cooperates), then the experience of the satisfaction one takes when so acting is also an aspect of the experience of intentional action or the actualization of the will. This ongoing aspect of the actualization of the freedom is captured in Hegel's characterization of freedom as a kind of "being with oneself in an other."

Second, freedom for Hegel is also a matter of the will's engagement in mutually constituted patterns of social interaction (PR, 22-28).¹⁷ The will as sketched so far, which is with itself in its object, is still only an individual will in a weak sense. One's willing can become fully individualized (in a stronger sense) only by contrast to the willing of others.¹⁸ But this contrast to the willing of others is also, for Hegel, a relationship with the willing of others. In order to be most fully free—that is, in order for a will to will itself in the fullest sense—one must also will the relationship with others whereby her will is most fully distinguished as her own. One accordingly wills her own action only by willing also a relationship to the wills of others in which her action is fully distinguished as hers. Moreover, if this individuation is finally to be effective, she must also will this relation to the wills of others as a relation to others who understand and reciprocally will the same pattern of interaction. Genuine freedom of the will is not only action according to norms, but also according to norms that are socially recognized and mutually effective for the agents concerned.

Since we now understand what Hegel takes to be involved in the actualization of the individual free will, we can now more fully appreciate that not every concept of right

will function as effectively as the next. Accordingly, not every concept of right will fare as well in Hegel's philosophical evaluation. Indeed, some concepts of right will be so inconsistent with the original concept of the free will that Hegel analyzes that he will omit them from his system of right entirely. Two such omissions merit explicit mention here. First, a narrowly utilitarian principle which presupposes that practical reasoning is a matter of merely instrumental calculation already must fail entirely with Hegel, because one's desires can never be taken as merely given by an agent willing effectively as a thinking intelligence. Free action must instead include in a nontrivial way the thought that it is appropriate to act on a specific desire. Because it fails properly to include such a basic speculative aspect of the will's operation as a thinking intelligence, such a simplistic utilitarian principle does not even get off the ground for Hegel as a norm to be included in the system of right. Second, narrowly communitarian principles which presuppose that the authority of a norm is given by the fact that it is designated by the community must also fail for Hegel. Not only would such a concept of right ignore the fact of the individual's own thinking ability, but it would prevent the individual's will from becoming fully individuated and thus one's own in the strong sense. Accordingly, Hegel does not include such norms in his systematical presentation of the realm of right.¹⁹

But just because Hegel is able to leave some concepts of right entirely out of his systematic treatment, it does not mean that there will not be difficulties with the ones he does include. Indeed, the problem of alienation that concerns Hegel so much will turn out to arise from one of the most central concepts of right in society. Keeping in mind that Hegel is aware that there are other concepts of right contending for the allegiance of

individuals in society will help us to see why Hegel thinks it is so important that the alienation he diagnoses be resolved in a suitably philosophical way. We must now turn to his analysis of this problem of alienation.

3. Abstract Right, Morality and the Diagnosis of Social Alienation

We must now see how Hegel's method of political philosophical evaluation of norms plays out with the candidate conceptions of right (in his terms "concepts" of right). As indicated above, Hegel will start with a concept of right that is genuinely rightful, but also deficient. He will then follow the concept's own demands for its actualization until he has reached a minimally adequate account of the actualization of the concept of right. The concept of right with which Hegel begins is that of "abstract right." This is the concept of right articulated via legal norms and especially those of property ownership. This concept, however, proves deficient with respect to its ability to satisfy reason's own demands, i.e., the demands of a thinking intelligence acting freely. Thus, for Hegel, the concept of "abstract right" gives rise implicitly to the concept of "morality." The latter is necessary, as we shall see, to accomplish two importantly related tasks: to satisfy the demands of reason in acting freely and to render the norms of abstract right practically stable. But it will turn out that the concept of morality too proves deficient with respect to its ability to satisfy the demands of reason, and it will be here that we encounter Hegel's famous criticism of Kant.²⁰ The problem is that when reason posits the demands of the concept of morality, those demands are so exacting as to preclude almost entirely the possibility of their own satisfaction; reason, by virtue of its own activity in making such demands, is itself alienating. Then in the wake of this alienation, Hegel will offer his larger diagnosis of the alienated condition of modern society. This diagnosis will

point up a political problem in the sense that these deficient norms of right leave the individuals who sincerely embrace them sufficiently frustrated as to render it tempting to give up on the ongoing project of justifying norms of social interaction rationally. It will be a variation on precisely this process that I will go on to argue is at work in the alienation of public reason.

In his study of “abstract right,” Hegel both articulates as the most basic condition for the actualization of the free will a sphere of “external freedom” and studies the social norms of legal personhood. The sphere of external freedom allows for the will’s capacity of particularity and thereby stands as a necessary precondition for acting with genuine freedom (PR, 34). That is, the most basic requirement for any action in the world is that the will be able to involve concrete external particular things in its activities. It is the virtue of legal property rights that they constitute such an external sphere of freedom by protecting the individual’s prerogative to embody her will in external things. The modern liberal rights to life, liberty and property, which ensure that one will have such an external sphere of freedom, are hereby designated by Hegel as basic to individual freedom.²¹ Importantly, Hegel also specifies that the right to particular things must be mutually recognized by other free individuals. Property rights arise meaningfully only in the context of social interaction, and one owns property and becomes a proprietor only within the context of an ongoing mutually recognized pattern of social interaction. The institution of property ownership, thus, is a norm-governed social practice under which the individual is considered a bearer of the basic rights to life, liberty and property.

But Hegel also shows that this abstract kind of freedom is far from sufficient from the point of view of attempting to conceive coherently of the actualization of an

individual will, pointing up at the same time also its limitations as a normative basis for stable system of social interaction. The activity of the will involved in legal personhood is essentially an arbitrary embodiment of will in external things and no *moral* scrutiny is as of yet necessary to the content of one's willing in the external sphere. The concept of abstract right is thus indifferent to the internal dimension of an agent's action (i.e., the intentions or interests upon which an agent acts), even though these cannot be matters of indifference to the activity of a thinking intelligence engaged in such self-determination. To draw out the limitation and inadequacy of this concept of freedom as a basis for normatively structured social interaction, we need only consider with Hegel the problem of crime. Without appeal to moral reflections, we cannot understand or distinguish clearly between crime, on the one hand, and punishment and revenge, on the other (PR 102-103). These categories require an evaluation of the internal or subjective element of action. To the extent that distinguishing between such categories is necessary for the concept of abstract right, the terms in which such distinctions will be made are implicit—but only implicit—in that concept. The conception of legal personhood lacks, as Hegel says, the explicit element of “subjective necessity,” and Hegel turns to “morality” in order to specify the further conditions for the possibility of the coherence and stability of abstract right. This is also a matter of great social importance for Hegel, because without a mutually acknowledged standard of resolving these questions, the social interaction based on the recognition of norms of property rights threatens to become unstable.

In his study of “morality,” Hegel expositis what he calls the purely subjective moment of the freedom of the individual will. Whereas “Abstract Right” had developed the actualization in the world of the free will in its particularity, “Morality” follows the

speculative moment of the actualization of the will's universality. As we have already noted, for Hegel, every action of the free will always takes as its end a norm, and such norms must articulate the appropriateness of the particular action for the particular agent in her particular circumstances. In focusing now on the internal dimension of this kind of action, the elements especially in question will be, on the one hand, the way in which the acting agent may take satisfaction in her actions on an ongoing basis and, on the other hand, the caliber of norms that the will embraces as the rational basis of that satisfaction and the extent to which they can be—and indeed must be—the will's own. But it will turn out that the demand reason makes regarding the caliber of the norms upon which it acts in order for those norms to be its own is so exacting that the agent will be able to take virtually no satisfaction in acting from such norms. Reason proves here to be alienating.

One of the most important features of the concept of morality is what Hegel calls “the *right* of the *subject* to find its *satisfaction* in the action” (PR 121, Hegel's emphasis). This aspect of subjective freedom, furthermore, entails for Hegel a right to the satisfaction of our natural drives and inclinations, the satisfaction of which as a whole Hegel calls “welfare” (PR 123). He rejects outright the Stoicism, often associated with Kant, of the dignity of reason as opposed to empirical nature. He argues:

The fact that [a subject] is a living being is not contingent, however, but in accordance with reason, and to that extent he has a right to make his needs his end. There is nothing degrading about being alive, and we do not have the alternative of existing in a higher spirituality (PR, 123A).

But the right of subjective satisfaction is not a matter of satisfying one's empirical drives and inclination as they are simply found or present themselves. It is instead a matter of acting on an appropriate norm with respect to those drives and inclinations. More

importantly, since freedom is a matter of the will's willing itself, this satisfaction must be according to norms that the individual can recognize fully as her own, as actual or effective for her. Thus, whatever those norms turn out to be, it is established here that as a formal requirement, these norms must be reasons that are genuinely motivating for her. Furthermore, one has a reasonable expectation to find satisfaction in acting from the norms that are the ends of her actions.

But as the concept of morality now plays out with regard to this issue of how the norm of one's action is to be regarded as effectively one's own, Hegel finds that the tendency of reason to abstraction proves so demanding as to frustrate the agent's ability to find satisfaction in her actions. Moreover, Hegel believes that this tendency is illustrated with great clarity in the categorical imperative at the center of Kant's moral philosophy. When Hegel follows the tendency of reason to abstract from the particularity of any given action and to reflect upon the quality of the norm guiding that action, the will abstracts from all of its particular content to a pure reflection upon the form of its relation to its content. This tendency of the free will is satisfied by nothing less than what Hegel terms "the absolute inward certainty of itself," and Hegel terms this disposition "conscience" (PR 136). For the will to be certain of itself means that it acts upon norms which must necessarily be its own, which cannot help but be reasons for it and reasons which motivate it. In this tendency of reason to abstraction, the necessity of the principle's counting as a reason for the will must arise by virtue only of the will's own rationality. This is precisely the nature of Kant's categorical imperative, the command to "Act only on that maxim through which you can at the same time will that it should become a universal law" (1785, 88).

But here we encounter Hegel's famous criticism that Kant's categorical imperative, when taken as the defining principle of the moral standpoint, turns out to be empty. Hegel characterizes the moral standpoint in quite sweeping terms as "abstract universality," a point of view which is "without content" and "indeterminate" (PR 135), a mere "empty formalism" (PR 135A). From a point of view that is so abstract, even necessarily so, Hegel argues determinate duties cannot be derived. Kantians have been quick to counter that Kant's categorical imperative procedure does not leave the will without any content at all. Rather, the categorical imperative is essentially a reflection upon the particular content taken from more empirical sources to see whether or not they measure up to the higher order motive of pure practical reason.²² Thus, it can be pointed out that Kant's categorical imperative does produce determinate duties like the ones that serve as his examples in the *Groundwork* such as the duty not to make lying promises, etc. It would seem, then, that on the matter of determinate content Hegel's criticisms are not entirely accurate.

But even if we grant these Kantian apologies, Hegel's criticism still points to a deeper problem. It is not so much that the moral standpoint does not produce any determinate duties at all, but that it falls radically short of generating in a satisfying way the kind of determinate duties that constitute the normatively structured institutions and conventional arrangements that sustain the modern social world. The Kantian conception of morality requires individuals to subordinate all of their other motivational interests—even those articulated by rational norms—to their interest in the very abstract rational principle of the categorical imperative. But if this is the structure of one's willing, then the motivational significance of all of the other relevant features of one's willing is

downgraded. Insofar as one is motivated by such a Kantian moral principle, she will be alienated from all of her other motivational interest so as not to be able to take rational satisfaction in them. This is suffering alienation in “the fetter of some abstraction” that Hegel referred to in his Preface, and he has now demonstrated that this abstraction arises from the free thought of modern individuals itself. This alienation also threatens to undermine the ongoing process of mutual recognition of normative claims that constitutes free individuality in the strong way discussed above (see Section 3.2).

The modern form of alienation to which Hegel is addressing his analysis of freedom in *The Philosophy of Right* is now diagnosed: the bulk of the modern social world is constituted by normatively regulated forms of social interaction and cooperation, yet because of its own alienating tendency the most decisive concept of freedom proves incapable of situating one within the complex forms of social life characteristic of modern society. For modern individuals who participate in these institutions, but who are motivated in their reflections above all else by the principle of morality, the social norms that regulate the bulk of the activities and interactions of their daily lives can only be seen as foreign and arbitrary from the point of view of their rational wills. In so far as individuals act merely as legal persons and conscientious moral agents, the norms necessary to constitute and regulate modern social institutions cannot be experienced as actual or effective for them. These abstract norms of right alone do not even provide the conceptual resources by which an individual might recognize those other norms of the modern world as continuous with their demands. The social world seems indifferent, and certainly not a home.

We might do well to ask here what practical danger Hegel saw in this alienated condition of modern society. From the point of view of the rational defense of individual freedom, that the leading concepts of right do not present the resources to criticize the vast bulk of the social interactions of the modern world is clearly a threat. When the most decisive concept of right not only does not readily lend itself to but actually frustrates the effort to articulate coherent and effective social norms to structure society's major patterns of social interactions, the most important danger is that irrational or unreasonable influences or considerations will become effective. At face value, this might not seem such a horrible threat. We could imagine worse for society than to have a few ground rules (abstract right) and then everything else within those guidelines be left to individual whim or preference. But Hegel saw that the problem is more complicated. His critique of the actualization of the concept of abstract right shows that they are not by themselves stable. Moreover, the subjective sense of moral certainty risks being attached to any content if its nature is not further articulated. If things went poorly, one suspects that even the norms of abstract right could be undermined or altered in a way that is not conducive to human freedom. Thus, when they reflect under the structures of these deficient concepts of right, not only is much of the world likely to be experienced as alien by modern reflective individuals, but Hegel shows that they also lack the conceptual resources to defend rational structures against mutation at the hands of various forms of irrationality or anti-rationalism.²³

We should pause here to make two observations about the nature of the problem Hegel has now diagnosed. First, it is a political problem, because all of the political structures of society fall within the scope of the set of norms that are as of yet alien to the

wills of reflective individuals motivated by these deficient concepts of right. Moreover, it is also political in the sense that it must be to the reflective endorsement of free individuals that the rationality of these normative structures must be commended, but this must be done in a way that will bring them some sort of genuine satisfaction, that will be actual or effective for them. Second, it is also instructive here to notice that the norms that generate the vast alienated condition of the modern social world are not specific to any single form of governance. Rather, these norms define a much broader background against which the specific norms of any number of possible systems of governance might appear problematic or alien. Put differently, this problem of the alienated condition of modern society will be a problem for any political system in any modern society—including a liberal democratic society—in which norms of legal personhood and most especially conscientious moral agency are broadly effective for the individuals living within that society. The question that now remains is how Hegel thinks that this inherent alienating tendency of reason itself might be overcome in such a way as to counter also the alienation of reflective individuals from the main structures of modern society in general.

4. Ethical Life and the Rationality of Social Institutions

The problem now before Hegel in his philosophical analysis of the actualization of the individual will is to show how the normative gap left in the wake of the alienating tendency of reason's own interest in this abstract moral character of the norms that guide its actions can be filled with content that will be actual, effective or rationally satisfying for free individuals, but in a way that also does not lose sight of the defining role of the concepts of abstract right and morality so essential to the possibility of right and freedom.

In Part III of his book, “Ethical Life,” Hegel turns to a critical evaluation and defense of the normative structure of the major institutional spheres of the Prussian state. The matter of greatest importance to us, however, will be to understand the extent to which Hegel’s critique provides analytical resources that might be useful in the context of other kinds of political arrangements. Just as Hegel’s diagnosis of alienation is potentially relevant anywhere the concepts of abstract right and especially morality are effective, so too will be his general strategy for overcoming that alienation.

Hegel’s remedy to the problem of alienation lies in his presentation of his novel evaluative category of “ethical life” (*Sittlichkeit*). The novelty of this category of ethical life lies partly in the fact that it leads Hegel to an immanent critique of the rationality of the major institutional structures of the social world.²⁴ But the deeper novelty in Hegel’s presentation of the category of ethical life is that Hegel claims that individual freedom actually *requires* participation in social institutions of the caliber that he defends. To the extent that the norms that structure these institutions actualize the individual free will, individuals will be rationally reconciled to the world around them. We must now inquire as to how action according to the norms that structure the social institutions Hegel examines is so important for the actualization of individual freedom.

In approaching this discussion, Hegel’s notion of “ethical life” itself merits some attention.²⁵ “Ethical life” translates the German word “*Sittlichkeit*,” which carries with it some important connotations not immediately obvious in the translation. In German, the word “*Sitte*” can mean more than just ethics. It also includes the notion of custom. The norms that constitute ethical life therefore are of various levels of formality, ranging from explicit norms to more customary or habitual practices. Hegel means to include all of

this range in his understanding of ethical life. It refers then not just to the external structural organization of particular institutions, but also to conventional, lived patterns of social cooperation and life which give them their substance. It will be from this broad range of conventional and formal norms that Hegel will draw the contours of the objects of the modern world with which individuals are to be at home and reconciled.

In turning to such a conception of ethical life, Hegel recognizes that social institutions (broadly understood) play a significant role in the formation of the will of individuals in at least two ways. First, institutions help to define many of the possibilities which are open to individuals to choose from in planning and living their lives and thus give a general form to the bulk of individuals' social activity and interaction.

Institutional structures, for Hegel, help to define what it could mean in modern society to fulfill so many of the roles which are reasonably central to many individuals' lives, e.g., to be a mother or a father, to be a craftsperson or a bureaucrat, as well as to be a citizen.

If nothing else, these socially defined roles form the social backdrop against which individuals live their lives. More likely, these roles specify the general and most basic terms of intelligibility by which individuals understand their social activities and lives.

To this extent, the basic social institutions of modern society form the wills of individuals by giving a general form or shape to the social activities in which they engage.

The second way in which social institutions play a significant role in the formation of the individual will, which is perhaps more important for the purposes of understanding Hegel's theory of reconciliation, is through the education (*Bildung*) of individuals in society. Hegel understood that human desires are flexible and subject to the influences of social circumstances.²⁶ As we will explore in more detail shortly, specific structural

features of major institutions of society exhibit their normative expectations openly, and individuals can come to desire to participate in and benefit from them as a result of their familiarity with them. When individuals grow up in a world defined by specific major social institutions, the socially recognized normative expectations help to shape their wills by identifying to them and endorsing certain of their interests as justifiable or reasonable in the eyes of those who participate also in them. This process not only frames the terms for one's participation in these institutions, but it also influences the desires people hold for engaging in various kinds of social activities and thereby influences the terms for the evaluation of such activities. Thus, the conventional character of institutionalized forms of action helps to commend to individuals a range of socially shared and accepted reasons for action. To this extent, Hegel's turn to social institutions goes a long way to explaining how modern individuals can act on reasons that are motivationally effective for them. The problem now is to understand how for Hegel the powerful influence of institutions serves at an objective level to actualize freedom rather than stifle it.

It might be tempting here to embrace a communitarian interpretation of the relationship between the larger social context and the autonomous individual will by which the social context simply posits the good enjoyed by individuals who function within it, but this would be to mistake Hegel's view of modern freedom. Such communitarian interpretations typically emphasize the priority of socially defined roles and conceptions as necessary conditions for the possibility of action at all, not to mention as defining standards of the goodness of acting.²⁷ But here we should recall that Hegel still considers both the dimensions of abstract right and morality to be fundamental to

modern freedom. Accordingly, from a negative point of view, they serve as limitations on what could count as reasonable socially shared norms or reasons for acting. Abstract right ensures that individuals can always resort to their individual rights of life, liberty and property and rightfully take leave of any social convention that violates those rights. Morality, likewise, ensures that any conventional norm must be able to withstand the conscientious moral scrutiny of modern reflective individuals. Furthermore, we should recall that Hegel turns to ethical life to actualize further those otherwise partial and unstable concepts of freedom. In this way, abstract right and morality will also serve to articulate positive requirements that must be satisfied in order for social institutions to actualize modern freedom. Any communitarian approach that accepts the will of the community or the authority and priority of tradition too uncritically will accordingly be unacceptable for Hegel.

Rather than take this communitarian tack, we should see in ethical life the articulation of forms of ethical community that must be evaluated according to both objective and subjective criteria entailed in Hegel's focus on the actualization of the free will. As forms of ethical community, the structures Hegel analyzes in "Ethical Life" must be evaluated objectively according to whether or not the content of the norms at issue are norms of freedom. This entails that these structures must render intelligible and stable the concepts of right treated under "Abstract Right" and "Morality." This means that "Ethical Life" will be evaluated first by its capacity to cultivate or educate individuals to think of themselves as acting under these concepts of right. Any institution that as an ethical community tends away from those definitively modern concepts of right will be suspect from the point of view of Hegel's attempt to understand how modern

freedom is to become actualized. Thus, modern social institutions must be evaluated on the basis of their tendency to educate individuals who participate in them to conceptions of themselves as free legal persons and morally conscientious agents.

Beyond this, however, Hegel's analysis entails as a further subjective demand for the evaluation of concrete institutions that they help to overcome the alienation Hegel has shown more abstract norms to induce. That is, these institutions must embody and articulate further norms or reason for acting that cannot help but be actual or effective for the individuals who participate in them. Thus, these norms must present reasons for action that are more than just instrumental values. Rather, individuals must embrace norms of action framed by these institutions as valuable for their own sake or as ends to be promoted. This means that the norms that govern them must be understood as articulating moral duties. But these duties are not to be experienced as limitations on the individual free will. Instead, Hegel famously claims that "the individual . . . finds his *liberation* in duty" (PR, 149; Hegel's emphasis). The sense of duty in questions here refers to the concrete obligations placed upon individuals by virtue of their fulfillment of the various roles which modern society fashions for them.²⁸

There may seem to be a paradox here, because duty is usually taken as a limitation on the individual's capacity for arbitrary choice. But what Hegel is trying to demonstrate is precisely that this sense of freedom as arbitrariness so familiar from the norms of abstract right is not a fully adequate concept of the freedom of the will. If Hegel can show that the norms which structure the major social institutions are objectively norms of freedom, then the Kantian opposition between duty and inclination will be overcome at least in principle in reflective thought. The desires whose satisfaction is most fulfilling to

individuals will be shown to be not merely arbitrary, but rationally constituted.

Individuals' subjective sense of their desires as constituted by action on such objectively rational norms will thereby become crucial to their liberation from the sense of arbitrariness instilled by deficient and abstract norms.

As we prepare to consider Hegel's evaluation of the norms defining the social institutions that he took to be most fundamental to his society, we should note two aspects of Hegel's analysis that will be most important for our interests. First, as we have now seen, much will turn on Hegel's analysis of both the objective and subjective quality of each of the norms he considers. At the level of their objective content, the caliber of the norms upon which individuals act when participating in these institutions must be established. It must be demonstrated that these norms are genuinely principles of freedom rather than principles of mere arbitrariness or of determination by some contingent empirical nature. To this end, Hegel will argue that the major norms of ethical life purify the empirical drives. Empirically given nature, as we shall see, is simultaneously upgraded and downgraded in this process.²⁹ And, at the level of the subjective effectiveness of norms, the major structural features of the institutions Hegel examines must exhibit the positive kind of freedom that is actualized when individuals act upon these norms such that these objectively rational norms also become practically effective. It will be instructive for us to see how Hegel's analysis of these norms plays out, because, as I have been urging, this analytical strategy might be applied to many more systems of norms than just those that Hegel addressed in his day.³⁰

Second, when we see how Hegel's analysis plays out, we will see the structure of his argument that the minimal necessary normative content for a political theory must

include much more than just certain abstract legal and moral norms. It will turn out that one of the distinctive features of the modern world for Hegel is the plurality of institutional structures necessary to actualize the individual free will. In exhibiting the norms at stake in each institution, Hegel's method of actualization will exhibit also the deficiencies and limitations of these norms as concepts of right. Again, for our purposes, it will be most instructive to see how this analysis plays out, because at very least it might be applied to the analysis of many other candidate systems of norms. Furthermore, to the extent that these norms are very general and minimal, they might in fact be suggestive of the kinds of norms that might be broadly effective in other similarly modern societies. I turn now to a brief sketch of each of the three major social institutions that Hegel takes to be characteristic of the modern world: the family, civil society and the state.

