Ratio Juris
An International Journal of Jurisprudence and Philosophy of Law

Ratio Juris. Vol. 27 No. 1 March 2014 (21–46)

# Reason of State and Public Reason

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*Abstract.* "Reason of state" is a concept that is rarely used in contemporary legal and political philosophy, compared to everyday parlance; "public reason," in contrast, is ubiquitous, especially in liberal philosophy, as a legitimacy-conferring device. In this article it is argued that the unpopularity of the notion of "reason of state" is partly due to its notorious ambiguity. Three different usages of the notion can be identified: a "thin" usage (where "reason of state" is equivalent to the common good); an "ironical" usage (where it is used pejoratively to denounce it as a pretext for application of illegitimate or illegal means); and a "pre-emptive" usage (where "reason of state" functions as a legitimate second-order exclusionary reason used to override otherwise mandatory first-order rules of action). It is argued that only the "thin" usage is helpful in a by-and-large liberal-democratic context. The article then discusses the main dilemmas related to the concept of public reason, especially in its most influential, Rawlsian interpretation, and defends the concept against common critiques. Finally, the two concepts of "reason of state" and public reason are compared, and it is argued that a "thin" usage of "reason of state" is functionally equivalent to public reason, and that both resonate with the theory of "input democracy" (focusing, as it does, on the legitimacy of reasons—or motivations—for applying coercive rules to individuals). The article also identifies a problematic feature of "reason of state": its emphasis on the state as a privileged interpreter of such reasons and/or as identifying the pool of actors within which the "constituency" of public reason is ascertained. There are good reasons to resist both of these consequences: the former because of its potentially authoritarian consequences, the latter because of reasons provided by cosmopolitan political conceptions.

It is not often these days that one hears about "the reason of state" in academic literature or in common parlance: The very concept is decidedly *démodé*. In contrast perhaps to French, Italian, and German where "*la raison d'état*," "*ragione di stato*," or "*Staatsräson*" are natural and even ubiquitous concepts, in Anglophone countries this notion is often used with pejorative or ironical connotations. A quick search of the academic literature suggests that the concept occurs mainly in the history of political ideas, when authors discuss the theories of Machiavelli, Hobbes, or—closer to today—Carl Schmitt. As one can guess, in these contexts the term is not used in a positive sense, to put it mildly. The virtual absence of "the reason of state" (RS) from today's normative political or legal philosophy is significant, and the fact that the notion is so ambiguous and potentially burdened with meanings that are antithetical to currently dominant liberal-democratic ideas must figure among the main reasons for this absence.

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In contrast, today's political theory is replete with references to "public reason" (PR). By no means a modern invention, PR has been given special prominence in contemporary liberal theory, particularly in its influential interpretation by John Rawls. PR is seen as a formula for the legitimate motives of political action, and more specifically, for justifying the laws and policies which may be coercively applied to individuals, including those who disagree with those laws and policies. PR is a legitimacy-conferring device, distinguishing the proper bases for state coercion from those that are illegitimate, such as private self-interest, sectarian ideological viewpoints, prejudice, or hostility to particular persons or groups. In this way, PR may be seen presumptively as being functionally equivalent at least to *some* uses of the concept of the reason of state (without ironic or pejorative connotations). The reason of state, when used approvingly, can be seen, among other things, as a legitimacy-conferring concept. So what is the difference?

This article will seek to answer this question. In the first part, I will offer a conceptual framework for RS, and try to distil those meanings that are not easily discreditable (though clearly at this stage this must be an open question). In the second part, I will focus on PR, and discuss some ambiguities of the notion, again trying to distil the meaning which lends itself to its operational use in a liberal-democratic system. In the third part, I will compare the two concepts with each other, and suggest why the use of RS (even in a non-ironical sense) should not be used as a normative tool.

## 1. The Reason of State

Much of the problem with the concept of RS is that, at least in contemporary parlance, it seems to be used in at least three different senses: (1) the use of RS as equivalent to the common good (which I will call a "thin" sense of RS); (2) the use of RS as a pretext or excuse for using illegal, immoral, or otherwise improper means (which I will call an ironical sense of RS); and (3) the use of RS to denote those tragic choices when we may legitimately override our natural moral impulses in order to pursue the public interest (which I will call a pre-emptive sense of RS). As will become clear from the discussion that follows, the boundaries between the three senses are far from clear and there are significant overlaps, but for the sake of simplicity, I will initially present the three senses as if they were distinct.