The form of the family which Hegel thinks is characteristic of modern society and freedom is specifically the bourgeois, nuclear family.³¹ He calls this form of the family the "sphere of love" and ethical life in its "immediate substantiality" (PR, 158). The modern family plays a significant role in the formation of the individual will by satisfying many of the individual's particular desires and needs, but in a way that focuses one's consciousness toward her place in a larger social unit. Hegel thinks the family unity has its origins in sources which are contingent such as the feelings of love or even the intentions of well-meaning parents (PR, 162 and 162A). The defining norm of the family is a mutual agreement via marriage to form a loving relationship. This relationship so constituted becomes objectively an end in itself for both parties. The sexual inclinations that might accompany love are thus deemphasized in relation to the normative commitment embraced. Whatever domestic division of labor is adopted, in turn,

becomes upgraded as a necessary constitutive element of the relationship that is an end in itself.³² But when one becomes a part of a family, the commitment to this norm becomes subjectively effective when one develops an ethical disposition toward one's relationships. Within the family, one becomes conscious of oneself as a part of a "unity," part of a unit larger than the particular individual. One thinks of oneself—both in relation to other members of the family and in relation to those outside the family—in terms of one's roles as a member of the family—e.g. a spouse or a parent. This is something beyond mere contingent interest; it is now an ethical interest.

The transformation of the individual will with respect to the family is completed by certain of the institutional structures of the family exhibiting the rationality of the institution for modern reflective individuals to comprehend. The features in question, taken together, exhibit the aspects of the family as promoting both an ethical unity and one which is oriented toward bolstering modern individuality. The first structure which Hegel considers is the marriage ceremony. It represents more than a merely arbitrary contract, but a contract which almost ironically indicates an end to such merely arbitrary contracting. This is because one agrees to give up deciding her will in the purely arbitrary ways acceptable for legal personhood or even in the very abstract or detached ways acceptable to conscientious moral agency. Next, the orientation of the family toward modern individuality is clearly indicated in provisions for family property. Hegel calls this the actual external existence of the family in the world and distinguishes the modern institution of the family as atomic rather than extended. Strikingly, Hegel supports limits on the ways in which families might care for children. He argues, progressively for his day, in favor of limitations upon the family's ability to use children

for economic gain (PR, 174A). This is because the family is properly oriented toward the ethical production of modern free individuals. To the extent that these provisions become motivationally effective for members of the family, we can see already that they both promote the concept of right found in abstract right and serve as ethical constraints on the way one would likely exercise those abstract rights.

Similarly, the limitations of the family based in its normative deficiencies are also exhibited. Above all else, the family is based originally in inclination. But when the unity of the family is established, it does not have the means to satisfy all of the individual inclinations of all of its members. Sometimes disagreements over how inclinations are to be satisfied cause a marriage to fall apart. Hegel's provisions for the possibility of divorce indicate clearly that he does not believe that the family cancels out entirely the basic rights of legal personhood. But even if the marriage does not fall apart, the family is not necessarily sufficient to satisfy all of the inclinations that its individual members might have. There must be another institution to aid in the satisfaction of individual wants and needs. Hegel thus considered the modern family to be complementary to the institution of civil society, which is for him the most distinctive institution of the modern social world. The family is construed as the most basic unit of consumption for the market place, which has its home in civil society. More deeply, Hegel also sees the family's goal in raising children as raising autonomous individuals who can function on their own in civil society. Indeed, the most striking feature of the ethical work of the family is to do the work of reproducing autonomous individuals for civil society, as civil society itself cannot do.

In turning to civil society, we find that Hegel agrees with many of the social contract tradition that the functions of civil society are the most distinctive features of the modern world, but he is the first in the history of political philosophy to give a thorough articulation of civil society as distinct from the state. Previously, philosophers had used the names of civil society and political society as virtually interchangeable noting the contrast with the supposed state of nature (e.g., Hobbes or Locke). But Hegel saw them as quite distinct and giving expression to different moments of modern free individuality. It is within the institution of civil society that we find the marketplace and the institutionalization of private property upon which that depends. We also find here certain arms of the state which support the market place, such as the police, the administration of justice and other more or less bureaucratic agencies. Finally, it includes also “corporations,” or organizations of individuals in particular trades or vocations in the larger economic system. Civil society provides the institutional framework that most fully makes possible the actualization of the abstract freedom of the will as legal personhood in property and provides for our awareness of it. This is the very individualistic sort of agency which for many, though not for Hegel, exhausts what modern freedom should be.

The particular structural features of these institutions of civil society, in turn, help to transform the will of individuals to make them aware of their individuality. The economic system with all of the structures necessary to support it, which Hegel terms inclusively the “system of needs,” allows individuals to articulate their own particular needs and wants and to have them satisfied by others in the market system (PR, 189-208). Individuals become aware of themselves and others as separate and unique persons who

have their own particular interests and aims. What is more, the rationality of the system of needs is exhibited when it takes on the form of universality in society. That is, individuals become aware that their needs and wants are satisfied only when those of others are satisfied. Importantly, they also come to this satisfaction by freely or voluntarily pursuing their own ends, sometimes in association with others, as “private persons who have their own interest as their end” (PR, 187). This all gives rise to an impersonal sense of rationality which values individuals instrumentally as a part of a larger harmonious whole, guided by something like Adam Smith’s invisible hand of the marketplace. This shapes the way individuals deliberate within the economic sphere: they become rational calculators, evaluating and revising their plans in accordance with what is consistent with the system of market exchanges among other rational calculators. The administration of justice, with its publicly articulated laws, enforces and reinforces this aspect of free agency. Together the economic system and the administration of justice, thus, make possible and draw our awareness to the aspect of modern individual freedom as radically separate individuals. Furthermore, it articulates in a profound way that modern society and any individual’s free activity in civil society depends upon the free rational calculating activity of all such modern individuals. Civil society thus promotes a conception of freedom that is at once both social and individualistic, but in quite an abstract way.

Importantly, according to Hegel, the structures of civil society do not remain entirely individualistic. On Hegel’s reconstruction, civil society includes also various “corporations.” These organizational structures as envisioned by Hegel include trade-based associations including both employers and employees, religious groups, local town

counsels and other such associations (PR, 250-255). They promote voluntary cooperation among individuals with similar interests and serve to curb competitiveness. While these corporations may seem to soften the individualism promoted by the other institutions of civil society, they actually serve to articulate the universality of individual particularity more explicitly. In the corporations, individuals with similar interests voluntarily band together to be able to articulate in the state their common interests qua particular individuals. The satisfaction taken in their individual experience when their needs are thus met helps to reinforce the rationality of such association. But perhaps the most constructive aspect of civil society is that it educates individuals in such a way that they are encouraged to be active individually as reflective agents.

But Hegel does not believe that civil society embodies a complete representation of modern freedom. It does not represent all of the interests that are fundamental to modern individuals, nor does it fully actualize all of the aspects of the reasoning activity that is necessary to the individual will's coming to its self-actualization in the modern world. Importantly, in civil society the system of needs is still deeply marked by a character of what is naturally given and contingent. The pursuit of the various interests mediated through civil society, even with the moderating effect of the corporation, threatens to run unchecked and destabilize the mutually recognized patterns of social interaction that constitute civil society. Civil society for Hegel still suffers from an abstract individualism that has not yet been canceled into a systematic ethical unity. For these reasons, Hegel does not think that it represents an adequate actualization of individual freedom.³³ For this we must turn to a discussion of the modern state.

In the state we find the culmination of Hegel's account of ethical life and the system of social institutions in which modern individuals are required to participate in order to realize the actualization of their freedom. From the point of view of actualization of the concept of right, the state is essential because it alone can unify and constrain the many various other norms that threaten to go unchecked in their various ways. It is important to note that the state for Hegel includes not just the government and its agencies (which we may term the "political state"), but also all of the basic political and social institutions of modern society which make possible and call our awareness to modern individual freedom. We may speak of the state for Hegel in two senses: the political apparatus alone and the entire system of social institutions that the state unites. The rationality of the state therefore can be fully evaluated only by including the family and civil society as well, by virtue of the fact that the modern state makes them possible at all. To see how the state is able to unify these various spheres of social interaction into a systematic ethical community of modern free individuals, it is necessary first to sketch the structures of the political state and then the sense of oneself one gains by virtue of membership in the state.

The kind of state Hegel champions is a constitutional monarchy, and in its main structural features we can see the culmination of Hegel's speculative tracing of the actualization of the concept of right.³⁴ Hegel's state has three main structural branches, each of which corresponds to one of the moments of the pattern of Hegel's speculative logic with which the book opens: the legislative branch represents the moment of universality, the executive branch cancels this universality into particularity when law is administered and made concrete, and finally the monarch cancels both moments and

thereby unifies both prior moments in the speculative moment of individuality (PR, 173). The legislative for Hegel is to be a bicameral institution that mediates the interests of the government and the various groups of individuals it represents, including the landed agricultural interest and the trade based corporations (PR 302). In this way, the plurality of needs of various interests becomes articulated within the political state. The executive, in turn, is constituted by a very powerful and well-educated professional bureaucracy. This executive is to constitute its own class within the state, with a disposition shaped by its education and responsive to the sovereign, primarily to maintain the ordered ethical unity of spheres of social interaction unified within the state. Finally, it is the monarch, who is chosen by hereditary succession for the sake of stability, who embodies the rule of law and unifies the functions of the state by virtue of his individual willing. This monarch, it should be noted, however, seems to function largely symbolically to make the ethical unity of the state more visible to its citizens.

In order fully to appreciate the political state and how it unifies the broader state by constraining other norms, we must understand the significance of membership in the state beyond participation in the institutions of civil society and the family. To be a citizen in the state is more than to be a participant in the family or civil society, for Hegel (PR, 261). Citizenship properly involves accepting the aims of the state and actively making the maintenance of the stability of the state one's own end. As Merold Westphal shows, the state, much like the family, actualizes freedom by promoting an ethical unity that is a liberation from the contingent factors of the drives and inclinations as expressed in civil society and from the isolated, self-centered selfhood fostered by the economic life of civil society. When the universal ethical unity of the state is willed, the interests and

activities of civil society get upgraded and downgraded. The economic patterns of individual needs satisfaction become deemphasized in relation to the higher ethical end of the state which makes them possible. Yet, the presence of civil society in the state helps to insure that when citizens will their involvement in the state as such they do so with the genuine freedom of modern reflective individuals. This is because civil society institutionalizes the space for individuals to satisfy their own needs and arbitrary wants, ensuring a point of view of full individuality from which to reflect upon the state and then to endorse its reasonability. For this contribution to the rationality of citizens' participation in the state, civil society is upgraded in its normative status as a necessary means to the realization of individual freedom as the end of the state. What is crucial toward this end is, as Hegel says, that individuals will the universal above and beyond their own particularity.

What does it mean for a modern free individual to will the universal above and beyond her particularity? Let us consider the case in which this kind of willing is most dramatized for Hegel: surrendering one's life for one's country in war. Hegel holds that we have a "universal duty" to sacrifice our lives if necessary to preserve the sovereignty of the state in times of war (PR, 324, 325). He stresses that this sacrifice is for something much more fundamental than for protection of individual property, etc. He says:

It is a grave miscalculation if the state, when it requires this sacrifice, is simply equated with civil society, and if its ultimate end is seen merely as the *security of the life and property* of individuals. For this security cannot be achieved by the sacrifice of what is supposed to be *secured*" (PR, 324).

Rather, what is at stake is freedom itself. As evidence of this, Hegel seems to recognize limitations on when the state can justly require this sacrifice. The ultimate end must be the very sovereignty of the state. In being willing to sacrifice one's life, one exercises

through one's valor a self-conscious universality. This is an abstraction from all particularity of one's own distinct identity, but one in which one does maintain the conscious end of promoting freedom (PR, 328). So it would seem that one could only make this highest sacrifice for the purpose of protecting freedom itself. To die in the service of property alone would be for reason to negate itself for the protection of only one of the kinds of objects it can will. This is something entirely different from the valor that Hegel extols as the highest awareness and actualization of freedom itself. The state here is demonstrated to be a distinct institutional sphere from civil society and a necessary moment in the full actualization of freedom.

Short of such extreme circumstances, however, in the more ordinary daily functioning of the state, there are many questions about how the state actualizes individual freedom. One set of questions concerns the political structures Hegel envisioned for the modern state, viz., a constitutional monarchy with very little to no opportunity for individuals directly to influence laws and policies. Hegel's state instead articulates a scheme of indirect representation, mediated through a representative parliament and a powerful structure of bureaucratic agencies with the monarch more or less as symbolic figure head.³⁵ In such a scheme that does not seem consistently to involve the direct activity of the individual, one is left to wonder how actively the average individual will take the normative principles of the state as her own. Perhaps we might find some satisfaction of this concern if we take strongly Hegel's insistence that the state must properly include all of the social institutions that it houses, but I will leave this aside as just one possible avenue of interpretation. Another set of questions surrounds whether or not in a sympathetic reading of the *Philosophy of Right* the state

even represents a complete actualization of freedom for Hegel. After all, Hegel assigns the theory of right a specific place in his much larger philosophical system, the next stages of which would lead us into a consideration of the ways in which human reason as spirit unfolds and develops historically in art, religion and philosophy.³⁶ While these questions are philosophically interesting, I am content for this reading with the demonstration that the institutions of the state in ethical life offer a greater actualization of freedom than available in the alienated standpoints of legal personhood and conscientious moral reflection.

We now have enough of Hegel's *Philosophy of Right* before us in order to appreciate the role of ethical life as a category that promotes the actualization of the individual free will and thereby the reconciliation of modern individuals to the social world around them. One of the aims of Hegel's method, as discussed earlier, is to cast light on the normative structures of modern social institutions so as to demonstrate something fundamental: the social arrangements that are most influential in shaping the lives of modern free individuals are not merely determined by contingent nature or need. Rather, they are subject to justification as normatively regulated patterns of social interaction. Moreover, comprehending them as such allows reflective individuals to take a greater degree of rational satisfaction in their social engagement than they might when they are motivated only by other deficient norms, precisely because these richer norms are properly understood as moments of the individual's own self-determination. If Hegel's view is correct, the modern world is already to an impressive extent objectively a proper realization of human freedom. It was this core of rationality in the social world that I noted at the beginning of this chapter that Hegel found to be so promising. This is

not to say, of course, that the modern world is an ideal or perfect world. There will still be forms of frustration confronting individuals. But Hegel's argument will be successful if it demonstrates that the rational norms that structure the major patterns of social interaction in society are satisfying enough to keep individuals engaged in the practice of justifying their social activities rationally, instead of falling into the forms of anti-rationalism that we noted at the outset that Hegel thought were of such grave concern.

This leaves now a pressing practical problem. Languishing as they do in the alienated condition of being motivated by the abstract norms of abstract right and especially morality, these individuals do not recognize the extent to which the social institutions of the world around them are so structured by norms that genuinely promote their individual freedom. If everything else to this point might lend itself to our consideration of other kinds of political arrangements, including especially liberal democracy, we should ask as well whether or not this is true of the more practical mechanism by which modern individuals might become effectively educated to this rationality in the structure of the social world. We should wonder, in particular, how Hegel expects his very peculiar and demanding vocabulary of philosophical presentation to make a difference in the day to day life of individuals in the modern state. Here a conjecture about Hegel's intended audience proves illuminating. Hegel opens his "Preface" by stating, "The immediate occasion for me to publish this outline is the need to provide my audience with an introduction to the lectures on the *Philosophy of Right* which I deliver in the course of my official duties" (PR, Preface 1). These duties, of course, were as a professor at the university in Berlin. Steven B. Smith reasonably suggests that Hegel thought of his lectures as a part of the education appropriate for the

class of bureaucrats who would serve in the executive branch of the rational state he outlines in his book (Smith 1989, 139). If this is the case, then his speculative method of philosophical presentation might also be thought of as a form of pedagogy appropriate to cultivating the professional disposition among those future bureaucrats that Hegel thought was proper to their ethical work in maintaining the ethical unity of the state. This might even go some distance toward explaining why the categories of Hegel's logic are so dense and difficult first to penetrate and then to escape; perhaps they are deliberately intended to have precisely such a transformative influence on those who study them in depth. It would follow then as well that Hegel's speculative method is intended to bolster the rational state somewhat indirectly by strengthening one of its central pillars.

If this historical conjecture about Hegel's intended audience is on target, it was perhaps a point of practical wisdom that Hegel took such great care to provide these theoretical tools to the future bureaucrats of the Prussian state. It would have been these bureaucrats, rather than a single (very popular) professor of philosophy, who would have been in the best position to encourage among average citizens the rational insights into the satisfaction to be found in the state. But this is not the strategy that we would accept as the first line of defense of the structures of a liberal democratic society. But even here, there is still a general strategic insight that is worth stating. The normatively constituted structures of modern society that are so dramatically influential in defining the most important activities of individuals' day-to-day lives are complex and perhaps even tend toward fragmentation. The defense of the rationality of such norms requires a concerted effort to appreciate their rationality, even through their complexity, and to display that rationality publicly. This might be advanced by a powerful bureaucracy working very

hard to demonstrate such principles to individuals who live under such institutions, but perhaps more democratic mechanisms could advance the same strategic goal.

5. Hegel's Theory of Right and the Problem of Democratic Stability

In his *Philosophy of Right* Hegel defended in particular the rationality of the main political features of the Prussian state of his day. It also seems that he deployed his defense of this state through his role in the education of its future bureaucrats. What Hegel sought to defend, of course, is not what we might seek to defend today, and his particular practical strategy is not even immediately available to us. But I have tried to show throughout this reading that the method of Hegel's analysis is not fundamentally committed to the Prussian state, let alone Hegel's own particular job within it. Rather, his analysis might help us in understanding many other political arrangements. In particular, I have tried to draw out three key insights that might help us in understanding the structure of liberal democracy today. First, Hegel's method of analysis of paying careful attention to the kinds of satisfaction or frustration that might accompany acting from specific norms will help us to see more clearly the structure of a deeper problem in Rawls's account of how we are to understand that a democratic society might be stable for the right reasons. In particular, Hegel should help us to see that internal to Rawls's conception there is a problem of alienation that threatens to undermine his account of the possibility of stability for the right reasons. Second, Hegel's turn to the normative structures of ethical life for the articulation of the norms by which the alienated condition of modern life might be overcome will hold important clues for how the alienation of public reason too might be overcome. Among these clues will be that we must appeal to a plurality of norms in order to account adequately for how a genuine reconciliation to

the social world might be effectively achieved. Also among the important clues Hegel provides will be his insight that we must pay careful attention not only to the objective content of the norms in question, but also always to the subjective experience of acting in such normatively regulated patterns of social interaction. Finally, to help us keep our bearings in the project of reconciliation, it will be useful to heed a very general insight that framed this reading of Hegel's more theoretical analysis. The most basic concern in thinking about the need for reconciliation through public reason is not to found a perfect world, but to demonstrate how the use of public reason might prove satisfying enough so as to maintain the allegiance of citizens to the democratic process in a world characterized by many competing normative demands. With these insights in hand, I believe we may turn now to a more illuminating consideration of the structure of the problem of democratic stability.

Notes

¹ Robert Pippin has described the task of coming to grips with Hegel's vocabulary as like heading "into a dangerous and mysterious forest, from which few have returned speaking a language anyone else can understand" (1997a, 36). Hegel's unique vocabulary is probably most familiar to those who know the caricature of his logic as unfolding a vast metaphysics in a thesis-antithesis-synthesis pattern. I call this a caricature, because these were not Hegel's own terms. I will not try to elaborate the speculative logic beyond what I present here as key to understanding the argument of the *Philosophy of Right*. For a fuller treatment of these issues, a good place to start is Gustav E. Mueller (1996).

² See Wood (1990), Beiser (2005), and Pinkard (2000) for useful discussions of more of the details of Hegel's day.

³ See Frederick Beiser's *The Fate of Reason* (1987) for a detailed account of the politics and controversies that would have formed the backdrop for Hegel's own time.

⁴ *The Philosophy of Right*, H.B. Nisbet (trans.), Cambridge: Cambridge University Press, 1991. Hereafter references to this text will be made parenthetically as PR followed by Hegel's section number and an indication of R if the quote comes from Hegel's remark or an A if it is from the subsequent additions from the notes of students who attended Hegel's lectures. References to the Preface of the text will be made by the number of the paragraph, as here where the quote arises in the 15th paragraph of Hegel's Preface.

⁵ Here we might keep in mind also an important linguistic point to which Rawls calls our attention in his discussions of Kant (see, e.g., Rawls 1989b, 503-4). Hegel's word for "rational" in this context is the word 'vernünftig.' In his German, this covers what in English we have two words to distinguish: 'rationality' and 'reasonability.' We have already noted the difference between the senses of these words in English in the last chapter when we discussed Rawls's conception in his political liberalism of the two moral powers of citizens. In Hegel's German, both were expressed by the word 'vernünftig.' Hegel follows in the Kantian tradition of including within practical reason much more than merely instrumental rationality. Additionally included is (at least) a stronger moral sensibility akin to what the English language understands as reasonability, the ability to examine the merits of one's ends with an eye to more than efficiency and narrowly self-interested satisfaction. Accordingly, when Hegel examines what within the world we should consider 'rational,' we should be aware that this might also include what is 'reasonable.'

⁶ See, e.g., Hardimon 1994a, 52-83; Wood 1990, 10-11; Franco 1999, 123-39

⁷ See Hegel's *Encyclopedia Logic*, §6.

⁸ As M.W. Jackson points out in his essay "Hegel: The Real and the Rational" (1996), part of the controversy with the *Doppelsatz* originated with the translation of "wirklich" as "real," which it certainly can mean in German. However, even here, Jackson is right to point out that there is still a distinction that is often marked in language between just anything and what is "real." One need only think of someone like Thrasymachus in Book I of Plato's *Republic* objecting that someone who does not live up to the standards of his craft is not a "real" craftsman of that sort. Hegel is invoking the rational as a standard of what is "actual" or "real" in precisely this sense.

⁹ On a more sober note, we should acknowledge here that there is at least some kernel of truth to the repeated complaint of critics who claim that Hegel is a conservative apologist

for the Prussian monarchy (cf., Knox 1970.). He is clearly not the explicit radical that Marx is later in the nineteenth century. In his famous “Theses on Feuerbach,” Marx articulates the limitation of Hegel’s philosophical outlook and, indeed, might well have had Hegel in mind when he pronounced “The philosophers have only interpreted the world, in various ways; the point is to change it” (Thesis XI, “Theses on Feuerbach,” in Karl Marx, *Karl Marx: Selected Writings*, David McLellan, ed., p.158.) Feuerbach was, of course, one of the so-called “left Hegelians” whose project found its origins in Hegel’s social philosophy. Yet, as I hope will become clear, to dismiss Hegel as merely a conservative would be extremely short sighted. For instance, Hegel’s description of the modern state to which reflective individuals should be reconciled includes such things as limits on child labor and public trials by jury for those accused of crimes, things which were uncommon and indeed progressive for Hegel’s day (cf., PR 174, 227A, 228R; cf., Jackson 1987). This is consistent with our observation that the actual to which modern individuals are to be reconciled is not the same thing as what happens empirically to exist.

Yet, it should be noted that Hegel is rather more modest than Marx and others on the abilities of philosophy itself. In one of Hegel’s most eloquent passages, he acknowledges what he takes to be the limitations of philosophy and warns:

A further word on the subject of *issuing instructions* on how the world ought to be: philosophy, at any rate, always comes too late to perform this function. As the *thought* of the world, it appears only at a time when actuality has gone through its formative process and attained its completed state. ... When philosophy paints its grey in grey, a shape of life has grown old, and it cannot be rejuvenated, but only recognized, by the grey in grey in philosophy; the owl of Minerva begins its flight only with the onset of dusk (PR, Preface, 16).

On this view, it is simply not within the power of philosophy to change the world. But it is possible for philosophy to exhibit to modern individuals the rationality of the social structures around them. To the extent that they find that world hospitable to their own rational self-determination, the slide into anti-rationalism will be less attractive, and Hegel’s defense of reason will be a success.

¹⁰ The translation here is Robert Pippin’s, though his emphasis has been dropped (1981, 509). The word “together” here is not literally in the German text, though it clarifies what is grammatically evident in the German. In my discussion of Hegel’s methodology in this section, I am particularly indebted to Pippin’s 1981 article “Hegel’s Political Argument and the Problem of *Verwirklichung*.” Pippin has been one of the relatively rare commentators on Hegel who has been able to clarify the useful insights that are bound up in Hegel’s rather difficult manner of presentation.

¹¹ I have benefited greatly from Robert Pippin’s analysis. As he has characterized it, “the basic line of argument throughout the *Philosophy of Right* is relatively straight forward” (1981, 512).

¹² John Rawls marks the distinction between a “concept” and the various “conceptions” of it we might debate in the opening pages of his *A Theory of Justice* (5). In Rawls’s usage, we may all agree that the concept of justice is the appropriate notion to appeal to

in certain disputes, but we might well disagree as to what principles give the best interpretation of what that concept means. Thus, we debate about the appropriate “conception” of justice. I will generally tend in this chapter toward Hegel’s use of the word “concept” to help mark the extent to which the forms of right he analyzes are so distinct and different.

¹³ There are certainly many resemblances between Hegel’s speculative method of analysis and the method of reflective equilibrium, but it is worth noting that they are not identical. One important difference is that Hegel’s method is more modest or minimal, studying only the quality of norms and their interrelations. The method of reflective equilibrium aims to consider in a more robust way the substantive justification of specific norms or values. To this extent, I believe that Hegel’s method of analysis might strengthen the method of reflective equilibrium. I do not, however, undertake a systematic comparison of the two methods here.

¹⁴ This generalization might seem too strong, as Hegel’s text does contain various digs at the arguments of others. But here it is useful to remember that such digs are found mainly in the additions contributed by students who attended his lectures.

¹⁵ This is not to say that Hegel is entirely pleased with everything that he included in his study. As Shlomo Avineri (1971) points out, Hegel seems to have seen some of the problematic features of the marketplace just as clearly as Marx. Avineri thinks this is particularly clear in Hegel’s early *Realphilosophie*, but continuous with his views into the *Philosophy of Right*. Avineri, however, interprets Hegel’s discussion of the marketplace as a substantive endorsement. Accordingly, he considers Hegel’s work to be marked by a “sprint of resignation” and “quietism” (97).

¹⁶ It is this process of the will’s activity that in the context of the *Philosophy of Right* instantiates a famous pattern of Hegel’s speculative logic that I have already noted is more widely and more loosely characterized in terms of the thesis-antithesis-synthesis model. Each of these moments, being by themselves each an essentially partial or incomplete aspect of human agency, is characterized by Hegel as having a “negative” aspect. They each represent something the other aspect is not. Their combination produces the famous Hegelian “negation of a negation” that ends up more than what either was at the start by virtue of the “*Aufhebung*,” which can variously be translated as “cancellation,” “overcoming,” “sublation” and perhaps others. Expressed somewhat more positively, the genuinely human or “individual” will is the one which determines itself to some particular object or end, but which remains also conscious of itself together with the particular object that it has willed as its own. Hegel says of this will that it is “with itself” and that through this activity it constitutes itself as an individual will (PR, 7). This is the basis for the actualization of the individual free will, though it is difficult as of yet to see exactly how this generates a full conception of modern individual freedom.

¹⁷ Richard Dien Winfield (1982, 7-11) elaborates this argument as well. Winfield emphasizes the term “interaction” over patterns of “recognition” as is fashionable following usually from readings of Hegel’s *Phenomenology*. I follow Winfield in this preference for speaking of patterns of interaction.

¹⁸ Hardimon (1994) distinguishes between a weak and a strong sense of individuality in a similar manner (cf., 148-53).

¹⁹ There is some irony in this, as Hegel has often been appropriated by Communitarians for their cause. Contemporary communitarian interest in Hegel's theory was led most notably by Charles Taylor's very metaphysical reading of Hegel's theory. Michael Sandel's communitarianism seems to owe much to Taylor's as well.

²⁰ Though I have mentioned Hegel's critique of Kant, we should also be careful not to think that Hegel rejects all of Kant's rationalism in ethics. In fact, Hegel owes much to the Kantian theory of autonomy (See particularly Robert Pippin's "Hegel's Ethical Rationalism" [1995]). Indeed, as is widely known, the Kantian account of morality occupies a pivotal point in the development of Hegel's *Philosophy of Right*, and as such, although it is "overcome," we must remain aware that what Hegel takes as its fundamental provisions are preserved in his account of the full realization of his system. Less frequently recognized is that taken together Parts I and II of Hegel's book represent a reworking of the entire terrain of the Kantian *Metaphysics of Morals*. "Abstract Right" corresponds to the "Doctrine of Right," while "Morality" corresponds to the principle underlying the "Doctrine of Virtue" (Joachim Ritter, "Morality and Ethical Life: Hegel's Controversy with Kantian Ethics" [1966].) That is, Hegel accepts the distinction between these two aspects of modern freedom as fundamental, and their positive implications must be preserved in his full account of modern individual freedom. However, he holds that each is incomplete and lacking and that even when taken together they do not provide an adequate account of the full complexity of modern freedom. Rather, when taken to exhaust the realm of right, Hegel argues that the result is the distinctively modern form of alienation in which the modern individual cannot find herself at home in the world. For Hegel the concepts of abstract right and morality merit special attention precisely because they are still so important in the modern world. They develop two constitutive aspects of the will and its freedom which are presupposed in the modern social world, and recognizing this will help us to characterize better what Hegel took to be the malaise of modern alienation.

²¹ Hegel also hereby clearly incorporates into his account of modern individual freedom the tradition of natural rights liberalism from Locke to Kant.

²² For useful treatments of the categorical imperative, see Barbara Herman (1993), Korsgaard (1996) and Rawls (2000).

²³ From the point of view of the individual will, this has the character of what Axel Honneth (2000 and 2001) terms suffering from indeterminacy, which is a form of social pathology for Honneth. The right that the individual will has to its own subjective satisfaction and to experiencing the norms that govern its behavior as its own must be at best deeply frustrated. What is potentially worse, in this normative void, each of the partial conceptions of freedom risks running unchecked into a pathological form of social life. The standpoint of legal personhood risks giving way to a form of life obsessed with what is allowed by the letter of the law, but lacking any moral sensibility. Perhaps more sinisterly, the moral standpoint in the form of conscience teeters on the edge of blind fanaticism. Indeed, Hegel saw in many of the romantics of his day a flight into subjectivism, bordering on outright relativism, in which anything attached to the steadfast resolve or subjective willing of the individual gained perverted moral celebration, regardless of its objective status (PR, 139-140).

²⁴ We should recall, of course, that Hegel does not suppose that the entire social world around him is rational. Rather, his interest in the "actual" leads him to focus on those

structures of the social world that are already constituted by rational norms that cannot help but count as reasons for modern individuals. These are the structures, then, that Hegel's argument will seek to defend.

²⁵ For other helpful discussions, see also, e.g., Hardimon (1994a) and Wood (1990).

²⁶ Steven B. Smith provides an illuminating discussion of this point, suggesting that this insight may originate with Rousseau's *Discourse on the Origin and Foundations of Inequality Among Men* (116).

²⁷ Examples of this sort of argument are to be found in the work of Charles Taylor.

²⁸ See Hardimon 1994b.

²⁹ See M. Westphal (1984).

³⁰ We might note here that there is a similarity in Hegel's analysis to the distinction Rawls draws in his "reasonable moral psychology" between three kinds of desires that might motivate an individual: object-dependent desires, principle-dependent desires and conception dependent desires (PL, 81ff). The subjective alienation Hegel sees arising from the modern moral point of view might be taken to arise from a commitment to a principle-dependent desire. In turn, Hegel's analysis of the norms that constitute the forms of social interaction *Sittlichkeit* would be an analysis of the effectiveness of conception-dependent desires. I leave this issue aside here, however, because simply drawing this distinction does not guarantee that the subjective alienation will be overcome. As I will argue later in Chapters 4 and 5 below, it is not guaranteed that every conception will give rise to desires that will be sufficient to overcome this alienation.

³¹ Regarding Hegel's various remarks about the role of women in the family and status in society more generally, Allen Wood (1990) puts the matter as well as anyone by calling them "quaintly repugnant reminders of the social practices of Hegel's age and the prejudices for his class" (243). It is my contention in reading Hegel's analysis of the actualization of the will as a providing only the minimal content to a political philosophy that he is not absolutely committed to the specific norms he analyzes. Thus, we might still draw conceptual resources for thinking clearly about other candidate sets of norms.

³² There is something of a debate in the literature as to how necessary a specific division of labor really is for Hegel's theory. See, e.g., Edward C. Halper (2001), Richard Dien Winfield (1997).

³³ Merold Westphal's (1984) discussion of the deficiencies of civil society is particularly helpful. Westphal notes that civil society is ultimately oriented toward the satisfaction of economic need, but "the goal of satisfying economic needs, whether animal or human, is a goal so restricted, finite and particular that in the institutions of civil society which are given over to this goal we cannot hope to find the actuality of true human freedom" (91). Such true human freedom is more a matter of the ongoing practice of the entire way of life that makes these lesser satisfactions possible on an ongoing basis.

³⁴ Particularly useful discussion of this aspect of Hegel's account of the state maybe be found in Beiser (2005) and Smith (1989).

³⁵ See, e.g., M. Westphal (1984), K. Westphal (1993), and Lilla (2001).

³⁶ Pippin (1981).

Chapter 4: The Alienation of Public Reason

It is now time to return to Rawls's conception of public reason. Rawls intends this conception as an account of how a democratic society marked by profound, but reasonable pluralism might be able to regulate itself politically such that it is stable for the right reasons. I aim in this dissertation to show, however, that his conception is deficient in two respects. First, it is psychologically deficient in that Rawls pays insufficient attention to the motivational character of the norms and values that on his view are to count as public reasons. Second, it harbors a normative deficiency in that he fails to address how public reason might designate a sufficient range of political values to serve as bases of the public justification of legitimate law such that society might be appropriately stable. In Chapter 2 above, after reconstructing Rawls's account of the stability of a democratic society as an issue of alienation and reconciliation, I argued that there is actually an important pluralism among the substantive political values that might serve as bases for public justification of legitimate law, but that Rawls seems oddly indifferent toward the task of specifying how public reason should negotiate this pluralism.

In this chapter, I now propose an analysis of the normative structure of the Rawlsian conception of public reason that shows a problem of alienation with striking parallels to that identified by Hegel in modern society. I argue that at its most fundamental level, Rawls's conception of public reason entails an inherently alienating tendency that mirrors that diagnosed by Hegel in his analysis of the concept of morality. Following the Hegelian example, this alienation of public reason will best be seen if we inquire as to what it might be like for one to act according to the most fundamental norms

defining the idea of public reason at all for Rawls. Once this inherently alienating tendency of public reason is identified, then we should be able to see more clearly what precisely is at stake when we attempt to identify an appropriate set of substantive political values to serve as bases of public justification of legitimate law and the terms according to which society might be judged stable for the right reasons. Showing as I do in this chapter that a phenomenon of alienation is a permanent aspect of the Rawlsian conception of public reason will lead directly to the vindication of my claim that Rawls's conception of public reason is psychologically deficient. For, by failing to attend sufficiently to the motivational character of the norms that constitute his conception of public reason, he fails to notice that stability on his view is improbable at best.

I proceed in the argument of this chapter in three sections. First, I show that the Rawlsian conception of public reason is itself alienating by tracing what it might be like for one to act according to the moral ideal that defines for Rawls the idea of public reason at all. Second, I argue that in the wake of this alienating tendency, public reason threatens to become alienated by adopting inadequate means of embracing substantive political values to serve as bases of its decisions. Third, I show that when we situate the frustrations that accompany these normative deficiencies in the Rawlsian conception of public reason in the context of the other pressures and potential satisfactions of the background culture of modern society, we will be able to see in a way that has not been sufficiently appreciated in the secondary literature that Rawls's account of the possibility of stability for the right reasons is undermined by its own normative structure.

1. The Alienating Tendency of Public Reason: The Root of the Problem

The root of the distinctive problem of the alienation of public reason from which I believe Rawls's conception suffers is a motivational deficiency that is a variation on the problem of the subjective alienation Hegel found to be at the root of the alienated condition of modern society. To draw this out, we must return to the very heart of that conception and the structure of the project to show how society might be stable for the right reasons. The most fundamental problem will turn out to be that participation in public reason is governed by a moral requirement regarding the kinds of reasons that are to be acceptable bases of public reason, but that moral requirement actually serves subtly to frustrate the effort to identify what such appropriate reasons might be. To draw this out, we will need to proceed, much as Hegel does, by asking what it might be like for a citizen to act according to the most fundamental norm defining the idea of public reason at all.

Embarking as we are on my diagnosis of the problem of the alienation of public reason, we might do well to begin with some reminders regarding the terms in which I am analyzing forms of alienation in general. First, we may distinguish between general forms of social alienation and the more specific phenomena of the alienation of public reasoning. We should note that social alienation in general can be either objective or subjective. A form of social alienation is objective, on the one hand, when in some way individuals are prevented from participating in some kind of social interaction or when social circumstances are inhospitable or hostile to their reasonable activity. Examples of this might include various forms of discrimination in hiring or admission to schools and the like. A form of social alienation is subjective, on the other hand, when the

individuals' participation in a given social institution or form of social interaction is not objectively obstructed, but rather when their motivation by other considerations interferes with their ability to see it as conducive to their activities. By way of example, if someone failed to participate in a specific government program that would be beneficial to him not because he was barred from doing so, but because he was motivated by his strong dislike of government programs (for whatever reason) and accordingly refused even to consider the option, then we would have to describe him as subjectively alienated rather than objectively alienated. As I showed in Chapter 3, one of the most important aspects of Hegel's analysis of social alienation is that he demonstrates that the reasons by virtue of which one might become subjectively alienated from various forms of social interaction actually include moral motivation. This will have important implications for our understanding of the alienation of public reason.

Turning now to the alienation of public reason, it is also a form of social alienation. The alienation of public reason, furthermore, may be either formal or substantive. It is formal when citizens are denied participation in various ways in democratic decision-making processes. Such formal alienation can be expected to alter or distort the results of those processes, thereby likely giving rise to other forms of social alienation. Yet this form of alienation, which clearly represents an objective form of alienation, is unacceptable to any model of democracy and does not represent a particularly difficult theoretical problem. For the Rawlsian conception, which holds that democratic decisions should be made according to appropriate kinds of reasons, however, the alienation of public reason may also be substantive, as when the values that determine decisions of public reasoning fail in some other way to be appropriate or adequate. The

substantive alienation of public reason also has the potential to alter or distort not only the results of democratic decision-making processes, but also perhaps the process itself. This suggests strongly that the problem of the substantive alienation of public reason might have an objective dimension. Clearly, when decisions of public reason are made according to the wrong reasons, the circumstances they shape might easily become dysfunctional or inhospitable to those affected. But it might also happen that something in the substantive structure of public reason might make public reason objectively alienating, that is, inhospitable as a form of social interaction. Given these possibilities, the question of what criterion we should appeal to on the Rawls's conception in order to determine what reasons are to count as proper bases of public reason becomes central. It is here that we shall find a stubborn problem of subjective alienation.

The problem of the substantive alienation of public reason, as I understand it, has at base much the same structure as the problem of the subjective alienation that gave rise to the alienated condition of the modern world as diagnosed by Hegel. Recall that for Hegel the root of the problem of the alienated condition of the modern world was found in the subjective alienation that follows in the wake of a commitment to the requirements of modern conscientious moral agency. The outlook of conscientious moral agency requires individuals to act only on reasons that must be reasons for them individually by virtue of their rationality, as articulated in Kant's categorical imperative. That is, Kantian morality requires individuals always to subordinate their will to the principle of pure practical reason. But for individuals who are motivated by this stringent moral requirement, very few of the other interests or desires upon which they act will carry the credential of such purely rational motivation. Even in cases in which all of one's actions

are morally permissible under the categorical imperative, the motivation for those particular actions is still alien to the very rigorous prior standard of the categorical imperative. The problem of the alienated condition of the modern world, then, is at base a problem of how rational willing has content that is sufficiently rationally motivated. In the shadow of the demands of the categorical imperative, all other motivations show up as deficient. I believe something like this pattern of a demanding criterion for the acceptability of a reason that casts all other reasons as deficient is reproduced at the founding level of Rawls's conception of public reason.

The problem of the alienation of the Rawlsian conception of public reason, I believe, originates very similarly in a moral source. According to Rawls, for a proposal or reason to be admissible in public reason, it must satisfy the criterion of reciprocity, the requirement that one must think it reasonable that other reasonable and rational citizens might also be able reasonably to endorse it (IPRR, 578). Rawls, furthermore, calls the requirement that citizens satisfy this criterion the duty of civility, and he specifies that this duty is a moral duty and that it defines the relationship that is to hold among citizens within public reason (PL, 217; IPRR, 577). So central to the idea of public reason is this requirement that Rawls says that those who reject it "will of course reject the very idea of public reason" (IPRR, 574). The duty of civility is the duty that characterizes the proper relationship of respect that obtains between free and equal citizens who are defined in terms of their powers as reasonable and rational agents. Indeed, Rawls refers to citizens as possessed of two moral powers, which give rise to their capacities for reasonability and rationality (PL, 19, 48-54). Thus, as for Kant, the respect one has for fellow citizens is ultimately respect for their reasoning nature, especially their reasonability. Taken

together, the idea of public reason seems to be defined by a moral ideal that parallels significantly the demands of Kant's categorical imperative.

Now there are obviously differences between the Kantian conception of morality and the Rawlsian conception of public reason, and to draw out more clearly the motivational deficit that I believe it harbors we should begin with Rawls's account of how individual citizens are to conduct their participation in public reason. It is here that we must inquire, much as Hegel does, as to what it might be like for individual citizens to act according to the norms entailed in the moral ideal that defines public reason. Rawls specifies that the content of public reason is to be given by a family of political conceptions of justice. He, of course, does not expect that citizens will subscribe to a single such conception, and he is clear at least as of the "Introduction to the Paperback Edition" of *Political Liberalism* that he does not expect all to subscribe to his conception of justice as fairness (PL, liif; IPRR, 581). This is consistent with his view of the fact of reasonable pluralism. Thus, individuals are to submit in public reason proposals that are qualified by the political conception of justice to which they subscribe.¹ These proposals are to be consistent with the criterion of reciprocity as the duty of civility requires. Then, citizens will deliberate together to forge an overlapping consensus on the terms by which they will cooperate in society.

In attempting to assess the motivational character of the content of public reason as envisioned by Rawls we encounter some possible difficulties of interpretation. Rawls assumes as an ideal of public reason that citizens will all subscribe to some political conception of justice and that this political conception of justice will have a certain relationship to their comprehensive doctrines. On this view, citizens would presumably

be motivated in their participation in public reason by the contents of their own individual political conception of justice. Put in terms of Rawls's reasonable moral psychology, they are motivated by a conception-dependent desire based in their political conception of justice. But this assumption is problematic at two levels. First, it leaves rather opaque the question of what sorts of interests actually motivate individual citizens. Rawls seems to expect that his conception of justice as fairness should be included, in which case a fairly Kantian sense of justice would presumably motivate some citizens (PL, 77). But this need not hold for all, or even most, citizens. Thus, citizens might be motivated to take an interest in public reason for many different reasons. Second, it is also not entirely clear why Rawls thinks it necessary that all citizens even have a clearly formulated political conception of justice. For as long as the criterion of reciprocity is satisfied, it would seem that the central requirement of public reason would be sufficiently met. This is not the criticism that Rawls makes an unrealistic assumption about the intellectual life of the average citizen (though that criticism does seem empirically sound), but the challenge that it might really be unnecessary to his conception of public reason. Indeed, it might even be an assumption that works subtly against Rawls's own valuation of reasonable pluralism by unreasonably excluding from public reason those who freely choose not to live as intellectuals. I raise this line of thought, because if we accept it as sound, then it might be that there are even more sources of motivation that could bring citizens to participate in public reason. The point that I am trying to emphasize here is that we should expect a pluralism among the motivations underlying the specific proposals in public reason.

Whatever the motivational character of the reasons or proposals individuals introduce into public reason might be to those individuals themselves, however, the fact that public reason must negotiate a plurality of motivational interests suggest that the motivational character of the reasons for action finally endorsed by public reason in general is a separate question and thereby possibly the location of a separate motivational deficiency. The most obvious way to look for such a possible motivational deficiency would be to imagine situations in which compromises would be required of citizens along the way to establishing a final overlapping consensus. One could imagine a reasonable and rational citizen who, acting upon her principle-dependent desire to deliberate civilly that is a part of her political conception of justice, participates civilly in deliberations of public reason, introducing along the way reasonable proposals informed by her political conception of justice and dutifully giving reasonable consideration to the similar proposals introduced by others. Furthermore, one could even imagine our reasonable and rational citizen disagreeing with all of the proposals advocated by her fellow citizens, but believing that those disagreements arise from reasonable sources such as those articulated by Rawls as the burdens of judgment. Finally, it is even imaginable that in the end none of our reasonable and rational citizen's own proposals were adopted, but that she nonetheless agreed to abide by the decisions of public reason out of the respect that she held for her fellow citizens consistent with what she understood the duty of civility to require. Rawls elaborates that as long as the criterion of reciprocity is satisfied by all with respect to a particular proposal, "It may not be thought the most reasonable, or the most appropriate, by each, but it is politically (morally) binding on him or her as a citizen and is to be accepted as such" (IPRR, 578). In such a case, this citizen would have no

directly motivational interest in abiding by the decisions of public reason, *except* for her interest in respecting the moral ideal of describing the relationship that ought to obtain between free and equal reasonable and rational citizens as such. In this scenario, there clearly emerges a dramatic possibility in which citizens might have to choose between all of the considerations that are directly motivational for them and their interest in the moral ideal that defines public reason. It is in such a scenario that we can now easily identify the most basic motivational deficiency of the Rawlsian conception of public reason.

Following the Hegelian analysis, the fundamental motivational deficiency in the Rawlsian conception of public reason is not to be found in the simple fact of the choice one might be left to make between all of her personally motivational interests and her interest in the moral ideal defining public reason, but rather in the underlying normative structure of public reason whereby that choice could become a demand of fulfilling public reason. That is, when we take together the moral duty of civility to abide by the criterion of reciprocity that defines public reason with the characterization of citizens in terms of their moral powers of rationality and reasonability, there emerges in Rawlsian public reason a moral interest that becomes the standard of proper political motivation in contrast with which all other sources of individual motivation—even those shaped by one's political conception of justice—become of secondary and contingent significance.² This is a pattern of subjective alienation. By virtue of individuals' commitment to the moral ideal defining public reason they can become alienated from all of their other motivational interests. Indeed, to the extent that the moral ideal of public reason is sufficiently demanding as the dominant motivation for individuals, they might even experience their other motivational interests as downgraded in political significance so as

to experience them as alien even though those interests might finally carry the day in decisions of public reason.