### *1.1. Three Usages of RS*

The first (Rousseauian, for reasons which will become evident below) notion of RS is an equivalent of the common good, public good, or public interest.[1] I am deliberately listing in one breath these three concepts which in the literature are not necessarily co-equivalent to emphasize the "thin" character of this concept. The state, as figuring in this notion of "the reason of *state*," is merely a representative spokesman for the common good, and not much necessarily hinges (at first blush, at least) on the state-ness of this spokesman. It is simply that the "constituency" of the common good in the world as we know is usually taken to be correlated with

[1] For an interpretation of Rousseau as identifying the "reason of state" with the general will (which is a Rousseauian sense of the common good), see Foisneau 2007.

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the boundaries of nation-state, and so the state figures in this concept as a level at which the common good is ascertained. The state is just a representative body entrusted with articulating, rightly or wrongly, common interests.

What is crucial for this notion of RS is that it marks a fundamental contrast with a *private* interest or private good. The distinction between common good and private interest is fundamental to political philosophy, but also intrinsic to intuitive moral impulses. We are capable, most of the time, of distinguishing between what is in our interest and what is good for the community as a whole; even if we often have problems with mustering sufficiently strong will to act towards a public interest, the lines between private and public interest on a given issue are often easy to draw. For instance, consider an egalitarian who is in a high income bracket: Her notion of the common good would incline her to vote differently on tax rates than if the vote were dictated exclusively by her private interest; whatever she actually does, a recognition of this discrepancy is manifestly persuasive.

Perhaps the most eloquent distinction between public and private interest in the service of a democratic theory was articulated by Jean-Jacques Rousseau (1948, 274): "There is often considerable difference between the will of all and the general will. The latter is concerned only with the common interest, the former with interests which are partial, being itself but the sum of individual wills." For the purpose of discussing RS in the sense of public interest, we do not need to adopt other implications of Rousseau's theory of democracy, and in particular a dangerous idea that any given majority is necessarily the best exponent of the public good, with the fact of being outvoted indicating that members of the minority are simply mistaken as to the true substance of the public good on a given issue (Rousseau 1948, Bk. IV, Ch. II).

This idea, based in Rousseau upon the construct of the general will, and the doctrine that each particular vote on day-to-day political issues is a sort of replication of the consensual general will, which prefigures the formation of specific general wills, and a consequent fanciful idea that the majority must necessarily be right in discerning the true general will (or, in our language, the common good), may be safely separated from the idea of the possibility of incongruence between private and public interest, and accommodated within a liberal-democratic theory.[2] We may (as any reasonable person should) accept the general fact of such incongruence without committing ourselves to any political mechanisms of ascertaining public interest, and giving effect to its primacy over private interests in political decision-making. If we accept the possibility, indeed the pervasiveness of such incongruence, we may accept that, as citizens, we should be expressing our views about the best way of promoting (what we take to be) the common good, rather than simply articulating our self-interest. As Jeremy Waldron (1990, 58) has stated: "When voters turn their minds to the general good [. . .] they must aspire to make political decisions that are just. This means, among other things, that they aspire to make political decisions that strike a proper balance between the interests of the various members of society." While there may be legitimate fundamental

[2] Interestingly, John Rawls (1993, 219–20) explicitly declares the affinity of his theory of public reason with Rousseau's idea that voting concerns one's ideas about the common good. Rawls's affinity to Rousseau's position is further amplified by his surprising (and, in my view, unwarranted) statement that there is "but one public reason" (ibid., 220).

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disagreement among citizens about the visions and the implementation of the common good and of the proper balance between different interests (in ways that Rousseau would not allow), this is a disagreement that is fundamentally *different* from the clash of individual interests.

Further, acceptance of the distinction between public interest and private self-interest in our individual motivations does not call for any unrealistically demanding altruistic approaches on the part of the citizen-voter. Rather, it corresponds to what Bruce Ackerman (1991, 232–3) calls "private citizenship"—a position he distinguishes from a "perfect privatist" for whom the question "What is good for the country?" boils down to "What is good for me?" Readers of *We The People: Foundations*, will remember that, apart from "private citizen" and a "perfect privatist," there is a third character in Ackerman's catalogue, a "public citizen," modelled on Ralph Nader, who "combines an emphatic asceticism in personal life with a more-than-full-time commitment to the public good as he understands it" (ibid., 232). In contrast, a "private citizen" (with an emphasis on *citizen*) is completely aware that "an ongoing commitment to informed citizenship may unduly deflect our energies from the struggles of everyday life" (ibid., 234). Still, and regardless of what actual course of action a person will undertake, she must at least acknowledge that "[a] sober consideration of the national interest may indicate that personal and local interests must be sacrificed to the general good" (ibid.).