As I will explore more in the next section, it should be emphasized that this problem of subjective alienation is unique to the Rawlsian conception of public reason as opposed to the competitive-procedural model of democracy. The latter does not harbor the possibility of this form of alienation. This may be seen by consideration of the way one might experience frustration in politics under that model. To be sure, one would certainly experience frustration if her particular preferences did not win out in the contest to carry the day. That frustration might even be expected to endure for some time, as one would surely be required to respect the rule of law and thereby accept the defeat. But the quality of the frustration of such preferences would not be the same as under the Rawlsian model. Under the competitive-procedural model, one who loses a contest might simply be encouraged to keep trying to persuade, negotiate with or even manipulate her fellow voters until her preferences finally do win. The point to notice here is that the competitive-procedural model does not introduce into the structure of one's motivations a moral interest that would trump all of her other interests and interfere with those preferences as her leading motivations. Whatever frustration she might encounter in the democratic process, it is not based in any subjective alienation introduced by the norms guiding that process. To recap, the most distinctive feature of the motivational structure of the Rawlsian conception of public reason is the moral ideal of reciprocity with its duty of civility that constitutes for Rawls the idea of public reason at all. But embracing this ideal introduces into citizens' motivations a moral demand that

trumps all of their other motivational interests. By virtue of their commitment to this moral ideal citizens become subjectively alienated from those other motivating interests.

We are now in a position to make a few observations about the nature of this problem of alienation. First, as noted, it is ultimately a phenomenon of subjective alienation, and it follows from the requirements of acting according to the norms that are most deeply constitutive of Rawls's conception of public reason at all. Perhaps paradoxically, this phenomenon of subjective alienation follows from the demands of acting according to precisely the norm that specifies the standard according to which Rawlsian public reason aims to be universally inclusive of all reasonable and rational citizens. It is this norm that specifies the criterion according to which substantive considerations are to be admitted into the deliberations of public reason. If it is effective, it is this norm, thus, that defines what at an objective level will be the character of the ongoing social practice of democratic governance, the business of determining the reasons according to which society will justify publicly its legitimate law and thus be stably regulated. If, in the face of this inherent subjectively alienating tendency of the norm that defines such a democratic governance of society, citizens depart from its standard, the danger to democratic public reason is that it might also become objectively alienated as well. To return to my reference to Hegel's project of reconciliation, the corollary is the risk that Hegel saw looming in the alienated condition of modern society that individuals might give up on constituting their social world by forms of social interaction that are rationally structured. In the next section, accordingly, I explore something of what it might be like for public reason to become objectively alienated and

what the underlying motivational considerations might be that would accompany such objective alienation.

2. The Further Risk of the Substantive Alienation of the Rawlsian Conception of Public Reason

Having identified the structure of the problem of subjective alienation at the very core of the Rawlsian conception of public reason, it is now time to look toward the structure of a subsequent problem of substantive alienation that seems likely to follow in the wake of the first. Recall that I have placed the values of the freedom and equality of citizenship as the grounding values of liberal democracy, and different conceptions of democracy interpret their demands differently. For the Rawlsian conception, liberal democracy is the project of free and equal reasonable and rational citizens deliberating together in public reason according to the moral ideal of reciprocity and attempting to forge an overlapping consensus on the political values that will serve as a basis for the public justification of legitimate law such that society might be stable for the right reasons. But, of course, the values of freedom and equality are indeterminate with respect to the question of what kinds of considerations those free and equal citizens would find satisfactory as bases for the kinds of political decisions public reason must make. As I argued in Chapter 2 above, we find that in the face of the demand for stability *for the right reasons*, the Rawlsian conception comes up short with respect to its ability to identify a sufficient range of substantive political values to determine answers to all of its fundamental questions. This is precisely the point at which I accused Rawls of the problem of the pluralism among substantive political values. This leaves precariously unresolved the question of the values by which citizens who are alienated from one

another by the fact of reasonable pluralism might be able to achieve any form of political reconciliation.

I now examine from the point of view of the Hegelian analysis of the satisfactions and frustrations of acting according to norms the situation of citizens deliberating in public reason regarding the substantive political values to which they should appeal in deciding important questions of public reason. The possibility that public reason might become substantively alienated now emerges as a distinct problem. Recall that Rawls specifies that public reason is to decide especially questions related to constitutional essentials and matters of basic justice (PL, 213; IPRR, 575). The substantive alienation of public reason stands to occur when the particular decisions of public reason about these questions are made on grounds that in various ways are not satisfying as the right reasons. Public reason turns out to suffer from what I will ultimately argue is a complex normative deficiency. I examine here what I consider to be two possible sources of such substantive alienation of public reason. Analyzing the structure of this normative deficiency will, I believe, ultimately hold important clues for the prospects of forging a more reconciliatory conception of public reason.

The first possible source of the substantive alienation of public reason is what I would characterize as an overly legalistic emphasis on the questions of constitutional essentials that public reason is charged with resolving. By “constitutional essentials” Rawls means the kind of political rights and liberties that might be embodied in a written constitution (IPRR, 575n). This includes the basic liberties and principles that are foundational to the legal system in a democracy. The articulation of constitutional essentials helps to render the grounding values of freedom and equality more concretely

at the foundational level of the political and legal system. As an important point of reference, we might note that for the competitive-procedural model, the constitutional essentials are oriented specifically toward the goal of establishing procedures for decision making. The basic liberties protected in a constitution are most likely to be interpreted as political liberties that help to guarantee the fairness of decision-making processes. For the Rawlsian model, the constitutional essentials have not only the aim of securing the democratic decision-making process, but also individual liberties designed to protect the freedom of citizens in their activities beyond their participation in political processes.³ For Rawls, they model more broadly certain minimal content of public reason that is very central to the reasonability and rationality of citizens and what is expected to be acceptable to reasonable and rational citizens deliberating under the criterion of reciprocity. Thus, Rawls indicates that violations of basic liberties will be considered prima facie evidence of violation of the criterion or reciprocity (PL, lii). For both conceptions of democracy, then, constitutional essentials are central to shaping how public reason will play out, and it is instructive that both would in principle recognize that public reason can become alienated by virtue of failures related to such constitutional essentials.

The competitive-procedural and Rawlsian models of democracy must, however, part company with respect to the nature of the alienation of public reason to which constitutional essentials might give rise. For the competitive-procedural model of democracy, the danger is that a problem related to the constitutional essentials might give rise to formal alienation of public reason. This could happen in a number of ways. One way might be that a constitution could fail to secure sufficiently the political liberties for

citizens to be able to participate effectively in decision-making processes. In this vein, an important criticism of the American constitutional tradition is that it allows the most important media of political communication to be sold for very high prices, effectively alienating poorer citizens from the decision-making process.⁴ Another way that a constitution might provide for the formal alienation of public reason is by establishing decision-processes that can be manipulated in various ways. Here again, an important criticism of the American constitutional tradition is that it provides for an excessively large number of “veto points” in the legislative process.⁵ Those who have access to these veto points can selectively halt legislation, arguably alienating others from the process. Both models of democracy recognize the possibilities of these kinds of formal alienation related to the constitutional essentials of a society, and such formal alienation is an objective kind of alienation that makes the process inhospitable to those who ought to participate in it. But the competitive-procedural model recognizes only these, denying again that there is any special more substantive form of the alienation of public reason.

The Rawlsian model of public reason, by contrast, holds that the constitutional essentials ought to include at least a core of substantive political values that ought to guide public reasoning, and surrounding this expectation, further phenomena of the alienation of public reason can arise. The most striking risk of such a substantive alienation of public reason arises with the possibility that deliberations of public reason so focused on constitutional essentials might take on an abstract legal character. In such a case, the values enumerated explicitly at the constitutional level might become the sole focus of deliberative attention, even though they might be insufficient to settle a given question adequately. Moreover, the risk of alienation of public reason also arises with the

focus on constitutional essentials because the courts are often the central forum for adjudicating such questions. Indeed, Rawls considers the courts to be exemplars of public reason, because they are bound to justify their decisions publicly and in constitutional terms (PL, 231-40; cf., IPRR, 575). But what Rawls neglects is that the courts are arbiters of legal questions and they are largely limited in the range of values to which they can appeal in their decisions to those values that are already enumerated in the constitutional legal tradition. Yet, this normative basis of legal decisions might fall far short again of fully determining decisions of public reason. This normative deficiency, it seems to me, is after all what produces some of the conceptual acrobatics for which court decisions are often infamous.⁶

The alienation of public reason arising from the indeterminacy of constitutional essentials is an objective form of alienation, because it stands to render the process of public reason inhospitable to reasonable citizen participation. To the extent that the constitution does not contain sufficient normative grounds to determine a question of public reason fully, but its decisions are still justified by reference to such constitutional principles, other influences will have been decisive which are not reasonably articulated in public reason.⁷ Similarly, there exists also the possibility that an unduly legal emphasis on the constitutional essentials might render public reason inaccessible. In one form, citizens might not be well enough versed in legal traditions to be able to follow or even participate in public deliberations. In a more subtle form of alienation, an excessive focus on framing questions of public reason in terms of the legality of constitutional essentials might well distort the very questions that get asked and prioritized.⁸

It would be wrong not to recognize the importance of constitutional provisions for liberty, due process and the like for securing the conditions for meaningful democratic governance. Just as Hegel saw that the fundamental legal rights familiar from the tradition of natural law are essential preconditions to articulating the freedom of the subsequent concepts of right he considers, Rawls is correct to specify for these constitutional essentials a special priority in the necessary minimal content of public reason. Societies might even use a constitution to enumerate and prioritize some of their most fundamental normative commitments. But it would be wrong to think that a written constitution might settle all fundamental political questions, and thus there will always remain with any legally articulated norms the possibility that alienation might arise. Even if we were to attempt to supplement or improve on the content of what should be considered essentials of a democratic constitution, such would merely beg the more fundamental question of what constitutes the proper content of public reason.

Before we ask what additional kinds of substantive political values ought properly to be invoked as bases of decisions of public reason, we might pause to inquire as to what satisfaction the legalistic appeal to constitutional essentials might provide for citizens deliberating in public reason as to what would count as the right reasons to ground the particular decisions of public reason. Two points merit consideration here. First, a written constitution articulates grounds that are presumably broadly accepted by all. This does not mean that the meaning of those terms is fully settled, but it does imply that there is broad agreement that they are the most fundamental values to which we might appeal. This seems to fit well with the Rawlsian notion that the constitution is to articulate the kinds of right that are to have priority in decisions of public reason. This appeal, then,

might help to negotiate difficult questions more smoothly. Second, there is also perhaps a sense in which appealing legalistically to notions of constitutional essentials might allow fundamental questions to be decided in a way that is technically correct. To this extent, there might be a potential satisfaction in the decisiveness with which a judge, say, as a legal expert might be able to resolve what is otherwise a politically fraught matter. The potential for backlash at members of a judiciary, as well as the potential to amend a constitution to fit better with public sentiment, however, should be enough to demonstrate that any such forms of satisfaction cannot be counted upon to have foundational certainty.⁹ Thus, we should turn directly to the problem of attempting to identify what substantive political values should properly serve as the bases of decisions of public reason.

Since enumerating specific constitutional essentials turns out not to settle all of the questions of public reason, we must now face what I take to be a more fundamental source of the substantive alienation of public reason on the Rawlsian model: the lack of adequate substantive political values to guide the full range of decisions public reason is charged to make. As we saw in Chapter 2, Rawls consistently specifies that public reason is to decide questions of constitutional essentials and matters of basic justice. It is safe to infer also that matters of basic justice must address the most fundamental aspects of the basic structure of society, as Rawls always maintains that this is the subject of public reasoning. But the basic structure of society is highly complex, and here we encounter head on the problem of Rawls's failure to address explicitly the pluralism that exists among substantive political values that might serve as bases of public reason. In the framework of Hegel's theory, this kind of alienation of public reason echoes the

normative gap that is left for the individual will between the concepts of abstract right and morality. This is the alienation that occurs for Hegel when the vast bulk of the normatively governed forms of social interaction that shape the daily lives of individuals cannot be generated from those two prior deficient concepts of right, especially when blinded by the subjective alienation that follows in the wake of the modern norms of conscientious moral agency. When we think of this form of alienation as it arises now within the framework of public reason, we must distinguish, I believe, between two different aspects of the problem. Hegel's analysis of ethical life allows us to see a more complex and nuanced set of contours for how this alienation might arise, suggesting that there will be an objective and a subjective component to the problem. On the one hand, the norms or values considered in public reasoning must be objectively rightful in the sense that they articulate forms of social interaction that are genuinely appropriate to the cooperation of reasonable and rational citizens who disagree about many things. But, on the other hand, these norms or values must also prove somehow subjectively motivationally effective for the individuals whose activities they structure.

To see more clearly the normative deficiency that generates the substantive alienation of public reason, we might remind ourselves of where our two models of democracy stand at the point that they part company on the question of the possibility of the substantive alienation of public reason. When the values of the freedom and equality of citizenship and the norms enumerated as constitutional essentials prove indeterminate, what is the situation in which those still committed to the values of freedom and equality find themselves? They find themselves inevitably with a decision that must be made, where even avoidance of deciding is in effect a decision to lower the priority of the

matter. Faced with such a situation, the competitive-procedural model of democracy suggests a competition among the preferences of individuals as a fair and reasonable way to move forward, but this will not be satisfactory to Rawlsian citizens with their interest in deciding questions of public reason based on the right reason. Simply to act on the preferences of the majority of citizens would be one way to get a decision made and move on, but it will not resolve the lingering sense that there are normative demands that should be met. Here we may identify two different problems left for Rawlsian liberal democratic citizens. The first concerns the character of the social arrangements that the democratic decisions would influence, while the second concerns the character of the motivating interests that guide the citizens making these decisions.

Recall that we said in Chapter 2 that what counts as the basic structure is largely a function of what political values we identify to pick out its constitutive parts and in what way. In order best to see how public reason might become substantively alienated we should now consider what we might call a problem of framing. What is it that keeps public reason focused on the fundamental organization of the basic structure? The basic structure of society is a very complex thing, to say the least, and there might be several ways for public reason to fail to keep this focus in sight. For one, questions posed in public reason might simply be superficial, failing to address anything significantly related to what is actually the basic structure of society. Beyond this, a proposal might actually address a matter properly concerning the basic structure of society, but only in a partial way. The basic structure of society includes many different forms of social interaction, but none can be considered adequately in isolation from the others. For instance, demands regarding the equality of women must take into account many different spheres

of society, and feminists have repeatedly argued that workplace equality, e.g., cannot meaningfully be addressed without considering as well the social organization of domestic life and the demands of caring for children.¹⁰ Finally, questions of public reason can also be alienated by failing to be critical of the organization of society even if the focus is on institutions at a fundamental enough level. Here we might cite the tendency to accept a long-standing status quo as simply natural or pre-political. A good example of this is the tendency to view the nuclear family as wholly natural, even though its organization is greatly influenced by various social and legal conditions that are wholly produced by government action.¹¹ Thus, public reason suffers from a lack of sufficient normative content even to articulate what the appropriate concrete questions are for public reason to address. To the extent that these sorts of losing track of the topic of the basic structure of society inhibit citizens from articulating their legitimate interest in public reason, public reason must be considered objectively alienated.

When we press this question of what substantive political values really are to count as the right reasons for the purpose of public reasoning regarding the basic structure of society, we are led to confront not only a lack of substantive political values in the Rawlsian conception, but also the problem of the subjective alienation that lies at the core of that view. When Rawls identifies the basic structure of society only as the “main political, social, and economic institutions, and how they fit together into one unified system of social cooperation from one generation to the next” (PL, 11), we must infer that it will be left to public reason to identify what those main institutions happen to be. But as the problem of framing suggests, this is already a normatively charged

problem. For, public reason must have criteria for deciding which social institutions ought to be included and which not.

To emphasize this point, we might return to our comparison with the competitive-procedural model, for which all individual preferences as such are taken as suitable for democratic consideration. By virtue of its refusal to set any standards for what might and might not count as properly political, however, the competitive-procedural model avoids the problem of substantive alienation. Likewise, it avoids the problem of needing to identify a determinate basic structure of society. When a citizen is dissatisfied with some aspect of society, she is free to articulate that dissatisfaction in the form of a proposal for change, and it does not matter how basic or how trivial that proposal might be. In principle, any proposal is as properly political as the next. If her proposal does not carry the day, she will perhaps be alienated from her society, but that reflects for the competitive-procedural model no inherent flaw in the democratic system. But for Rawls this scenario would seem to be unacceptable, because the basic structure of society is to be stable for the right reasons. Thus, if a citizen's proposals are really reasonable, but public reason does not adequately consider them, she will be alienated not only from society in general, but from public reason too.

When treated as practical questions of public reason, the problems of what constitute the basic structure of society and of what kinds of interests citizens might properly articulate as substantive political values turn out to be inseparable. When public reason addresses the topic of the basic structure of society, the task is not merely to identify what happen to be the most influential institutions in society. The task is also to evaluate whether or not those institutions function appropriately, and for this task

normative considerations must be invoked to articulate how such institutions ought to function. Part of this evaluation, in turn, must be to consider whether or not those institutions are reasonably hospitable to the activities of individual citizens, and for this further normative considerations must be invoked to identify what those activities might be to which the institutions of the basic structure ought to be hospitable. Part of this evaluation, in turn, must be to identify which of the activities, in which citizens might seek to engage, ought to be prioritized as the most important for a society to strive to promote. This would be to identify a class of interests that individuals might articulate as properly political. Presumably, citizens must appeal to values in their political conception of justice. But once Rawls admits that citizens might embrace a plurality of such conceptions, public reason must negotiate the disagreement. But Rawls offers us no conception of how public reason might pursue such questions, and this threatens to leave the conception substantively alienated. Citizens who seek to articulate reasonable proposals in public reason, thus, seem to stand no better off under the Rawlsian conception than under the competitive-procedural conception. Without any way to establish the reasonability of their proposals, they are vulnerable to the contingency of whatever happens to be the private preferences of the majority. Thus, by virtue of this normative deficiency, which amounts to a lack of normative guidance regarding what reasons are to count as the right reasons, the Rawlsian conception of public reason leaves it very difficult to see how any decision of public reason is to be satisfying as based on the right reasons.

To make matters worse, this source of the substantive alienation of public reason now stands to converge with the subjective alienation at the core of the Rawlsian

conception which arises from the moral ideal that defines the idea of public reason at all for Rawls. Recall that for citizens who are motivated by the moral ideal of reciprocity, including the duty of civility that defines for Rawls the ideal relationship of citizens in public reason, the unique priority that Rawls assigns to that moral ideal trumps all other particular interests a citizen might bring to public reasoning. Since Rawls grants that citizens will come to public reason with competing political conceptions of justice, moreover, the duty of civility even stands to trump interests that are already suitably political. Thus, any interests that individual citizens might take in public reason are thereby downgraded precisely by their interest in deliberating in accordance with the standard that the Rawlsian conception of public reason sets as its most essential. This now only stands to exacerbate Rawls's failure to suggest how public reason is to establish what individual interests are to count as legitimate substantive political bases for decisions of public reason. In the worst case scenario, the confluence of these two problems might serve to undermine the interest citizens have to engage in public reason at all.

We may now state precisely the nature of the problem as it has emerged on the basis of this generally Hegelian analysis of the normative framework of the Rawlsian conception of public reason. As it stands, that conception of democratic decision making entails specific normative demands that certain fundamental questions should be decided for the right reasons, but it fails to provide the conceptual resources for citizens to meet those demands in a satisfying way. What is worse, the central moral ideal of reciprocity that defines the idea of public reason at all with its attached moral duty of civility actually serves subtly to downgrade the political significance of all of the motivational interests

that might lead citizens to participate in public reason in the first place. Thus, citizens who are motivated to participate in Rawlsian public reason and who are motivated to do so according to the norms Rawls specifies stand to encounter great frustration precisely by virtue of their acting according to those norms.

3. The Problem of the Instability of Rawlsian Democracy

We now have before us a problem of alienation that is internal to Rawls's conception of public reason, and it is one that I believe undermines Rawls's claim to have demonstrated how it is possible for the citizens of a society marked by profound, but reasonable disagreement to regulate their society politically such that it is stable for the right reasons rather than merely as a *modus vivendi*. Though Rawls has certainly had no shortage of critics, I believe that this problem of alienation has not been sufficiently appreciated in the growing secondary literature to Rawls's later work. Three of the contributors to this secondary literature, however, have come close to identifying the problem of alienation that I have explored, and I review these near misses here. Against this backdrop, I go on to articulate why this pattern of alienation also renders Rawls's conception of democratic stability through public reason improbable at best, and maybe even a recipe for instability.

In recent years the figure who seems to be recognized as the leading critic of Rawls is Michael Sandel. The second edition to his *Liberalism and the Limits of Justice* (1998) includes an essay entitled "A Response to Rawls' Political Liberalism," in which Sandel comes admirably close to recognizing the alienation of public reason, but ultimately fails to recognize a problem that is internal to Rawls's conception. Sandel believes that Rawls's conception of public reason "generates disenchantment" (216f). In

specifying the effects of this disenchantment, he articulates certain pathologies of politics that I would describe as substantive alienations of public reason. For one, he recognizes that if political discourse proceeds as a Supreme Court opinion might, it would have a chilling effect on politics. In another insightful suggestion, Sandel thinks that another symptom of the problem might be seen when attention to “the private vices of public officials” stands in as the content of public reason. In such a scenario, “Public discourse becomes increasingly preoccupied with the scandalous, the sensational, and the confessional as purveyed by tabloids, and eventually the mainstream media” (217). But Sandel sees this disenchantment not as a phenomenon that might arise from within the norms of public reason, but as more a problem of exclusion of disagreeing moral and religious perspectives. Sandel refuses to recognize several key aspects of the idea of public reason. Most significantly, he rejects the fact of reasonable pluralism and ignores that Rawls specifies that public reason is limited only to certain specific forums without imposing restrictions on the entire political culture of a society. Thus, to Sandel, those who do not limit their participation to political values specified by a political conception of justice are not unreasonable, but unreasonably excluded from politics. He also seems to think that this exclusion applies to all forms of political discourse, leaving no room in society at all for discourse in which citizens engage each others’ comprehensive views.¹² Unfortunately, the disenchantment that Sandel describes—even though it approximates the substantive alienation of public reason that is also a concern to me—is largely the product of these distortions of Rawls’s conception of public reason and not an insight into the inherently alienating tendency of the central moral demands of that conception.

Robert Talisse, a critic who follows Sandel in his assessment of the exclusionary nature of public reason, also merits mention here partly for his effort to refine the nature of this criticism and partly for addressing this line of attack more directly at the problem of stability. In an essay entitled “Social Epistemology and the Politics of Omission,” Talisse argues that what is excluded from Rawlsian public reason is not so much entire positions, but any acknowledgement of the “epistemic force” of the reasons that might be given in their favor (Talisse 2006, 112). That is, Talisse correctly observes that the reasons that one would cite for holding that their positions are true or the best cannot serve as the basis of public justification of legitimate law in public reason. Because these views must be omitted from public reasoning, he says this gives rise to a “politics of omission.” The important implication that he draws from this is a tendency toward instability that it might generate. Talisse cites empirical data that suggest that groups of like-minded individuals who do not have exposure to opposing points of view tend to become more extreme in their positions, and this is precisely the position in which groups who are excluded from public reason would find themselves. Thus, Rawlsian public reason tends toward the cultivation of extremism rather than stability. But, like Sandel, Talisse does not take into consideration Rawls’s distinction between the forums of public reason and the background public political culture, where presumably the full epistemic force of any position might be engaged directly. Thus, he fails to show why we might be led to it as a problem of the internal consistency of Rawls’s view. If, however, as I argue, public reason is itself alienating, then we would have a more direct reason for worrying about the tendency of excluded groups to drift towards extremism.

Liam Murphy, the last critic I would like to discuss here, is noteworthy for explicitly attending to the phenomenon of alienation in what I believe is generally the correct way, though in the context of a differently framed problem of normative theory. In his book *Moral Demands in Nonideal Theory* (2000), Murphy is interested specifically in the problem of beneficence, the question of when we are required to promote the well-being of others. The principle most commonly cited in thinking about the requirements of beneficence is the generally utilitarian requirement that we optimize the well being of others, but this requirement is found virtually just as frequently to be over-demanding. Murphy's project is to propose, as an alternative to the optimizing requirement, what he calls a "collective principle of beneficence" that would have us think about the demands of beneficence within a framework of reference with a baseline established by a "compliance condition" (5ff). In this way, he hopes also to "undermine [the] force" of the problem of over-demandingness (9). At a fundamental level, Murphy is a critic of Rawls, because he explicitly rejects Rawls's dualism in normative theory, the position that holds that norms of political obligation and of individual moral obligations are separable. However, in other ways, Murphy is also sympathetic to Rawls's project. Like Rawls, Murphy is trying to find an alternative to the generally utilitarian response that is widespread in the literature, and he adopts a Rawlsian strategy of carefully weighing all plausible candidate principles on the way to the development of his own most favored candidate.

It is within this framework that Murphy both articulates in what I believe is the correct way a problem of alienation and sets out a strategy for overcoming it. He formulates as a possible objection that the moral demands of beneficence create a

problem of alienation that blocks any attempt to undermine the force of the over-demandingness problem. Murphy is clear that alienation arises from motivations one brings to thinking about a moral problem. In his preferred example, compliance with a moral demand of beneficence might cause one to disregard some other motivation that is appropriate to kind of valued human relationship (e.g., friendship). After considering the possibility that the presence of these conflicting motivations might make the person in question a bad person,¹³ Murphy settles on the view that the alienation produced is a species of the problem of over-demandingness. His reason for this is that “as long as a moral theory can allow its complying agents to have and act on partial motives, . . . it is as controversial to assert as it is to deny that there is a residual problem of alienation—either as an aspect of the problem of over-demandingness or as a separate, more exotic problem” (23). I believe that something like this is the correct disposition toward Sandel’s charge that public reason results in disenchantment, and Sandel ignores the fact that Rawls never forbids citizens to have the kinds of interests that are not admissible in the forums of public reason. This clears the way for Murphy to attempt to mitigate the demands of the requirement of beneficence by grounding them in a collective principle of beneficence that frames the demands on particular individuals according to a baseline of general compliance.¹⁴ Thus, in a move very much like Hegel’s turn to *Sittlichkeit*, Murphy helps us to think anew about problems of normative motivation, but without resorting to any re-enchantment of the social world. Yet, instructive as his project may be, Murphy’s rejection of Rawls’s dualism in normative theory prevents him from considering specifically the alienation of public reason. Moreover, if we are concerned with the problem of how a democratic society marked by deep pluralism might be stable

for the right reasons, we cannot presuppose that all citizens will see their democratic participation as following in some way from the requirement of beneficence. Thus, we would do well to return to the framework of Rawls's theory and see if there is some way to mitigate the alienation of public reason.

We should return now to the problem of the alienation of public reason as it arises internally to Rawls's conception of how a democratic society is to be stable for the right reasons. If we situate the normative demands of the Rawlsian conception of public reason in the context of everyday life and against the backdrop of the background culture of modern society, we will be able to see the full nature of the problem: even the citizens with the sincere desire to do so will find at best only reason to be ambivalent about participating in public reason. On the one hand, in public reason as outlined by Rawls, they find a moral commitment that trumps all of the other interests that are motivational for them, urging them nonetheless to participate in deliberations that do not have a clear strategy for identifying and addressing what in society has the greatest influence over the course of their lives and activities. On the other hand, citizens experience the overwhelming conditions of daily life.¹⁵ They will experience the demands of everyday life, including its economic and material circumstances that might occasion the desire to secure one's own lot no matter on what terms. Likewise, they will experience the demands of their comprehensive doctrines, which we may assume to be directly motivational for them, perhaps even more strongly in proportion as the world seems less hospitable. Finally, they may even be influenced by the broadly romantic current in the background culture of modern society that prizes values of authenticity, which frequently demand loyalty to one's fixed or predetermined identity.¹⁶ All together, these

motivational interests lodged in the background culture of modern society stand to have greater motivational attraction with more immediate satisfactions than those entailed in Rawlsian public reason. It is, therefore, not hard to see that this is a motivational recipe for citizens to shrug off the demands of public reason, if not to reject them outright.¹⁷

What is most important to notice here is that this is true not only for the citizens of concern to Sandel and Talisse who already reject in one way or another the demands of the criterion of reciprocity, but also for those who accept them and precisely because they accept them.

This, then, is the motivational situation with which any Rawlsian conception of liberal democracy must contend. For its part, the competitive-procedural model, which stands in the background political culture of society ready like any other conception to educate citizens to its ideals, allows citizens to retain their motivational ties to their comprehensive doctrines and even their more mundane desires, all under the banner of private preferences. It purchases this motivational wealth, however, at the price of risking profound alienation and conflict within society that might escalate beyond the bounds of civil politics, placing its hope in the prospects of *modus vivendi*. Under some cultural influences, this may seem like a worthy course. This might even be consistent with Sandel's hope for a more enchanted politics. Rawls, however, aims for a more secure stability. Treating as I have the problem of the substantive alienation of public reason as distinct from the more general and permanent subjective alienation induced by the criterion of reciprocity suggests, however, that a conception of what sorts of substantive political values might properly serve as bases of public reason might at least mitigate the alienated condition of public reason. Much like Murphy, I hope to be able to

undermine the force of the problem I identify without resorting to enchantment. In the next chapter, I propose an amendment to the Rawlsian conception of public reason that attempts to do just that.

In this chapter, I have now vindicated my claim that Rawls's conception of public reason and how it is possible for a democratic society to be stable for the right reasons is psychologically deficient. This deficiency lies in the fact that Rawls does not pay sufficient attention to the motivational character of the norms that structure for him the very idea of public reason. This is demonstrated by the fact that he fails to notice the possibility that there is a source of alienation internal to his own conception that threatens to undermine the motivations citizens might have for participating in public reason at all. What is more, that Rawls neglects to specify in any systematic way how public reason is to embrace substantive political values beyond those of the freedom and equality of citizenship to serve as bases for the public justification of legitimate law suggests strongly that my claim that his conception harbors a normative deficiency is also justified. I say at this point only that it suggests this strongly, because it might still be the case that there would be no way in which the alienation of public reason might be mitigated. In that case, there would be no practical point to specifying any one set of values over another. Thus, there would be no real normative deficiency, strictly speaking. I believe, however, that the alienation of public reason might be mitigated, but only if an appropriate set of substantive political values were embraced as part of its content. I turn to a sketch of one candidate set of values now in Chapter 5.

Notes

¹ In the “Introduction to the Paperback Edition,” Rawls revises his view slightly to admit that citizens may introduce into public reason ideas from their comprehensive doctrines, “provided that in due course public reasons, given by a reasonable political conception, are presented sufficient to support whatever the comprehensive doctrines are introduced to support.” He calls this requirement “the proviso” (PL, li-lij).

² This formulation is similar to the statement of a problem by Bernard Williams in his “Persons, Character and Morality” (1976, 2).

³ Amy Gutmann (2003) describes these kinds of liberties as co-original in Rawls’s conception of liberal democracy.

⁴ See, for instance, Shapiro (2003, 59-62) and Rawls (IPRR, 580).

⁵ See again, for instance, Shapiro (2003, 110).

⁶ One particular issue that comes to mind in this context is the effort to establish the nature of any privacy rights that might be entailed in the U.S. Constitution.

⁷ The famous debate between H.L.A. Hart and Ronald Dworkin regarding whether or not there is any necessary moral content of law is instructive here. Hart is willing to admit that judges sometimes must exercise discretion in new situations. Dworkin insists that they must appeal to the moral content of rights. See Hart (1961) and Dworkin (1975).

⁸ The course of politics in the United States in the era following the Supreme Court decision in *Roe v. Wade* is arguably a case study in the alienation of public reason arising from a malfunction of consideration of constitutional essentials. Many critics from various points on the political spectrum have argued that the Court overstepped its proper bounds in issuing such a sweeping decision and thereby distorted the democratic process. On the left, among those who support abortion rights, examples of such arguments can be found in Gutmann and Thompson (2004), Shapiro (2003), Jeffrey Rosen (2006). As a matter of the objective alienation of public reason, one effect of this decision was to shift the focus of political debates toward the politics of the make-up of legal institutions, rather than to hold the focus on the more substantive normative questions themselves, which might be decided in a more democratically participatory way (even if by a legislative body). Thus, a process of public reason became artificially stuck on a set of legal procedural issues. At the level of a more subjective alienation of public reason, the *Roe v. Wade* aftermath has had the effect of magnifying and distorting for many individuals the importance of a single, rigidly framed issue in the context of their larger set of political concerns and priorities. See, for instance, Rosen (2006).

⁹ I leave aside here that the famous debate between Ronald Dworkin and H.L.A. Hart regarding the nature of judicial decision-making reveals that this caricature of the legal decision-making process might not be correct. See Dworkin 1975 and Hart 1994.

¹⁰ A useful recent examination of the issues surrounding this theme maybe found in Joan Williams’s “Our Economy of Mothers and Others: Women and Economics Revisited” (2003).

¹¹ Nancy Cott’s history of marriage in America in *Public Vows: A History of Marriage and the Nation* (2000) is particularly instructive on this point.

¹² Thus, we find Sandel asserting in sweeping fashion with regard to the limitations on what can be admitted into public reason that “the political life it describes leaves little room for the kind of public deliberation necessary to test the plausibility of contending

comprehensive moralities—to persuade others of the merits of our moral ideals, to be persuaded by others of the merits of theirs” (211). But Rawls is clear that these demands do not apply to the background culture of a society and its various public discourses.

¹³ The most famous articulation of this criticism is in Bernard Williams’ essay “Persons, Character and Morality” (1981).

¹⁴ Murphy, of course, does not think that general compliance actually obtains. Nevertheless, his proposal helps us to think about what beneficence can reasonably require of us. Thus, his proposal helps us to think theoretically about nonideal circumstances, as the title of his book suggests.

¹⁵ David F. Ford, *Theology: A Very Short Introduction* (1999). Ford considers the theme of “multiple overwhelms” as part of the backdrop of theology today. He includes among these such normal things as the experience of deep passions or doubts and more historical things including the scientific revolution and modernity in general (7-12). The point is that religion helps people to cope with these overwhelms. So far, it is not clear how public reason might do the same.

¹⁶ Charles Larmore (1999) makes what I take to be a similar case that Rawls’s conception of democracy already makes too many sacrifices to this sort of principle. He holds that a moral principle of respect for persons is the underestimated proper basis of the conceptions of liberal democracy found in both Rawls and Habermas. But he suggests that perhaps

as certainly in the case of others, another contemporary ideal has come to stand in the way of seeing our deepest commitments for what they are. In our time, freedom of self-determination, as both an individual and collective value enjoys a tremendous prestige. It commands so ready an allegiance that all other values can seem of subordinate importance (624-625).

For a more general treatment of these values of authenticity, see for instance Charles Taylor (1991). Finally, it is worth remembering as well that this stream of romanticism was also a concern to Hegel. See my discussion in Section 1 of Chapter 3 above.

¹⁷ I credit the notion of shrugging off of the demands of democracy to the seminar entitled “Democracy Shrugged?” of the Center for Place, Culture and Politics at the Graduate School of the City University of New York, where I was fortunate to be a fellow in the academic year 2005-2006.

Chapter 5: Public Reason and Reasonable Reconciliation

In the last chapter, I argued that the alienation of public reason has a two-part structure. At its most fundamental level, I argued that the moral ideal of reciprocity with its corresponding duty of civility that defines the idea of public reason for Rawls entails a threat of subjective alienation, because it requires of the citizens willing to participate in public reason in accordance with this norm a subtle downgrading of the political significance of all of their other motivational interests. Because this moral ideal of reciprocity is essential to the idea of public reason, the attending subjective alienation is a permanent feature of the idea of Rawlsian public reason. Beyond this permanent form of alienation, I also argued that the Rawlsian conception of public reason suffers from a further source of alienation that might not be essential to that conception that arises from Rawls's apparent indifference toward the question of the kinds of substantive political values that ought properly to serve as the bases of the public justification of legitimate law in public reason. When these two problems of alienation are taken together, there emerges from within the framework of Rawls's conception of public reason significant possibilities of instability, rather than stability for the right reasons. Thus, in the last chapter, I vindicated my claim that Rawls's conception of public reason is psychologically deficient by showing that Rawls fails to pay sufficient attention to the motivational conditions attaching to the norms and ideals that structure his conception to notice that it harbors this possibility of instability.

In this chapter I turn to demonstrating that Rawls's conception of public reason is normatively deficient because of Rawls's indifference toward specifying how public reason might embrace a sufficient range of substantive political values to serve as the

basis of public justification of legitimate law such that a profoundly, but reasonably pluralistic society might be stable for the right reasons. To demonstrate that this oversight does amount to a normative deficiency, it will be my burden to show that the choice of one set of substantive political values over another can make the difference between stability and instability. Since I suggested in Chapter 4 various ways in which public reason might become substantively alienated, the main problem now is to see whether or not by specifying an appropriate range of substantive political values we can understand how citizens might achieve a significant enough measure of reconciliation from within the terms of the Rawlsian conception of public reason to maintain their interest in the ongoing practice of public reason and thereby render it stable for the right reasons.

I proceed in this chapter in five sections. First, I sketch under the term “reasonable reconciliation” my conception of the kind of reconciliation that I believe is possible for citizens reasonably to expect to experience on the terms of the Rawlsian conception of public reason. Then, over the next two sections, I develop as an amendment to the Rawlsian conception of public reason a conception of the two kinds of substantive political values that public reason must incorporate in order to bring about the satisfactions of reasonable reconciliation. To model the kinds of legitimate motivational interests citizens may take in public reasoning, I propose that public reason should include as bases of its deliberations the human functional capabilities developed in the work of Martha Nussbaum (2000), and, in order to promote the evaluation of the kinds of social arrangements that ought to be structured by public reason, I propose a set of what I call (for lack of a better term) “reasonable social values.” Fourth, in order to illustrate the

nature of reasonable reconciliation in the face of the subjective alienation that is a permanent feature of the Rawlsian conception of public reason, I consider how citizens might negotiate through public reason the political controversy surrounding the question of the legal status of same-sex unions. Finally, I show that my proposed amendment to the Rawlsian conception of public reason does make a enough of a difference in the possibilities of stability over against instability to justify my claim that Rawls's account is normatively deficient.

1. Reasonable Reconciliation: Or, a Democratic Reinterpretation of the Project of Reconciliation

I offer here a preliminary account of the limited kind of reconciliation citizens might reasonably hope to achieve through public reason. To distinguish the form of reconciliation I believe is available on the Rawlsian conception from other types of reconciliation to which we might aspire, I term it "reasonable reconciliation."

Reasonable reconciliation is the satisfaction citizens might expect to experience when they are satisfied specifically that the basic structure of their society is effectively regulated by public reason for the right reasons. By developing this conception of reasonable reconciliation, I propose in this section to lay the conceptual foundation for a democratic reinterpretation of the project of reconciliation I traced in Hegel's *Philosophy of Right*. Such a reinterpretation of the project of reconciliation must take its general outline from the fundamental normative commitments of the Rawlsian conception of public reason, and this entails both certain limitations on the kind of reconciliation that might reasonably be expected and certain more positive implications for what that reconciliation might be like. On the side of the limitations to this reconciliation, I sketch

what I take to be four fundamental things that should not be expected within the Rawlsian framework. More constructively, I also sketch the more positive implications for reconciliation entailed, first, by the Rawlsian commitment to the basic structure as the subject of public reason and, second, by the role of public reason itself in the process of negotiating the terms by which the basic structure is to be regulated.

Perhaps the most important aspect of reasonable reconciliation is what it fundamentally cannot be. Fundamental limitations on the kind of reconciliation that might reasonably be expected are established by the grounding commitment to the freedom and equality of citizens as it is interpreted by the Rawlsian conception in the moral ideal of public reason itself. First, since reasonable reconciliation is to be achieved through public reason, above all else we must distinguish it from an uncritical, nonreflective acceptance of the status quo. We noted in Chapter 1 that reconciliation is not the same thing as resignation, but this point takes on special significance when we ask what kinds of reconciliation public reason might occasion. Reasonable and rational citizens are much like Hegel's obstinate modern individuals, "unwilling to acknowledge in their attitudes anything which has not been justified in thought" (PR, Preface 15). When we place the idea of public reason in the decisive role of regulating the most important arrangements in society, however, there arises a special imperative that the most basic features of the social world be justified not only in thought, but in public deliberations. Blind or unquestioning acceptance of the status quo, then, is not consistent with the demands of public reason.

Second, we should distinguish reasonable reconciliation also from what we might call "comprehensive reconciliation." We may assume with Rawls that all reasoning

individuals are capable of forming comprehensive doctrines as a means of answering ultimate questions in life, and we may assume that such doctrines give rise to many of their fondest hopes and expectations about the way the world should be. If these hopes and expectations were satisfied, they would be deeply satisfied and reconciled to the world in a grand way. It is this sort of reconciliation to the world based in the expectations of one's comprehensive doctrines that I term "comprehensive reconciliation." But, acting under the moral ideal of reciprocity, citizens must also recognize limitations to what it is reasonable to expect others to be able freely to endorse. Reasonable reconciliation, therefore, cannot be the satisfaction of one's comprehensive religious, philosophical or ethical view as such. We should rather expect pluralism among the comprehensive views to exist among free and equal reasonable and rational citizens, and this assumption shapes our reasonable expectations about what the social world might be like. Thus, we might expect that reasonable reconciliation might be consistent with a potentially profound measure of frustration of one's most comprehensive aspirations.

Third, we should distinguish reasonable reconciliation also from a direct moral approval of the structures of society. For Rawls, a political liberalism is not the same as a comprehensive liberalism. Rather, a political liberalism restricts its moral demand to the relationship which attains between citizens who are engaged in the business of justifying to each other legitimate law. This gives rise, of course, to the "duty to civility," the moral duty, which we have already explored, for citizens to make their case for the principles and policies they support in terms of reasons that they might reasonably expect other citizens to be able to embrace (IPRR, 577). Even though this moral norm is foundational

to public reason, other forms of moral disagreement about particular policies and the like are to be expected. They might even be the most contentious and vexed issues that public reason faces. But Rawls believes that the subsequent values and reasons entered into public reason as bases for political decisions themselves are “not intrinsically moral” (IPRR, 578n). This is consistent with the subjective alienation to which the moral ideal of reciprocity gives rise. For those motivated above all else by a moral norm, even other moral values that might serve as bases of deliberations of public reason will have a different and potentially less satisfying character. If reasonable reconciliation is to be obtained, public reason must acknowledge this fact. Public reason must, therefore, specify a different normative basis for the kind of satisfaction it will aim to generate.

Fourth, we may distinguish reasonable reconciliation from the acceptance of political arrangements as a mere *modus vivendi*. As Rawls emphasizes, and as we have noted, it is fundamental to the ambition of public reason that citizens understand how the basic institutions of their democratically regulated society are stable *for the right reasons*. This articulates the demand that the arrangements of society be justifiable in terms that are stronger than the terms of a compromise. This, in turn, distinguishes the satisfaction that we should understand as reasonable reconciliation from any state in which social arrangements are valued merely instrumentally as the best compromise to preserve life or peace. Rather, citizens must be able to understand the basic structure of their society as being effectively regulated by reasonable political values that have some intrinsic value of their own. Thus, public reason must distinguish for the bases of its decisions an appropriate positive normative credential beyond the avoidance of violence. Yet, this credential cannot be comprehensive or directly moral.

With these fundamental limitations in mind, I propose that we might look to a different front in order to develop motivationally effective normative content for public reason and thereby define the more positive character of reasonable reconciliation. Specifically, I draw upon two other ideas that are already fundamental elements of the Rawlsian conception of democracy, but with a more Hegelian emphasis: that the basic structure is the subject of the deliberations of public reason and that it is through public reason itself that citizens regulate and evaluate the fundamental arrangements of the basic structure. First, Rawls is clear that public reason is to focus its scrutiny upon the basic structure of society, but he does not press this point as far as it might go. As I have already argued, he does not consider as extensively as he should the kinds of questions regarding what actually constitutes the basic structure of society that this focus raises as properly problems of public reason. It is precisely here, of course, that I argued that the potential for substantive alienation ensues. It is my proposal that Hegel's analysis of ethical life affords us a clearer understanding of what the range of questions that public reason ought to address might be like.¹ For Hegel, the task is to identify the minimal norms of social interaction necessary to fill the normative gulf left open by more abstract and alienating norms that are already so influential in modern society and to do so in a way that these norms might be motivationally effective enough to maintain in an ongoing fashion the practice in society of justifying norms rationally. The advantage that Hegel offers over Rawls, though, is that he provides a much more detailed analysis of what is basic and why.

Second, and perhaps most important for this investigation, reasonable reconciliation is further characterized by the unique role that public reason plays in

achieving it. Recall that Hegel thought it greatly important that the institutions of the modern state educate individuals to the rationality of participating in the forms of interaction they structure and that Hegel seems to have sought to equip the bureaucrats of that state with the philosophical disposition necessary to promote this educational work. This bureaucratic strategy is not available to us, but it is nonetheless important for the goal of reasonable reconciliation that the reasonability of the social arrangements to which individuals are to be reconciled be exhibited. Within the Rawlsian conception of democracy, it is only public reason that is situated to be able to accomplish this work. It is thereby also through public reason that citizens might be educated to the rationality of the major structures of their society, but it is also citizens who must so educate themselves. The problem is, of course, that when public reason proceeds under deficient normative guidance it becomes unnecessarily substantively alienated. Combined with the prior subjective alienation that arises from the moral ideal that defines public reason at all, then, citizens would seem to have more reason to shrug off public reason than to live with its frustrating demands. The avenue for reasonable reconciliation I propose now to explore is to enrich the normative basis of public reasoning in such a way that it might mitigate this alienating potential.

Before I turn to my proposal regarding the kinds of substantive political values that might serve as bases of public reasoning so as to promote the goal of reasonable reconciliation, I should note that my proposal aims to explain how it is reasonably possible within the framework of the Rawlsian conception of public reason to expect that citizens might be satisfied enough that public reason does in fact regulate the basic structure of their society for the right reasons. As it will turn out, in order to achieve such

a reasonable reconciliation, citizens must strike a fragile balance. On the one hand, they must accept fundamental limitations to the depths of the satisfaction they might expect from the state of society around them, and thereby the possibility of profound frustration or disappointment. On the other hand, they must nevertheless be able to articulate within public reason sufficiently motivational content to inspire their continued allegiance to the project of public reason at all. Over the remainder of this chapter, I propose a conception of the kinds of substantive political values that I believe might allow citizens to strike such a balance and a characterization of how reasonable reconciliation through democratic public reason might be achieved.