The distinction is, of course, easy to assert in abstract but in practice it may well be blurred: We all know that we have remarkable capacities of representing (not just to ourselves but also to others) our self-interest as the public interest. The distinction is relatively easy to make when the interests in question are of a material or financial character: It is relatively easy to draw in one's mind a distinction between, say, the tax system that is best for the public interest (as I understand it, in the light of my conception of social justice and economic theory) and the tax system that would be the best for me, considering my individual financial situation. But when it comes to non-material interests and ideals, the distinction is less easy to draw: If I believe that the death penalty is wrong (or right), or that abortion is morally wrong (or that it should be left to the woman to decide), it is difficult to see how the pursuit of this ideal can be represented as self-interest.

Talking about "the pursuit of spiritual and associational ideals," Ackerman postulates, "as a private citizen, I must recognize that these great goods may be in conflict with the national interest: Perhaps it is in the public interest for [. . .] my Church to be denied tax revenues, or my income taxes to provide social security even for those Americans who look upon the pope as an anti-Christ" (ibid., 298). I am not sure that such a distinction between a "sectarian" non-material ideal and the national interest can be easily made for all non-material ideals (the death penalty and abortion spring to mind as examples where I find it difficult to draw the line), though it can be made at least with respect to *some* non-material ideals, in particular when religious matters are at stake. It sounds plausible that, as a member of a particular church, I can draw the line between my religious interest (which may consist in having this particular church established as a state church, my religion officially privileged in public life, state ceremonies, and so on) and, on the other hand, a public interest which calls for equal recognition of all other churches and religions which would consequently call for a separation of state and *any* religion and non-recognition of *any* religious faith as a state orthodoxy. This

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calls for an aspiration of impartiality, perhaps modelled on Rawls's "veil of ignorance" as a theoretical exercise aimed at reducing the impact of our self-interest on our ideals of justice, or Ackerman's "neutral dialogue," or a traditional "impartial observer" perspective. In any event, we must presuppose that such a distinction is possible: Otherwise, the "common good" as a category separate from individual self-interest is (from a perspective of an individual) untenable. I will accept, *arguendo*, that it *is* tenable, at least with respect to a large number of material and non-material interests and ideals.[3] (I will have more to say about RS as a common good below, in Part 1.2.)

The second concept of RS is a pejorative or ironical notion because what I have in mind here are only those usages of the concept that imply that it is a pretext, or an illegitimate way of defending an immoral, or illegal, or otherwise illegitimate action on the basis that it *allegedly* serves the interest of the state understood as the privileged representation of the community.[4] Clearly, *what* defence of a state action is illegitimate, and therefore *which* usage of the concept of RS is pejorative or ironical, is in the eyes of beholder. This is not devastating to my distinction. The only fact that matters is that we *can* recognize such usages, and indeed (as I suggested at the outset) it seems to me that when RS is mentioned in English-language literature, it is more often than not used with condemnatory undertones.

Consider, as an example, a lively discussion about the uses of torture in order to elicit vital information, which may be useful in the "War on Terror" (see, e.g., Waldron 2005). In this context, the concept of RS is usually referred to in a cynical manner: The English language has developed in a way that makes RS almost synonymous with state force thinly veiled by an appeal to the national interest. Presenting a liberal approach to the "War on Terror," Dana Villa (2008, 110, emphasis added) observes: "Liberalism developed precisely in opposition to this double threat: the deadly danger of religiously inspired violence and intolerance (on the one hand) and *cynical reason of state* (on the other)." It is unlikely, these days, that the words "reason of state" would be used by those who *defend* the use of such despicable methods; rather there is a focus on national security or safety, national self-defence, and so on. The term "reason of state" is more likely to be used by those who disapprove of such measures, and who will attribute the "reason of state" to the proponents of such uses of torture. There is something unfashionably cold and authoritarian in appealing to RS as a way of justifying such horrendous violations of bodily integrity and human dignity.

Finally, the third concept is related to tragic choices: when in order to achieve a public interest (or, more usually, prevent public harm) we need to do something

[3] For an argument that it is an eminently realistic picture of the voters' motivations, see Waldron (1990, 59 and 73–4 n. 28).

[4] See, for example. Peters 2008 (emphasis added): "Open government opposed *reason of state*, state secrecy, and national security, often popularized as 'big brother' and 'faceless bureaucracy', with a system of public accountability based on principles of freedom of information tied to Article 19 of the Declaration of Human Rights." Another example: Writing about the demonic depictions of the enemy, Italian scholar Matteo Tondini (2007) observes: "When taken to the extreme, sociological templates are used to portray potential adversaries of the political community. This happens when the reason of state (*raison d'état*) clashes with the rule of law (*raison juridique*)."