2. Substantive Political Values, Part 1: The Central Human Functioning Capabilities

I turn now to my amendment to the Rawlsian conception of public reason that I believe might help to mitigate alienation of public reason so as to achieve a reasonable reconciliation. In one sense, my proposal is modest. But, in another, it is importantly more ambitious. It is modest in that I do not believe the alienation of public reason can be overcome entirely, as I have now explained. The subjective alienation lying at the core of public reason will remain a permanent source of frustration for that conception, because it is a part of the moral ideal that defines what public reason is at all. I believe, however, that the substantive alienation of public reason, which follows in the wake of the inadequate conception of the values necessary to serve as bases of all of the decisions of public reason, might be significantly overcome. Here my proposal is ambitious in the sense that the conceptual apparatus that I believe is minimally necessary to overcome this substantive alienation is fairly complex. To overcome the substantive alienation of

public reason will require consideration of two sets of substantive political values. The values I propose are, first, a set of values characterizing the individual interests that are legitimately articulated in public reason and, second, a set of values characterizing the forms of social interaction public reason ought properly to promote. In this section, I propose that a suitable candidate set of values of the first sort is already available in the “central human functional capabilities” championed by Martha Nussbaum (2000). For a candidate set of values of the second sort, which I shall term “reasonable social values,” I sketch in the following section a set of values that echoes Hegel’s articulation of the institutional spheres ethical life.

We will do well to begin by revisiting the standard for what distinguishes values as political at all. For Rawls, for any consideration to be admissible in public reason, it must satisfy the criterion of reciprocity. Given the fact of deep pluralism among comprehensive doctrines, not everything will qualify. Considerations from one’s comprehensive doctrine, of course, will fail to qualify as properly political. Among those values that are admissible in public reason, moreover, it is not guaranteed that they will all be embraced for precisely the same reasons by all citizens. Rawls thus specifies that an acceptable agreement might be made in terms of an overlapping consensus. Thus, we must restrict the kinds of values that can be entered into public reason as substantive political values only to those that might be the subject of an overlapping consensus of citizens who might otherwise disagree profoundly about other matters. But this is only a formal, procedural mechanism that does not help us substantively to identify what sorts of considerations ought to serve as bases of decisions of public reason. We must now

consider a more substantive case for what substantive political values ought properly to guide decisions of public reason.

The first and most basic set of substantive political values guiding public reason, I propose, must characterize the legitimate motivational interests citizens might take in public deliberations. For this I suggest Nussbaum's list of "central functional human capabilities." Nussbaum originally developed her account of these human capabilities working with economists and philosophers concerned with the problem of analyzing the quality of life especially as it arises in questions of development economics.² The initial aim was to articulate an index of values that allows for a qualitative analysis of the quality of life that might be richer and more suggestive than merely quantitative analysis of the size of a particular society's economy. Nussbaum's strategy is Aristotelian in its general outline, seeking to characterize in a general way the most fundamental sorts of things that humans do as a part of a flourishing human life, a life that they consider to be lacking in nothing of fundamental human importance.³ The result of the investigation was a list of ten "central human functional capabilities" that seemed to have very broad appeal, including the capabilities for the following: life; bodily health; bodily integrity; senses, imagination, and thought; emotions; practical reason; affiliation; other species; play; and control over one's environment (both political and material) (Nussbaum 2000, 77-80). The version of this list with brief descriptions of each capability as articulated in Nussbaum's *Women and Human Development: the Capabilities Approach* is reproduced here in Appendix 1. I propose that Nussbaum's list of the central human functional capabilities is particularly appropriate as a set of substantive political values to serve as bases of decisions of public reason for two sorts of reasons. First, at an objective level,

they are appropriate already as topics of public reason in the sense that they are apt objects of an overlapping consensus of reasonable and rational citizen, as Nussbaum is careful to explain. Second, they are also values that articulate interests that cannot help but be motivationally effective, as I shall elaborate.

To begin to appreciate how the values on Nussbaum's list of the central functional human capabilities are appropriate as bases of decisions of public reason, we should note that she characterizes them as minimal, general, modest and modern. To see the way in which this list of capabilities is minimal we need only point out that it provides a threshold of basic human functioning that it would be reasonable to expect that all people would want to enjoy, specifying activities that could be realized in many different ways (2000, 77). It falls far short of specifying an outline of a complete life that any individual might consider worth living. It is general in the sense that it does not focus on highly specific activities, but on functional capabilities generally necessary for any flourishing life. As such, she describes the capabilities as all subject to "multiple realizability" (2000, 77). The list, furthermore, is modest in the sense that Nussbaum does not pretend that it is definitive or complete. She considers that it is open for revision, and, in fact, she has developed the list over time. Nussbaum emphasizes that the list has changed from its original articulation when she was working with academics in the context of the United Nations to its current formulation that reflects also her work with women's groups in India (2000, 78n). Finally, it is modern in the sense that it embraces such things as literacy and scientific education, which might not have been associated with a flourishing human life at all historical periods (2000, 77-78).

More importantly, Nussbaum argues that each of the capabilities on the list satisfies the formal requirement in that each is an appropriate subject for an overlapping consensus. She stresses that the development of her list over time is provisional evidence of its viability as the subject of an overlapping consensus. Thus, the list qualifies as a list of properly political values in the sense that each might be expected to satisfy the criterion of reciprocity. Nothing in the list depends upon any specific comprehensive doctrine, and everything seems to be something that anyone would recognize as legitimate interests no matter what one's comprehensive doctrine. Importantly, Nussbaum also holds that the capabilities approach constitutes a partial theory of justice, addressing it thereby to questions of basic justice that are properly questions of public reason. As Nussbaum explicitly argues, "the structure of social and political institutions should be chosen, at least in part, with a view to promoting at least a threshold level of these human capabilities" (2000, 75). In this way, each capability is to be treated in public reason as an end in itself, as a goal fully worthy of promoting.

I accept and endorse Nussbaum's claims about the appropriateness of invoking the central human functional capabilities as demands within public reason, but my most pressing interest is to emphasize the more subjective motivational character of these values and their potential for helping to overcome the subjectively alienating tendency of Rawlsian public reason. As I have noted, Nussbaum stresses that the list of central human functional capabilities articulates items that are very general, but central to the kinds of activities that shape the lives of most modern individuals. Thus, it is safe to say that most individuals already exercise many, if not all, of these functional capabilities. To the extent, then, that they value their lives and their ability to engage in the kinds of

activities that exercise these capabilities, the list of central human functional capabilities articulates not only interests that citizens can take in the deliberations of public reason, but even interests that we may in principle expect are also already motivationally effective for them.⁴

This specification of the human capabilities as bases of public justification of legitimate law in public reason is not only consistent with the reasonable moral psychology that Rawls presupposes (PL, 81ff), but also helps to bolster the basis for motivational interests that citizens might take in the deliberations of public reason. Recall that for Rawls citizens must first have a principle-based desire to abide by the criterion of reciprocity. This desire, moreover, must arise from a conception-dependent desire founded in one's political conception of justice, say, to realize some ideal of citizenship. To count as reasonable, one's political conception of justice, of course, must specify a list of basic rights, liberties and opportunities; which are assigned a special priority; and all-purpose means to make effective use of those freedoms (IPRR, 581f). One's political conception of justice, in turn, must fit as a module within one's comprehensive doctrine that defines what ultimately counts as a life worth living. Now, it is from her political conception of justice that a citizen is to draw her proposals in public reason, but the content of public reason is set by a family of such conceptions. This is precisely the point at which being motivated by the moral ideal that defines public reason demands a potential downgrading of all of one's other interests, even in the other ideals articulated in her political conception of justice. Articulating the list of central human functional capabilities within public reason has the important virtue of likely overlapping with the other values that might be a part of many competing political

conceptions of justice by being the central means to the realization of many ideals. Thus, at least some aspect of the many interests based in citizens' particular political conceptions of justice that are downgraded in subordination to the moral ideal of citizenship that defines public reason at all might in turn be upgraded again in relation to the capabilities one they have passed muster as bases for the public justification of legitimate law.

Here, however, we must recognize a fundamental limitation on the ability of the values articulated as central human capabilities to generate reconciliation. Individuals do not exercise their central human functional capabilities in the abstract, but always in specific concrete situations and interactions with other individuals, and this brings us closer to what is the business of public reason. Public reason is charged with the task of regulating effectively the basic structure of society, and the basic structure of society is nothing other than the most general patterns of social interaction in society, which may or may not be hospitable to the reasonable activity of individual citizens. Evaluating this character of the basic structure of society will turn out to pose questions and problems that are analytically distinct from the task of formulating a list of the central human functional capabilities. For now, however, it is important to notice that the list of capabilities defines for us a set of interests that may be taken as basic for the purposes of the deliberations of public reason.

3. Substantive Political Values, Part 2: Reasonable Social Values

The human capabilities approach articulates a set of values that might serve as a basis for reasonable reconciliation by virtue of their articulating general interests that in principle could not help but be motivationally effective for citizens. But we must still

resolve two problems before we will have an adequate account of how reasonable reconciliation through public reason is possible. The two problems are closely related, arising from the fact that simply invoking the capabilities in public reason is not sufficient to account for the possibility of reasonable reconciliation to the basic structure of society. On the one hand, there is a problem about how public reason is to translate a commitment to the function of the basic human capabilities, which are subject as Nussbaum says to “multiple realizability,” into specific institutional arrangements or patterns of social interaction. Such a deliberation of public reason must evaluate the character of the forms of social interaction that are historically present in a society and how various institutional arrangements function together in relation to each other. On the other hand, there is also the problem that the central human capabilities are very general, while the interests that usually motivate individuals most effectively are desires to engage in very specific or particular activities. Thus, public reason must also find a way to direct the awareness of citizens to the general level at which the capabilities are articulated as proper political interests in public reasoning. To address these problems I now include in my amendment to the Rawlsian conception of public reason a second set of substantive political values that I call “reasonable social values.” I include here a list of four values: intimacy, distributive fairness, associational loyalty and constitutional patriotism. The point of these values is not to determine fully the outcomes of public reason, but rather to assist citizens in framing the questions of public reason in such a way as to render reasonable reconciliation a meaningful possibility.

In proposing my list of reasonable social values, I take as my point of departure the relation between these social values and the human capabilities. As a formal

consideration, as with the list of central human functional capabilities, we should aim at a list of values each of which is to be given a conception which might reasonably serve as the subject of an overlapping consensus in public reason. This will qualify the values on the list as properly political values for the purposes of public reason. To satisfy this requirement, the conceptions of these values will have to be very general, characterizing forms of human interaction only very generally and not in terms of any specific comprehensive doctrine. More substantively, however, I intend my list of reasonable social values to be subsequent in the ordering of public reason to the human capabilities, complementing and building upon the project of the human capabilities approach. These reasonable social values are to articulate forms of social interaction that are conducive to the development and exercise of the specific human capabilities. The function of these reasonable social values is, thus, two-fold. First, these values are to guide the deliberations of public reason regarding the kinds of social interaction constituting the basic structure of society, in order that public reason includes within its scope sufficient arrangements as to render the institutional structures of society reasonably hospitable to the activity of the basic forms of human functioning. Second, by thus framing the scope of the questions before public reason in terms of an evaluation of the general character of the institutions of the basic structure of society, the articulation of a list of reasonable social values within public reason will serve to educate citizens to the level of generality at which they might reasonably expect to take satisfaction in the decisions of public reason.

A brief statement here on the Hegelian character of my proposal might also be helpful. Recall that in order to overcome the subjective alienation he diagnosed in the

leading concepts of right effective in the modern social world, Hegel found it necessary to situate the individual will within the ongoing already motivationally effective patterns of social interaction of ethical life. Similarly, my proposal for the inclusion of a list of reasonable social values as bases of the decisions of public reason aims to incorporate into the deliberations of public reason the evaluation of the forms of ethical interaction that at a most pervasive and basic level influence the development and exercise of the human capabilities. As I argued in Chapter 3, Hegel's primary interest in his analysis of ethical life was not to establish the necessary institutional structures of the modern world, but to analyze systematically the character of the most fundamental norms that structured the major institutions of the social world around him. Similarly, I do not propose to identify specific institutions, but rather to characterize ethically the forms of social interaction that might be fundamental. To this end, I propose a set of values that when taken together as a set might help to evaluate not only the quality of specific institutions or basic social arrangements, but also the character of the basic structure as a whole. To this extent my project is consistent with Hegel's emphasis on ethical life as a systematic whole.⁵ Similarly, the social values I propose characterize those forms of interaction in terms of the general ethical character that public reason should seek to promote within more specific institutions and patterns of social interaction. Using Hegel's analysis of ethical life as a point of departure, I first offer a provisional sketch of each of the four social political values on my list. Then, I offer some observations regarding the importance of assigning a role to some such set of values as a whole in the deliberations of public reason about the character of the basic structure of society.

First, in the place of the institutionally defined norms of the family in Hegel's account of ethical life, I assert the value of intimacy. I characterize intimacy here provisionally and loosely on the model of Aristotle's understanding of friendship as any kind of close personal relationship in which one has the disposition of caring about and desiring the good of another, a disposition which develops only over time spent in close interaction.⁶ Certainly many, many different relationships qualify as intimate on this characterization, and certainly not all of them are properly topics of public reason. But I further specify intimacy here as a value that describes the kinds of relationships and social interactions in which two of the central human functional capabilities might be developed and exercised. I have in mind here particularly a combination of the capability for emotions and the capability for affiliation. Among other things, the capability for emotions requires that there be individuals with whom we interact emotionally on a sustained basis and in a fairly deep sort of interaction. Indeed, the very development of our emotions seems to require such sustained relationships. With respect to the capability for affiliation, intimate relationships also seem to be one kind of affiliation that is deeply valued by almost all individuals.

When it comes to a basis for decisions of public reason, I assert the value of intimacy instead of some other more determinate form of social interaction, because there might indeed be many forms of social relations that are intimate and that might reasonably be cultivated or promoted as a matter of public reason. In seeking to establish whether or not any given form of intimate social interaction should be a topic of public reason, the standard to invoke would be the extent to which it might be reasonably a part of meeting a minimum threshold of the relevant human capabilities. Beyond the

romantic or sexual couplings that I will discuss in the next section of this chapter, intimacy might also be invoked as a fundamental value in deliberations about many other forms of social relationships. One perhaps controversial example might be the relationships individuals have with their health care providers. The quality of the relationship we have with health care providers affects not only our ability to exercise the capabilities for life and health, but also our capacity to experience some of life's most profound emotions (e.g., the joy of good health and the anxiety of mortality) in a way not encumbered by secondary anxieties. Public reason might accordingly seek to evaluate programs of health care reform not only according to cost-benefit analysis, but also in terms of promoting the quality of the relationships in which health care takes place. Less controversially, a second example of a form of intimate social interactions public reason ought to promote would be the relationships in which children are raised. These ought properly to be considered and promoted as intimate relations, because of the profound influence these relations will have on children's development of emotions and capacities to form affiliations with others over the course of their lives. Thus, public reason might seek to avoid programs or policies that would undermine the potential for cultivation of intimate relations among children and the persons who care for them (e.g., in deliberating about foster care arrangements or programs providing assistance to poor families whatever their shape). I do not mean these considerations to determine any final outcome of public reason, but rather to show how certain questions might be established as proper topics for consideration in public reason.

It is important here for understanding the prospects of reasonable reconciliation that we consider also not just how the evaluation of intimate relations may be established

as a proper topic of public reasoning, but also the motivational interest that we might expect to attach to such deliberations. All of us have intimate relations of various kinds over the course of our lifetimes, and the quality of those relations influences powerfully our sense of how well we fare in life. What is more, this is something that we first come to know at a fairly gut level. In his study of intimacy in his book *Intimacy or Integrity: Philosophy and Cultural Difference* (2002), Thomas P. Kasulis argues that intimacy is characterized by a way of knowing that is not merely cognitive or theoretical, but dependent on our embodied emotional awarenesses that develop only slowly over a long period of time spent in commitment to specific relationships.⁷ This characterization of the unique quality of intimate relations suggests that we cannot help but take an interest in these relations, as is consistent with the observation of the centrality of intimate relations to the exercise of the capabilities of the emotions and affiliation.

Yet the very specificity of the nature of intimate relations suggests that we should distinguish the satisfaction individuals take in their intimate relations as such from the properly political satisfaction of reasonable reconciliation that citizens might expect to take by virtue of public reason. To do this we must distinguish a political dimension of intimacy by virtue of which public reason might reasonably contribute to the quality of intimate relations. This might seem like a futile task, because of the quality of closeness usually associated with intimate relations that seems to mark intimacy as an entirely apolitical thing. Assuming such closeness, it would seem that the only thing public reason might do with respect to intimate relations is to grant them formal public recognition, and this is quite external to what gives these relations their motivational interest. But Deborah Anna Luepnitz, in her book *Schopenhauer's Porcupines: Intimacy*

and Its Dilemmas (2002), challenges this myth of seemingly immediate closeness.⁸ She argues instead that for intimate relations to flourish they must have space enough to interrupt the closeness that can lock individuals into virtually inescapable misery. Luepnitz argues that intimate relations are best equipped to flourish when their parties are armed, like porcupines, with the mechanisms to make this space for themselves. Here we do encounter a dimension of intimate relations that public reason can promote by affording individuals the tools by which to affect the quality of their intimate relations. Here one might cite the way that rights to divorce have afforded women (who did not always have such rights) the leverage to improve the quality of their marriages, if for no other reason than that it is publicly known that remaining in an unhappy marriage is not necessary. Similarly, with respect to relationships with one's health care providers, public provisions for the right to a second opinion or for access to one's medical records or the like might substantively improve the quality of those relations. If these sorts of mechanisms can be made publicly available to individuals as means by which the quality of their intimate relations might be promoted and thereby improve the prospects for the development and exercise of the capabilities for emotions and affiliation, then public reason would in this respect have content that would be at least modestly motivationally effective for citizens.

Next, in place of Hegel's sphere of civil society, I assert two candidates for reasonable social values: distributive fairness and associational loyalty. Treating of distributive fairness first, I mean to articulate a value by which citizens might evaluate the quality of the many impersonal relationships that are so profoundly influential over individuals' lives in the modern world, including importantly (but not limited to) the

market place. Invoking distributive fairness as a proper topic of public reason, of course, opens a near Pandora's box by raising issues of vast complexity with a similarly vast extant literature.⁹ My interest here, however, is only to illustrate how this social value might function within public reason together with the human capabilities to overcome something of the substantive alienation of public reason and to render the basic structure of society hospitable to the reasonable activities of citizens. Distributive fairness directly affects many of the central human capabilities, ranging from the capability for bodily health when it comes to questions of basic nutrition and health care; to the capability for the senses, imagination, and thought when it comes to distribution of education; and most especially to the capability for control over one's environment when it comes to the distribution of sufficient wealth and opportunities to own property and the like. Fair patterns of distribution stand to become urgent issues for public reason to the extent that such distribution would bear upon a minimal threshold of some kind of functional capability. Establishing that a pattern of distribution so influences the functional availability of human capabilities, in turn, ought to be enough to establish that the social arrangements in question merit the scrutiny of public reason as part of the basic structure of society.

It is important that I emphasize here that I intend my political conception of distributive fairness to be limited in two important senses. First, I do not intend to smuggle in here any full or complete conception of justice, least of all Rawls's conception of justice as fairness. Thus, my conception of distributive fairness does not demand any specific level of distribution beyond what might be minimally necessary for the meaningful exercise of specific human capabilities. Nor does my conception of

distributive fairness demand that every distributable thing must be distributed under the scrutiny of this value. Public reason must certainly entertain debates regarding more stringent demands of justice as a part of its mission to resolve questions of constitutional essentials and matters of basic justice. But reasonable reconciliation does not envision that all of the demands of citizens' conceptions of justice be satisfied. Instead, much as Rawls realizes in his last work, it is unreasonable to expect that all will agree on the same conception of justice, and citizens must develop the terms for a more modest and limited form of satisfaction with the democratic decisions of their society. Second, my conception of distributive fairness is also limited in a way that does not have such a clear precedent in Rawls's writings in that I expect that the scope of its relevance will be limited specifically to forms of impersonal interaction. It will not be the case that distributive fairness will be an adequate value by which to evaluate all of the aspects of the basic structure of society. As my description of the value of intimacy and its role in the development and exercise of certain of the capabilities might suggest, not all of the capabilities will be well developed in an atmosphere of impersonal interaction, no matter how fair those interactions might be. Thus, distributive fairness does not, on my view, apply to the whole of the basic structure of society. It is rather one reasonable social value among others that must be appealed to as a means of evaluating the extent to which the basic structure is constituted by patterns of interaction that are hospitable to the reasonable activities of citizens.

The main point to emphasize here, however, is the extent to which including the value of distributive fairness as one of the bases of decisions of public reason contributes to rendering the content of public reason motivationally effective for citizens and thus to

reasonable reconciliation. Distributive fairness as a value or standard applying to the quality of impersonal interactions in society encourages the evaluation of the extent to which the decisions of public reason render these forms of interaction hospitable to the development and exercise of those capabilities for control over one's material environment; for bodily health to the extent that health care is distributed as an economic good; and even to the senses, imagination, and thought to the extent that education is similarly distributed. Again, we must distinguish between the satisfaction individuals take in their particular exercises of these capabilities and the more limited satisfaction of reasonable reconciliation available through public reason. The purpose of including the value of distributive fairness within public reason is to promote the evaluation by citizens of the extent to which the development and exercise of these capabilities is dependent upon the conditions of forms of social interaction that are subject to regulation by public reason, and thus the extent to which at least one aspect of the interests that already are motivationally effective for them is an issue within public reason.

Next, I propose the value of associational loyalty also as a value to articulate part of the range of interactions corresponding to what Hegel identified in his notion of civil society. Associational loyalty is the social value appropriate for evaluation of the various forms of voluntary association in which citizens might reasonably participate. These kinds of interactions are more personal than market-based relations, but far less personal than of intimate relations. The obvious capability that is most relevant here is the capability for affiliation. But beyond this, forms of social interaction that are characterized by associational loyalty might also promote the capabilities for practical reason, to the extent that one might develop a conception of the good together with like-

minded individuals; play, as many voluntary associations center around recreational pursuits that can only be enjoyed in concert with others; and emotions, as when it comes to feeling pride at accomplishment, gratitude for the assistance of others, or even cultivating courage in the face of traumatic events beyond one's control. It is worth noting that a vast literature surrounding the notion of civil society has sprung up over the last generation or so, and in this literature there have been important disagreements as to what exactly civil society includes. For Hegel, civil society included not only the market place, but also a network of various voluntary associations, but in the more contemporary literature many have separated the market and voluntary associations into distinct institutional realms.¹⁰ Including the value of associational loyalty in my list of reasonable social values has the effect of prioritizing as questions of the basic structure of society the extent to which society is hospitable to the development and exercise of these functional capabilities. Public reason, accordingly, might promote the freedom of assembly, limits to the hours that might normally be required to work or provisions for public holidays and paid vacation, all for the sake of making participation in voluntary associations more likely. To the extent that the deliberations of public reason contribute to the satisfaction individuals take in the exercise of these capabilities, they will have another motivationally effective interest in public reason and, therefore, another possible basis for the satisfactions of reasonable reconciliation.

In this vein, an important Hegelian reason to articulate associational loyalty as a form of social interaction that merits special consideration within public reason has to do with the ability of voluntary associations to check the expansive influence of marketplace forces. Hegel calls our attention to the capacity of the demands of the market place to

expand and overpower or encroach upon other spheres of interaction. As one force within civil society tending to counter the atomizing effects of the marketplace, he described various “corporations,” which were trade organizations including both employers and employees that provided an avenue for them to identify their most essential needs. In more contemporary times, voluntary associations seem still to merit consideration as leading forces in shaping the structure of people’s lives. Certainly, labor unions have had a powerful, if not also declining, influence on the face of the marketplace. More ominously, John Gray, in his study of globalization in *False Dawn* (1998), shows that the destruction of the social roots of markets has coincided with the creation of a new underclass in certain societies. If these suggestions of the influence of voluntary associations are correct, then it seems likely that citizens could demonstrate adequately the relevance of such associations to maintaining a minimal threshold of human functioning capabilities so as to introduce their role as proper matters for the deliberations of public reason. My proposal to include a social value of associational loyalty is intended to help citizens to articulate within public reason the value of those forms of social interaction.

Finally, in the place of Hegel’s notion of the state, I assert the value of constitutional patriotism. By constitutional patriotism I understand the ethical disposition that one might develop in allegiance to the legal and political structures of one’s society, including such things as a respect for the rule of law and for the basic liberties articulated as constitutional essentials and indeed to the process of public reason itself. Including the social value of constitutional patriotism as an aim to be promoted within public reason is important with respect to promoting the basic human capabilities in two ways. First, it is

directly central to promoting the human capability of controlling one's environment in a political sense. To the extent that the constitution in question is genuinely democratic in nature, promoting the value of constitutional patriotism will not only encourage individuals to view participation in democratic politics as an appropriate means to control their own environment, but it will also encourage in citizens a disposition to respecting the participation of their fellow citizens in democratic politics as well. To this extent, the value of constitutional patriotism anchors the normative criterion of reciprocity that defines the idea of public reason for Rawls to the practices of political participation defined in the constitution and to their maintenance in an ongoing fashion. Second, promoting constitutional patriotism in a liberal democratic society is also central to making many more of the fundamental human capabilities available by virtue of promoting a climate in which the basic liberties articulated as constitutional essentials might be exercised. Examples of central capabilities that are promoted in this fashion include the capability for practical reason, which Nussbaum explicitly states entails protection of the liberty of conscience, and even the capability for bodily integrity, which is promoted by constitutional provisions for due process of law and the like.

Here we must confront the more complicated question of how public reason is to promote the value of constitutional patriotism, and to an important extent this question recapitulates the central question about how public reason might avoid being unreasonably alienating. I have argued that we may safely presuppose that citizens will take a motivationally effective interest in the exercise of their basic human capabilities. If this is the case, then perhaps the most effective means for promoting constitutional patriotism in public reason is to demonstrate that the mechanisms for political

participation are effective means by which individuals might ensure their ability to exercise their capabilities. For this goal to be realized, however, the constitution to which citizens are to be patriotically loyal must provide a process of public reason that will be hospitable rather than alienating to the reasonable interests citizens might take in politics. There are perhaps many questions here of the strategy for the design of constitutions that are beyond the scope of this dissertation.¹¹ For the present purposes, however, it is sufficient to note that incorporating a value of constitutional patriotism as a proper basis for decisions of public reason adds to the content of public reason a further share of considerations likely to be motivationally effective for citizens.

Having sketched briefly each of the four reasonable social values, I should now emphasize that I mean public reason to promote all of these values in its decisions regarding the basic structure of society. That is, the basic structure as a whole is to be evaluated according to its incorporating the appropriate institutional and social structures required to cultivate each of these values. I should also emphasize again that my list of reasonable social values is subsequent in priority to the central human capabilities. These social values by themselves might prove to be vague and indeterminate or even conflicting, but they should always be considered as oriented toward the development of the prior human capabilities. Some might challenge the adequacy of the list as it stands in my proposal, seeking to add or subtract values or to reformulate specific items on the list. As is fitting to the process of public reason, such debate is welcomed. The fundamental point at issue for my presentation, however, has to do with the way that public reason might be able to promote the goal of reasonable reconciliation. Thus, a fundamental reason for invoking some such list of reasonable social values as bases of

public reason is to meet adequately the complexity of the problem. The central human capabilities are plural not only in number, but also in the kinds of social interactions required for their realization. By drawing upon a set of reasonable social values, public reason is able to keep sight of the fact that the basic structure must include a plurality of forms of social interaction in order to be hospitable to the activity of all of the central human capabilities.

With both of these sets of substantive political values—the central human capabilities and the reasonable social values—on the table, we are now in a position to make some observations regarding how they help to overcome the substantive alienation of public reason so as to promote the cause of reasonable reconciliation. My strategy is an attempt to open a new front on which the problem of the alienation of public reason might be addressed, and that front is now before us. Rather than attempt to forge a political consensus by direct reference only to the grounding values of the freedom and equality of citizenship where a single moral ideal threatens to alienate individuals from their most dearly held interests, I have attempted to show how political attention might be refocused so as to build a consensus regarding the stability of society based on consideration of more specific political values that are more ethical in character. In this way, the political significance of some of the motivational interests that citizens bring to public reason, but which are downgraded by their subordination to the moral ideal that defines public reason, might at least to some extent again be politically upgraded in public reason. This starts with the consensus on a multiplicity of human capabilities, which articulate legitimate interests that all might take in public reason and interests that in principle should be at least moderately motivationally effective for all. Public reason

then considers the basic structure of society in light of reasonable social values as it might be rendered hospitable to the activity of the human capabilities. Since the reasonable social values I propose to include in public reason evaluate the character of the major forms of social interaction in society that define in large part the way individuals will be able to exercise their capabilities and since this evaluation focuses at a higher level of generality on the extent to which these social arrangements are hospitable to the exercise of these capabilities, we may expect that citizens will find these values motivationally effective, at least to some extent. If guided in this way by the consideration of some such scheme of substantive political values, public reason might just have sufficient motivationally effective content to maintain the interest of citizens in their democratic governance, even if the subjective alienation that arises from its defining moral ideal cannot be avoided. To the extent then that public reason is capable of shaping the basic structure of society accordingly, citizens will, in turn, have cause to believe that their society is stable for something approximating the right reasons, and reasonable reconciliation will be achieved.

4. Reasonable Reconciliation through the Public Use of Reason: the Case of the Legal Status of Same-sex Unions

It will be useful now to consider in some detail a case of a controversial question facing public reason, in order to illustrate how the normative structures I propose in this chapter might promote the goal of reasonable reconciliation even in the face of the permanent alienating tendency of public reason. This consideration is also consistent with the method of reflective equilibrium, which encourages us to consider our judgments about our principles at various levels of abstraction and concreteness in order

to sound out whether our account affords us the most favorable philosophical presentation of the idea at hand. In this section, I seek to chart out the difference that my revised Rawlsian conception of public reason might make in the deliberation of a democratic society that is deeply divided over the question of the legal status to be accorded to committed same-sex intimate relationships. This is the question I referred to in Chapter 2, of course, to draw out the inadequacy of Rawls's account of the normative basis for the decisions of public reason regarding what even counts as the basic structure of society. My objective in this presentation is to provide a concrete illustration of possibility and limitations of reasonable reconciliation through public reason.

In my sketch of what it might be like to achieve reasonable reconciliation through public reason, I aim at the modest task of suggesting how the deliberations of public reason *might* proceed in regard to this most heatedly debated topic. That is, I will not attempt a systematic interpretation of the heated debates today in America surrounding the legal status of same-sex unions.¹² After reviewing why it is that I hold that this question poses an important problem for Rawls's conception of public reason, I will go on to discuss the forms of alienation that seem to be possibilities as a democratic society addresses this question. In this discussion, I will stipulate that the debate is between two opposing points of view, both of which I take to be within the range of the reasonable pluralism that Rawls accepts as a starting point for democratic public reason. I will similarly limit the possible policy options to three proposals that might be consistent with satisfying the demand of the criterion of reciprocity, but I will argue that when we take into consideration my amendment to the Rawlsian conception only two of them will remain live options for public reason. It is in the consideration of the potential

satisfactions and frustrations entailed in these two remaining options that we will have an illustration of what reasonable reconciliation through public reason might be like.

As I discussed in Chapter 2, Rawls himself only mentions the question of same-sex unions and only in reference to the function of the family in maintaining in society a sufficient population of citizens with the appropriate virtues of citizenship. He suggests that “no particular form of the family (monogamous, heterosexual, or otherwise) is required by a political conception of justice so long as the family is arranged to fulfill these tasks effectively and doesn't run afoul of other political values” (IPRR, 596, n60). Rawls, of course, does not specify what other political values beyond the freedom and equality of citizenship he might have in mind. This, however, begs the question of what even constitutes the basic structure of society at all. Rawls seems to leave open the possibility that public reason might satisfy its formal normative constraints of respecting the freedom and equality of citizens by simply refusing to acknowledge that the institution of the family is properly a part of the basic structure of society at all, but this possibility would likely not leave citizens satisfied that their society is stable for the right reasons. The underlying conceptual problem, then, is that the idea of the basic structure of society is itself not an a priori given, but a normatively constituted notion. That is, deciding what constitutes the basic structure of society is a part of the same problem as deciding what values are properly central to the deliberations of public reason. It is my contention, of course, that in order better to resolve this question in such a way that reasonable and rational citizens might be satisfied that the basic structure of their society is stable for the right reasons, we should include in our conception of public reason the values of the central human functional capabilities and something like my set of

reasonable social values. Since elaborating how public reason might settle the question of the legal status of same-sex unions will turn importantly on the role to be played by the value of intimacy, this discussion promises to provide a complex illustration of what reasonable reconciliation might be like.

In order to chart the senses of alienation that surround this contested question, we must specify who the parties are to the debate and what their particular positions and interests happen to be. Here I stipulate that there are two parties to be considered in my discussion: those who favor the extension of the legal institution of marriage to include same-sex couples, believing that their exclusion cannot be justified, and those who oppose such an extension, believing that the traditional definition of marriage requires that it be a union between one man and one woman.¹³ The division here is thus over the question of whether or not the legally recognized institution of marriage, with the various benefits that it brings as a package, will include or exclude couples of the same sex. What is more, we will also understand here that the opinions on either side of this question are passionately held, much as they seem to be held in the contemporary debate in America. But, perhaps contrary to the facts of the current debates in America, we will further stipulate that the citizens on either side of this question are reasonable in Rawls's sense that they are willing to limit their proposals in public reason to those options that satisfy the criterion of reciprocity. That is, these citizens will be willing to limit their proposals to options that they can reasonably believe other reasonable and rational citizens might also agree are reasonable. This assumption might not let us work with the full range of pluralism that might exist in society, but it will allow us to examine a

significant range of possibilities of alienation in order to illustrate what reasonable reconciliation might be like.

Given this particular set of parties to our debate, we should note here at least three senses of alienation that our parties face or stand to face depending upon the outcome of the deliberation. First, there is the alienation from the institutional arrangements of society among those who seek legal recognition for their committed relationships. This form of alienation is objective in nature, because the institutional arrangements of society are objectively inhospitable to their activities. Indeed, many people who are not willing to extend the legal title of “marriage” to same-sex couples seem willing to recognize this objective aspect of alienation by virtue of their willingness to provide “civil unions” for same-sex couples so as to provide all or virtually all of the legal benefits that accompany legally recognized marriage relations.¹⁴ Second, there is the perceived alienation that those who define the meaning of “marriage” in opposite-sex terms might experience if the institution were extended to same-sex couples. This form of alienation is subjective in nature, because it is by virtue of the particular definition of marriage these individuals embrace that they would understand a change in the legal definition of marriage as rendering the institution less hospitable to their participation in it. Together, these forms of alienation represent those that are defined with respect to the interest citizens take in the particular arrangements of the institutions of the basic structure of society. Third, there is the more political form of alienation based in the division of these individuals from one another. This form of alienation is the same kind of alienation that the fact of reasonable pluralism acknowledges when it takes deep disagreements to be expected as a normal part of life under free political institutions. Citizens in this way are deeply

divided from each other, yet somehow they must come to an agreement to form a consensus on the terms of social cooperation by virtue of which they might both agree that their society is effectively regulated for the right reasons by their deliberations.

The question now before us is how Rawlsian public reason might proceed and what potential there is for reconciliation of the parties to this deliberation, but in framing the possibilities for public reasoning we encounter immediately what I have argued is the alienating tendency of public reason itself. This, of course, is the alienation that follows in the wake of the central moral ideal that defines the idea of public reason at all as articulated in the criterion of reciprocity. Since the duty to observe the criterion of reciprocity is a moral duty, this inserts a moral demand into the structure of citizens' political interests that trumps all of their other motivationally effective interests, thereby downgrading the political significance of those other interests. Indeed, we will see the upshot of this alienating tendency when we consider what options the observance of the criterion of reciprocity will allow to be considered in the deliberations of public reason. As I shall interpret its implications here, the criterion of reciprocity will require that whatever options be entered into public reason provide for equality among the institutional arrangements available to all citizens.¹⁵ This means with respect to the question of the legal status of same-sex unions that any possible resolution to this debate within public reason will have to provide for the same institutional arrangements for all couples, no matter if they are same-sex or opposite-sex couples.

Here I limit the discussion to three options that would seem to be available on the terms of Rawls's conception of public reason. First, public reason could provide equal access to the institution of marriage to all couples who apply for marriage licenses. This

seems to be the option that is preferred by most of those who advocate for the legal recognition of same-sex unions. Second, citizens deliberating in public reason could decide that from a legal point of view society would stop recognizing “marriage” as such. On this possibility, the term “marriage” would be replaced in all relevant statutes with the term “civil union,” and the benefits that currently attach to marriage relationships would be distributed instead to partners in publicly recognized “civil unions.” These civil unions would be open to all who applied for the relevant license. The term “civil unions,” of course, is now familiar from the action of the State of Vermont in 1999, beginning with the decision of the State Supreme Court in *Baker v. Vermont*, by which the state opted to provide the benefits available to opposite-sex couples via the relationship of marriage to same-sex couples via this alternative arrangement. Note, however, that I do not consider the Vermont option a live option for the sake of Rawlsian public reason, because it defies the presumption I am making regarding the demand of the criterion of reciprocity. In the U.S. Constitutional tradition after 1954, separate is presumed not to be equal. Finally, as I discussed in Chapter 2 above, Rawls seems to leave open the possibility that society might opt through public reason to stop providing legal recognition or institutional benefits to committed intimate relations at all.¹⁶ That is, the relationships we now acknowledge legally as marriages could become entirely deinstitutionalized. Given this range of possibilities, we must now address the question of the forms of reconciliation that we might expect to achieve via the deliberations of public reason.

I take up this question now not from the point of view of Rawls’s formulation of his conception of public reason, but from that of my proposed revision to this conception

with the two sets of additional substantive political values in place as I sketched them in the previous two sections. As Rawls formulates his view, it seems that he would be indifferent between which of these options citizens finally choose. But it is my view that indifference cannot be an option between these possible outcomes, precisely because such indifference loses track of the question of whether or not citizens can embrace in a satisfying way such an outcome as stable for the right reasons. To take seriously this question, we must consider the motivational character of the available options. One important consideration in this regard is to avoid the merely instrumental valuation of the intimate relations of citizens that seems to be allowed under the brief discussion Rawls does offer. Such an instrumental valuation is least likely of all, I believe, to survive the subjective alienation that accompanies the moral demand associated with submitting to the criterion of reciprocity. Valuing citizens' sustained intimate relationships merely instrumentally in public reason does not articulate anything that is likely to be motivationally effective for them. Instead, it seems to require that they be prepared to downgrade the significance of those relationships in order to be willing to participate in democratic deliberations. To this extent, it seems to be very much a piece of the same sort of downgrading of the significance of citizens' motivational interests that my analysis suggests submitting to the criterion of reciprocity requires. In the wake of the moral demand of the criterion of reciprocity, indeed, everything that is already of motivational significance for citizens risks becoming of merely contingent importance. Why, in fact, should one who cares deeply about their closest personal relationships be interested in participating in public reason at all, when it seems to require that they accept

the downgrading of the significance of those relationships and the possibility that those relationships might be discounted entirely?

When we take up my proposal that the Rawlsian conception of public reason should be supplemented with the additional substantive political values I have proposed in this chapter, however, indifference to the choices before public reason is not an option. Indeed, my revised Rawlsian conception of public reason eliminates one of the outlined options from the start, by virtue of the fact that my proposal holds intimacy as a value that ought properly to guide the deliberations of public reason. So guided, public reason must reject the possibility of the deinstitutionalization of intimate relationships. Rather, my amendment to the Rawlsian conception of public reason requires that public reason evaluate the character of the institutions of the basic structure of society, in this case with respect to its hospitality toward the relationships within which the human functional capabilities of the emotions and affiliation might be developed and exercised. That is, my proposal requires that public reason include intimate relationships as properly a part of the basic structure of society and deliberate as to how best to render society hospitable towards them. Deinstitutionalizing these relationships all together by abolishing their legal recognition and the like, however, would render the basic structure of society at very least indifferent to their flourishing. Given the frequently expansive demands of market forces, moreover, deinstitutionalizing intimate relations might well leave society inhospitable to them as well. Both of the remaining options before public reason—extending marriage to all or extending civil unions only to all—are consistent, however, with rendering the major social arrangements of society hospitable to intimate relations. Which of these options society ultimately settles upon will depend perhaps on the

temperament of the population. My view, however, is indifferent to the choice between these remaining options.

We must now evaluate the sorts of satisfaction citizens might expect to achieve by virtue of this process of public reasoning as I have sketched it. Specifically, we must ask whether or not this framework for negotiating this contested question within public reason provides for a sufficient basis for citizens to be satisfied that the basic structure of society is stable for the right reasons. Thus, we must revisit the senses of alienation that I outlined at the beginning of this section that affect citizens as they approach this controversial question of public reason. We might perhaps do well to start by considering the extent to which the alienation of citizens from one another might be overcome. If citizens did achieve an overlapping consensus on this contested question, it would seem that they would become reconciled to each other. This is certainly the case, but we must also examine carefully the character of that reconciliation. It might be tempting just to posit that an agreement on principle is a form of reconciliation and then call it a day. But taking into account my argument that subordinating all of one's other motivationally effective interests to the moral ideal of reciprocity requires that citizens downgrade the political significance of those interests and thus undermine their motivation for participating in public reason in general implies that we should always take into consideration the motivational quality of participating in public reason. Thus, we must also consider the frustrations and satisfactions that attach to the specific agreement in question. Here, of course, we must turn directly to the frustrations and satisfactions that citizens might expect from their participation in the arrangements of the basic structure of society as regulated by their decisions in public reason.

The strategy of my proposed amendment to the Rawlsian conception of public reason, of course, is to incorporate into the practice of public reasoning an essential element of content that cannot help but be motivationally effective at least to some extent to citizens. On the side of those advocating extending legal recognition and benefits to same-sex couples we encounter minimal difficulty, because the most obvious experience to expect is one of satisfaction. If citizens in public reason ultimately decide to extend to same-sex couples the legal status and benefits of marriage, then the satisfaction would seem to be complete. If, however, the decision is to extend only the status of civil unions to all, we might expect some disappointment to accompany the satisfaction of the overall victory. (I shall treat this frustration more extensively momentarily when I suggest how the opponents of same-sex marriage might experience it as well.) It is worth distinguishing in either case, however, between the satisfaction such a citizen might take in the decision of public reason and the more particular satisfaction one might derive from the particular intimate relationship one might wish to be recognized. The contribution public reason might make to the latter satisfaction, of course, is limited to establishing circumstances reasonably hospitable to the flourishing of such relationships, and by virtue of their having participated in such deliberations, we may assume that those citizens would be well aware of this distinction.

On the side of those opposing extending such recognition to same-sex couples, however, we find a dilemma that helps to clarify the nature and limitations of reasonable reconciliation. Here the most obvious experience for citizens to expect is one of frustration that their ultimate preference was not ratified by the decision of public reason. We must conjecture that this preference likely arose from considerations within a

comprehensive doctrine. But, of course, we have also stipulated that these citizens are reasonable in Rawls's sense. Such reasonable citizens recognize that considerations from their comprehensive doctrines per se are not admissible within public reason, but only considerations that all reasonable individuals might accept as at least reasonable (cf. IPRR, 578). If such reasonable citizens are to achieve an overlapping consensus on the decisions of public reason so as to be satisfied that the basic structure of society is to be effectively regulated for the right reasons, then there must be some satisfaction available to these citizens as well. We have not explored the satisfaction entailed in my amendment to the Rawlsian conception. But we must also recognize the frustration these citizens might also expect to experience. Importantly, we have stipulated that the parties to this deliberation in public reason hold their views passionately, and this raises the possibility of profound subjective alienation. This possibility arises from the fact that the framing of this question by the criterion of reciprocity might demand that citizens opposing same-sex marriage accept the frustration of a principle that they hold dear. On the one hand, they might agree to extend the legal status of marriage also to same-sex couples, even though they hold a view based on their comprehensive doctrines that marriage simply is an opposite-sex affair. In this case, we would expect them to feel frustration that the term "marriage" might take on a second meaning that conflicts with the meaning of the term they hold dear. On the other hand, the only other option available is for them to advocate that their society get out of the "marriage" business entirely and to recognize under the law only "civil unions." This option, however, might be even less attractive, because it would mean not only letting go entirely of the hope that their preferred meaning of the term "marriage" has political significance, but also

accepting that their own deeply valued relationships would also be categorized for public purposes as “civil unions” only.

What is most important in this dilemma is to see that there is yet a third option for our citizens who oppose legal recognition of same-sex unions that also defines a limit to the possibility of reasonable reconciliation. That such citizens might experience alienation with respect to some of their most deeply embraced values by virtue of their participation in public reasoning is consistent with my view of reasonable reconciliation. This form of frustration is a manifestation of the subjective alienation I analyzed in Chapter 4. So long as these citizens can still take some satisfaction in the understanding that public reason regulates the basic structure of society so as to be hospitable to their intimate relations and those of their fellow citizens, reasonable reconciliation is possible. If this satisfaction is sufficient to motivate them to continue to engage in democratic politics under the norms of public reason, then they may be appropriately described as reasonably reconciled to their society through the public use of reason and their society will be meaningfully described as stable for the right reasons. If, however, this frustration of their other motivationally effective interests proves decisive, then we will be in the realm of options outside of the normative guidelines of public reason. Citizens who were so motivated might shift to some other practice of political engagement (or disengagement). In such a case, we will have found a practical limit to reconciliation through the public use of reason.

5. Reasonable Reconciliation and Stability

In the last chapter (Chapter 4), I demonstrated that Rawls’s conception of public reason suffers from a psychological deficiency that is evidenced by his failure to notice

that internal to his conception is the risk of the substantive alienation of public reason. In this chapter, it has been my task to demonstrate that Rawls's conception of public reason is also normatively deficient due to his apparent indifference toward specifying how public reason might embrace a sufficient range of substantive political values to serve as the bases of public justification of legitimate law such that a pluralistic democratic society might be understood to be stable for the right reasons.

As I indicated at the outset of this chapter, the bulk of this argument would involve two specific tasks. First, I sketched a conception of the kind of reconciliation citizens might reasonably be able to expect under the Rawlsian conception of public reason. Second, I developed a conception of the additional substantive political values beyond those of the freedom and equality of citizenship that public reason must consider in order to achieve such reconciliation. My conception of reasonable reconciliation and my proposal to amend the Rawlsian conception of public reason by the addition of the basic human capabilities and my set of reasonable social values are the fulfillment of these tasks. We must now recap the notion of reasonable reconciliation and take stock of where we stand with respect to the vindication of claim that Rawls's conception is normatively deficient.

Reasonable reconciliation represents a form of reconciliation that is plausible within the framework of Rawlsian public reason. To achieve such satisfaction, of course, requires that citizens strike a fragile balance. Ultimately, reasonable reconciliation must be reconciliation to the basic structure of one's society as it is shaped by the decisions of public reason. But when we consider carefully the grounds that might be available within public reason for agreements about how the basic structure should be shaped, we find that

those grounds are limited and that citizens are presented with a difficult choice. The moral ideal that defines the idea of public reason at all requires that citizens who participate in its deliberations accept a downgrading of the motivational significance of their deepest commitments. As a trade off in this situation, my amendment to the Rawlsian conception suggests that they might be able reasonably to expect, however, the more modest satisfaction that might be found when the basic structure of society is hospitable to the exercise of their basic human capabilities. The effect of including as bases of public reasoning the particular range of substantive political values that I proposed is to connect the democratic social practice of public reasoning to the ongoing evaluation of the hospitality of the basic structure of society to a set of interests that cannot help but be motivationally effective at least in a general way to citizens. The prospect of reasonable reconciliation, then, is the possibility that at least in some respect the motivational interests that suffer downgrading in political significance when subordinated to the ideal of reciprocity that defines public reason will be upgraded again to stand as legitimate interests in public reason. To the extent that public reason is effective in shaping its outcomes according to the standards suggested by my candidate set of substantive political values, citizens will have cause to be satisfied that their society is stable not as a mere *modus vivendi*, but for something like the right reasons. Perhaps most significantly, they will also have a significant basis of interests for their continued participation in public reason.

To see that Rawls's conception of public reason is normatively deficient with respect to its failure to specify a sufficient range of substantive political values to serve as bases of the public justification of legitimate law, we need only contrast my account of

how stability for the right reasons is plausible to one of the possibilities of the substantive alienation of public reason sketched in the last chapter. For this purpose, I suggest that we consider briefly the possibility that public reason might proceed in highly legalistic fashion of a Supreme Court opinion, which Sandel aptly characterizes as “abstract and decorous” (1998, 216). When we combine this sterile possibility with the alienating tendency of the ideal of reciprocity that defines public reason at all, it is not just those who reject the Rawlsian framework of public reasoning who would be dissuaded from participation in it, but those embrace it too. In the wake of this complex pattern of alienation, other political phenomena ensue, ranging from the appeal of the more conventional competitive-procedural model of democracy to the tendencies toward extremism about which Talisse worries. Accordingly, we see also a recipe for instability that can arise from within the Rawlsian framework of public reasoning. If, now, the way that a democratic society embraces substantive political values to serve as the bases for its legitimate law makes the difference between a plausible vision of stability and a likelihood of instability, the question of how a society regulated by Rawlsian public reason is to embrace such values in order to regulate itself stably for the right reasons cannot be a matter of indifference. Accordingly, Rawls’s conception of public reason is in this respect normatively deficient.

Notes

¹ Amy Gutmann and Dennis Thompson (1996, 2004) seem to argue that the proper scope of democratic deliberations is more narrowly moral. I do not take up that debate here other than to note the difference between the views

² See Nussbaum and Sen, eds., *The Quality of Life* (1993) for more details of how this project emerged.

³ For the Aristotelian roots of this, see Aristotle's account of the completeness of the good of humans in Book I of the *Nicomachean Ethics*.

⁴ I note here, though in passing, that this principle of motivation bears a resemblance to the "Aristotelian principle" that Rawls articulates in Part III of *A Theory of Justice* (424ff). A more systematic comparison of these two projects is beyond the scope of this dissertation.

⁵ As I discussed in Chapter 3, Hegel's method of evaluation of the "actualization" of norms does not give rise to a comprehensive theory of society, but only to an analysis of the minimal conditions for the actualization of the individual free will in modern society. Similarly, my attention to how social values function in public reason as a systematic whole does not give rise to a comprehensive doctrine about the nature of society. I mean only to keep in mind that we cannot adequately consider one social value in isolation from the other relevant values. Thus, e.g., were we to consider how best to promote freedom of economic exchange in isolation, we would do so at the risk of sacrificing other relevant social values.

⁶ See here Book VIII of Aristotle's *Nicomachean Ethics* in which he describes three varieties of friendship. I mean my account of intimacy to follow Aristotle's account of the most complete or perfect type of friendship.

⁷ Kasulis traces the word "intimacy" to its Latin roots in order to define it as a "sharing of innermost qualities" (28). As such, we could well think of intimate relations as organized around ways of knowing and disclosing that are more than sharing of abstract information. Kasulis considers five basic aspects of intimacy that are worth recapitulating here, because they will be suggestive of the kind of problem we will face when I attempt to sketch a political conception of intimacy. Each of these five basic aspects of intimacy relates to the ways in which knowing of an intimate variety, particularly in human relationships, is a rich and meaningful kind of human interaction.

The first of the aspects Kasulis emphasizes is that intimacy is a personal kind of knowing that depends upon the expertise one develops over a long period of acquaintance. By this Kasulis means that the claim to objectivity of intimate knowledge does not arise directly from empirical evidence and logic, but depends upon the personal experiences of the knowing agent. A doctor, for instance, may make a better diagnosis when she has known her patient well for a long period of time. Similarly, parents are more often quicker to know when something is wrong with the way their child is feeling because of their long-standing intimate association with the child than even a doctor with extensive medical training. The intuitions of someone with a longstanding intimate knowledge of another are cultivated and informed by this *personal* knowledge or expertise.

Second, intimacy involves a kind of commitment or situatedness that is not entailed in knowing merely abstract information. Intimacy, Kasulis says, involves a

“belonging with” the one with whom one is intimate. Intimacy involves a sense of peace or trust or a feeling of being at home with. Intimate connections bring along with them a meaning that is not exchangeable with other kinds of connections. The connection I make with the teller at the bank where I deposit my pay check is likely to be casual and not intimate; it is not per se relevant which teller’s window is open when I am next in line. By contrast, to use one of Kasulis’s examples, I have an intimate connection sometimes even with the books I read and reread; my marked and worn copy of Rawls’s *A Theory of Justice* is not readily replaceable, but has become something with which I belong as a scholar. This connection and belonging with is even stronger for the persons with whom we are intimate.

Third, intimacy as a kind of knowing is affective. Intimacy involves emotions in deep and sustained way, and our intimate awarenesses are often shaped by emotional states. In particular, Kasulis emphasizes that empathy is often a great aid to becoming aware of someone’s well being. Doctors, for instance, are more apt to make accurate diagnoses when they consider how a patient may be feeling empathetically than when they only treat a patient as a biological object of study. Similarly, feminists have long pointed out that emotional and caring regard for a child helps a mother have a much better awareness of the feelings, health and needs of her child than someone might have who does not forge an emotional connection with the child.

Fourth, intimacy is also somatic or embodied. Intimacy involves the kinds of awareness that can only be achieved through physical presence. This is because physical presence involves a certain amount of risk and is always influenced by mood. Hubert Dreyfus articulates this point in his book *On the Internet* (2001), in which he argues (in part) that the internet will never be able to replace classroom education, because the mood and risks of being in a classroom with a teacher and fellow students cannot be reproduced online. The classroom involves a mood and subtle embodied cues as to what is most important or difficult. Physical presence also allows the teacher to gauge the mood of the class toward the material, what is registering well and what not. Dreyfus’s point could well be expressed as being that the classroom allows for a measure of intimacy that online settings cannot.

Fifth, and finally, intimacy has an aspect that Kasulis describes as “dark or esoteric” (47). Our intimate awarenesses come to us in ways that we may not readily know how to explain. As Kasulis suggests, football players often have an intimate understanding of the way their game is played, but when asked to explain what happened in any particular game are hard pressed to articulate it in very meaningful terms, at least terms that are meaningful to those not similarly initiated in the sport. This esoteric aspect is easy to understand in light of what has been said about the somatic, affective and personal nature of intimacy. Yet, the fact that this way of knowing is so esoteric does not necessarily strip it of epistemological integrity. In certain kinds of practices (such as playing football) or in certain specific relationships (such as a mother’s relationship to her child), the one with intimate knowledge is, other things being equal, likely to be considered the authoritative expert.

⁸ Luepnitz considers two symbolic characterizations of intimacy. The first, which she will reject as too mythological and unrealistic, is that set forward in the speech of Aristophanes in Plato’s *Symposium*. Aristophanes tells the myth that once upon a time human beings had four arms and four legs and were found in three sexual varieties: male-

male, female-male and female-female. As Aristophanes was a comic, these creatures went about with all their legs and arms, seemingly quite pleased and satisfied with themselves. Zeus, however, being not nearly so amused, split them each in two and scattered them so that they were lost to their other halves. For the rest of eternity, humans, on this myth, would seek out their other half so that they might again become complete and fully satisfied. Luepnitz is surely right that this comic fantasy of finding one's other half who holds the unique ability to make one complete holds a central place in our culture as the dominant ideal of intimacy.

In its place, Luepnitz would have us adopt a more realistic image found in a parable once told by Schopenhauer, one which fits much better with her psychoanalytic practice as sketched in her case studies. Schopenhauer's parable imagines porcupines on a cold winter's day. They try to get close to one another for warmth, but find their quills a most formidable obstacle. Intimacy, on this parable, is a struggle to achieve closeness, while attempting ever to cope with the poke of porcupine quills. Learning to make room for this sting and to address it in healthy ways, for Luepnitz, is a more suitable model of intimacy, and one which I shall hold should be remembered in political considerations.

⁹ I have in mind the vast literature that Rawls's conception of justice as fairness spawned since the publication of *A Theory of Justice* in 1971, much of it taking issue with whether or not the arrangements that Rawls proposed are reasonable articulations of the requirements of fairness. Iris Marion Young (1990) offers a particularly incisive critique of the limitations of appeal to distributive fairness in thinking about the questions that a conception of justice should address. Her critique is suggestive of some of the reasons I hold that distributive fairness is to be only one of the reasonable social values.

¹⁰ See, for instance, Cohen and Arato (1994).

¹¹ One interesting question for Rawls is whether or not his "Difference Principle" is a matter of constitutional essentials. Rawls consistently insists, however, that it is not. Perhaps his final reiteration of this point is in *Justice as Fairness: A Restatement* (48).

¹² There is now a fairly vast literature on the topic of the legal status of same-sex unions, and I will offer here only a few of the more noted installments. On the topic of the history of this debate, George Chauncey insightfully situates the question in the context of other historical developments in his *Why Marriage: The History Shaping Today's Debate over Gay Equality* (2004). For early popular arguments for same-sex marriage, see Andrew Sullivan (1995 and 1997). The most significant philosopher to contribute to this debate is probably Richard D. Mohr (1994 and 2004), though Martha Nussbaum merits an honorable mention here as well (1999). On the legal front, a leading scholar is William N. Eskridge, Jr. (2002). Finally, a critic of the movement for same-sex marriage who writes from a self-identified "queer" point of view is Michael Warner (1999).

¹³ The evidence about this historical definition of the term is certainly largely in support of this view, but by no means unanimously so. The most famous evidence against this unanimity is John Boswell's *Same-Sex Unions in Premodern Europe* (1995). One scholar has also argued that same-sex unions might be consistent with the natural law theory of morality (cf. Weithman 1997).

¹⁴ To get a sense of what these benefits are, we might consider the legal situation in the State of Vermont where something similar to this measure has been enacted. In its Act establishing "civil unions" for same-sex couples which accorded all of the same benefits to same-sex couples as to opposite-sex married couples, the Vermont State Legislature

enumerated a list of 24 items in state statutes that represented “legal benefits, protections and responsibilities of spouses.” Among the items on this list are laws relating to wills, spousal status for certain legal actions, adoption laws, rights to insurance coverage, rights to oversee medical care, public assistance, immunity to compelled testimony in marital communication and more. Bill as passed by the House and Senate, H.847.

¹⁵ This is perhaps somewhat of a speculative claim, because it depends upon making some assumptions about what citizens might be able reasonably to expect others might also consider to be reasonable.

¹⁶ Most usually this option is discussed merely as a logical possibility within the requirements of equality or justice, as by Nancy Fraser (2000, 116). A more substantive and provocative argument would require a positive account of how society might otherwise still perform many of the social functions that the family currently does with the institution of marriage as its organizing center. Martha Albertson Fineman offers such an argument in her *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies* (1995). Fineman argues that placing marriage as the center piece of the family is actually counterproductive for the purposes of distributing resources and taking care of those who are dependent upon others.

Chapter 6: Conclusions

I began this dissertation with the aim of contributing to the assessment of the legacy of John Rawls's contributions to democratic theory. I asserted, however, that Rawls's conception of how it is possible for a democratic society marked by profound, but reasonable pluralism to regulate itself through the public use of reason so as to be stable for the right reason is in two respects deficient, lacking the critical apparatus necessary to fulfill his own theoretical objective. First, it sustains a psychological deficiency in that it does not pay sufficient attention to the motivational character of the kinds of norms or values that structure his conception of democratic stability. Second, it sustains a normative deficiency in that it does not pay sufficient attention to the complex nature of the pluralism of values that must be negotiated in order to account for this stability. After reconstructing Rawls's project as a matter of navigating problems of alienation and reconciliation (in Chapter 2) and invoking the assistance of Hegel in showing how we might analyze the success or failure of such a project (in Chapter 3), I demonstrated in Chapter 4 that Rawls's conception of public reason harbors an inherently alienating tendency for those who are motivated by the moral ideal of reciprocity that defines public reason at all and that this alienating tendency stands to give rise to problems of instability. That Rawls fails to recognize this possibility showed that my claim is justified that his conception is psychologically deficient. Then, in Chapter 5, I proposed as an amendment to the Rawlsian conception of public reason a set of substantive political values that might reasonably be embraced from within public reason so as to render the possibility of stability for the right reasons, which I understand to be a matter of reasonable reconciliation, to be plausible. I showed that the way in which

public reason specifies the substantive political values that will serve as the bases for the public justification of legitimate law has the potential to make the difference between stability for the right reasons and instability, yet Rawls seems indifferent to how public reason is to negotiate this problem of the pluralism among substantive political values. Accordingly, my claim that his conception is normatively deficient is also justified.

With these deficiencies now on the table, I close with some reflections on the way in which Rawls nonetheless has advanced questions that are fundamental to the nature of democracy. To frame these considerations, I would like to turn to one final form of reconciliation about which Rawls seems to have cared quite deeply. Toward the end of the “Introduction to the Paperback Edition” of *Political Liberalism*, after reviewing the limits to reconciliation through public reason, Rawls turns his focus to a question regarding the extent to which we may be reconciled to the modern social world in general. He reviews the way that his work in *A Theory of Justice* and *Political Liberalism* is united in a concern for certain abstract questions about the nature and possibility of a well-ordered democratic society, questions that do not immediately seem to be directly related to day-to-day politics. Nonetheless, he argues that these abstract questions are still fundamentally important. He frames the issue as follows:

The answer we give to the question of whether a just democratic society is possible and can be stable for the right reasons affects our background thoughts and *attitudes* about the world as a whole. And it affects these thoughts and *attitudes* before we come to actual politics, and limits or inspires how we take part in it. Debates about general philosophical questions cannot be the daily stuff of politics, but that does not make these questions without significance, since what we think their answers are will shape the underlying attitudes of the public culture and the conduct of politics. If we take for granted as common knowledge that a just and well-ordered democratic society is impossible, then the quality of those *attitudes* will reflect that knowledge (PL, lxi; my emphasis).

It is easy to see here that Rawls believes that much is at stake in the way we think about the nature of democratic politics. It seems from this, in fact, that Rawls's concern for the rendering intelligible the possibility of a democratic society that is stable for the right reasons is in large part concerned with trying to demonstrate that it is at least internally consistent and reasonable for citizens to commit themselves to the ongoing practice of democratic governance. Likewise, he might be taken to be arguing that the demand that we make of others that they justify their use of political power publicly is reasonable, at least in the sense of not naively presupposing as possible something that is not.¹

In the discussion that closes the "Introduction to the Paperback Edition," Rawls frames this question of reconciliation much more dramatically by considering what it might mean if the answers to the questions he raises came back in the negative. Here, however, he draws a more direct connection with historical events. Here is his formulation of what he seems to think is ultimately at stake:

The wars of this century with their extreme violence and increasing destructiveness, culminating in the manic evil of the Holocaust, raise in an acute way the question of whether political relations must be governed by power and coercion alone. If a reasonably just society that subordinates power to its aims is not possible and people are largely amoral, if not incurably cynical and self-centered, one might ask with Kant whether it is worthwhile for human beings to live on the earth? (PL, lxii).²

Rawls, of course, consistently defended the proposition that such a society is humanly possible. As further evidence that this thought was not incidental to Rawls's thinking, we might note also that four years after the publication of the Paperback Edition of *Political Liberalism*, he closes his book *The Law of Peoples* (1999) with a similar reference to this same comment by Kant (128). It might be surprising to find Rawls of all philosophers so concerned with evil and an apparently serious question about the worth of humanity. If

we follow this issue just a little bit further, however, we will be able to see some aspects of Rawls's thought that will help us to reflect upon his legacy.

In a brief, eulogistic set of "Remarks on John Rawls" delivered after Rawls's death, Samuel Freeman (2007a) sets the most general concerns of Rawls's philosophical career within the context of his biography. On Rawls's philosophical interests, Freeman notes, "For his entire career, he was primarily occupied by two related questions. First, what does justice require of us? Second, given what justice requires, are humans capable of it?" (323). More biographically, Freeman also reports that Rawls's concern for the problem of evil also dates back to much earlier points in his life: he had once intended to be an Episcopal priest, and he served in the Pacific in World War II, even seeing the devastation of Hiroshima up close. Regarding the view of humanity articulated at the end of the "Introduction to the Paperback Edition," Freeman remarks, "In all his works, Rawls rejects this desolate view of humankind, which is, in effect, the orthodox Christian doctrine of original sin" (323). But, of course, Rawls couches this rejection in the framework of political and democratic theory that we have now examined in detail.

In her book *Evil in Modern Thought* (2002), Susan Neiman offers a more systematic, though also brief treatment of the themes related to Rawls's engagement of the problem of evil, a treatment which is also telling for my purposes. Neiman first expresses a measure of surprise at Rawls's late intimations of interest in the problem of evil. Nevertheless, she finds upon a more searching view that his work is "written in response to two metaphysical questions that orbit the problem of evil: the problem of contingency and the problem of reconciliation" (311). With respect to Rawls's challenge to the place of contingency in our lives, Neiman cites many features of justice as fairness

that date back to its articulation in *A Theory of Justice*, which those familiar with that book might easily recognize. These include the measure taken via the veil of ignorance to remove the morally arbitrary contingencies from the process for the selection of principles of justice, discussion of minimizing the effects on our lives of contingent facts of the lottery of nature, and thinking about the world from a morally constructed point of view rather than merely as it presents itself to us. The theme of reconciliation emerges more extensively in Rawls's later work, as the bulk of this dissertation should help to exhibit. More broadly, Neiman's characterization of how Rawls's work fits with the struggle against the arbitrariness and contingency of the natural world is also instructive for understanding something of the significance that Rawls assigns to the work of citizens engaged together to justify to one another their most important laws. She observes, "Redesigning a piece of the world is a project undertaken in the hope of affirming the world as a whole" (312). "Nature may be contingent," she says, but "you need not follow its lead" (312).

Thus, the Rawlsian project to attempt to show that a democratic society might be stable for the right reasons is also an attempt to show that we need not resign ourselves to life under a regime that acts as arbitrarily as nature itself or upon the merely arbitrarily given desires of the majority of citizens. As I have noted from the outset, Rawls works from within an apologetic framework of philosophy that defends the possibility of something to which one is already committed. Specifically, Rawls defends the possibility that humans can shape their world in a way that is worthy of their moral, rather than empirically given natures. He does not try to prove to the skeptic that humans must do

so. Rather, for those who might be inclined to hope that humans can, Rawls tries to show that it is reasonable to act on that aspiration.

As a reader might surmise from my effort to provide an internal critique of Rawls's conception of public reason that suggests that its deficiencies might not be fatal to his project, I am broadly sympathetic to Rawls's ambitions. Moreover, I am also sympathetic to his liberalism. However, the upshot of my analysis is that the problem is still more complex than Rawls's writings might lead us to believe. Indeed, even my amendment to the Rawlsian conception to suggest a range of substantive political values that might render public reason more reconciliatory does not amount to a complete revised conception of public reason. For, there are obvious questions that it also leaves unaddressed. Among these are certainly many procedural questions concerning how such values are to be introduced into public deliberations and the like. But perhaps of greater interest for assessing the legacy arising from Rawls's contributions to democratic theory is to note that coming to terms with Rawls's efforts will cause us to raise still more questions within political philosophy.

At the end of his book *Rawls* (2007), Paul Graham speculates that it will not be for his work on distributive justice that Rawls will be remembered a century from now, but for his work on problems of motivation. I believe Graham is probably right. But, I believe that the additional complexities that underlie the deficiencies I have now identified in Rawls's conception of public reason point us in the direction of certain kinds of questions that are not sufficiently theorized today within political philosophy. First among the insights to be drawn from my analysis is that democratic stability is perhaps more fragile than Rawls suggests and more vulnerable to historically given contingencies.

We may attribute this indeed to the significant role Rawls himself saw for the background culture of society plays in educating citizens to the ideals that will ultimately motivate their political action. Building from this, moreover, it would appear that political philosophy must also come to grips with more complex ways in which the frustrations and satisfaction of so many competing demands may be negotiated democratically and in an ongoing fashion. Since it is the moral ideal of reciprocity, which defines the idea of public reason at all for Rawls, that makes the various interests and motivations that citizens bring to political participation so precarious to negotiate, and since the demands of this moral ideal apply most dramatically to the actors within the central forums of public reason, this suggests that perhaps we are now overdue for a democratic reinterpretation of the concept of statesmanship. What is more, since the terrain that such a statesman must negotiate is the complex and shifting motivations of citizens, such statesmanship will probably require something more like the ethical disposition that I conjectured Hegel attempted to instill in the future bureaucrats of the Prussian state, or perhaps even like the art of ancient rhetoricians, rather than the technical procedural skills of late twentieth-century lawyers.³

The frequent claims that Rawls's *A Theory of Justice* revived normative political philosophy in the English-speaking world, together with the vast literature devoted in various ways to assessing that book's success, suggest that Rawls was the focus of attention for a vast portion of the political philosophy written in the generation or so after 1971. If Rawls's effort to understand how it is possible for a democratic society marked by profound, but reasonable pluralism to be stable for the right reasons sparks any

similarly vast attention to questions of democratic motivation, the legacy stemming from his contributions to democratic theory will be rich indeed.

Notes

¹ Thomas Hill (1994) suggests the interesting interpretation that Rawls's move to his political liberalism was an attempt to demonstrate that his conception of justice as fairness might pass something like a democratic reinterpretation of Kant's categorical imperative.

² Rawls supplies in a note the reference to Kant: "'If justice perishes, then it is no longer worthwhile for men to live upon the earth' (*Rechtslehre*, in remark E following §49, Ak: VI:332)" (PL, lxii n40).

³ Danielle S. Allen observes in her *The World of Prometheus: The Politics of Punishing in Democratic Athens* (2000) that one striking difference between ancient Greek democracy and Roman and modern settings is that "The handbooks [of rhetoric] served a purpose in the Athenian context equivalent to the purpose of the legal handbooks used in the Roman and modern context: they taught citizens who had to engage in situations of punishment how to construct arguments about desert so as to obtain the sought-after outcome" (150f). I do not mean with this quotation to suggest that public reasoning is merely an instrumentally valued activity, of course. Instead, I mean to point out that the ancient Athenians seemed to confront quite directly a much broader range of political motivations. Perhaps the only individuals who do this today on an ongoing basis are the so-called "spin doctors." That more people who are interested in the principled practice of politics do not have these sensitivities today is perhaps a part of the impoverishment of our political system.

Appendix 1

Central Human Functional Capabilities

Reproduced from Martha Nussbaum. 2000. *Women and Human Development: The Capabilities Approach*. pp. 78-80.

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