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that otherwise would be considered immoral or otherwise illegitimate.[5] I will call this usage a "pre-emptive" (or "exclusionary") sense of RS, because RS in this case acts as a device to pre-empt an otherwise valid moral norm. In the language of Joseph Raz (1975), RS works as a typical "exclusionary reason," providing second-order justifications to preclude doing what otherwise an actor would have good first-order reasons to do. If it were not for RS, a particular course of action (or omission) would be morally justified, but this justification is overridden by the fact that RS is at stake, and that following this otherwise valid moral norm would conflict with RS in this particular instance. The notion of "pre-emption" is also borrowed from Raz; in a different context, Raz (1994, 214) describes the pre-emptive nature of an authoritative directive as providing a reason for action "which is not to be added to all other relevant reasons when assessing what to do, but [which] should replace some of them." He further explains that those "other relevant reasons" appear at the level of justification of authoritative directives—as, *mutatis mutandis*, they also exist at the level of justification for RS in our *problématique*. As with Raz's authoritative directives, once they are formulated, they replace rather than add to those other moral reasons, so in the case of a pre-emptive notion of RS, once it is articulated, it supersedes any first-order considerations for political action. Used in this context, RS normally applies to the security (internal and external) and survival of the state, based on the insight that, "if the political order is assumed to be an essential condition of a free moral existence, the survival of this order becomes crucial" (Friedrich 1957, 6).

It may help cast light on this sense of RS if we contrast it with the first two senses: It has partial analogy and partial disanalogy with the "thin" and "ironical" senses of RS. It is analogical to the "thin" sense in that it is an approving sense of RS: If a RS is properly ascertained, then it is right to pursue it, even clashing with a legitimate private interest (as in the thin sense) or with an otherwise valid moral norm (as in the pre-emptive sense). The difference is in the tragic dimension: The pre-emptive sense indicates a violation of a norm which otherwise is moral, and which would be peremptory, save for the clash with RS. But this tragic dimension is absent from the "thin" sense: There is nothing morally peremptory about something being in my private interest. I do not even have a *prima facie* moral obligation (much less, an all-things-considered moral duty) to pursue my private self-interest. It may be legitimate for me to pursue it (when it does not clash with any moral obligation), but it is not my duty. So RS in the thin sense does not operate as to "pre-empt" the validity of an otherwise moral rule—the job it does, by definition, in the pre-emptive usage of RS.

As far as the confrontation between a pre-emptive and an ironical sense is concerned, the analogy is that in both cases we have a clash between *prima facie* moral duties, and in both cases RS prevails over the competing moral duties. The contrast is in the moral vector of this clash: In the ironical sense, we use the RS to denote an illegitimate privileging of a norm allegedly serving RS over an otherwise

[5] Carl Friedrich (1957, 127) applied the notion of "tragedy" to the "profound shock which the human being suffers when he discovers that conflicts of values do exist, and do require a decision," and continued: "The fundamental problem of politics is how to organize the community for the purpose of making such final decisions. The idea of the reason of state represents one possible answer."

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valid moral norm (such as an absolute prohibition of torture). We use RS to condemn it: We believe that the pre-emption is unjustified. However, in the pre-emptive usage, our valuation is opposite: We may deplore and greatly regret the overriding of a valid moral norm but, all things considered, we believe that it is justified under the circumstances. Remember that at a deeper level of *justification*, those other valid norms (first-order norms) have already been amalgamated into the second-order norm of RS (say, when considering the use of torture to extract information from suspected terrorists, we had already—for the sake of argument—absorbed the values of individual dignity, prohibition of infliction of bodily harm, and so on, alongside the importance of national security, into the second-order norms of RS). But at the level of application, the rule of RS pre-empts the first-order moral rules: The fact that they nevertheless maintain their high moral validity in our eyes colours the situation as truly tragic.

This last comparison, between the pre-emptive and ironical uses of RS, shows why none of these concepts is really useful as a *working* concept of RS. I understand the working concept of RS to be something that people of diverse viewpoints and ideologies may agree on. We should aspire to a working concept of RS that is not entirely dependent upon which side of the substantive disagreement you are on. If so, the only workable conception seems to be offered by what I have dubbed here as the "thin" use of RS: RS as an equivalent of the common good (common interest, public interest), as ascertained and articulated by the state. Hence, from now on, I will be working with this first usage of RS.

### *1.2. Common Good, Again*

But what *is* the common good, for the purposes of a discussion on RS? The concept is notoriously difficult to define, and I will not attempt a comprehensive discussion here: My purposes are driven solely by the application of a generic notion of the "common good" to serve as a possible standard of RS. It is much easier to say what the common good is *not* rather than what it is. It is *not* a set of common first-order actual individual interests of all individuals living in a given polity because even if such a set were to be ascertainable, it would be extremely narrow, much narrower than the intuitively persuasive notion of the "common good" would demand. In the words of Philip Pettit (2004, 153), "it is extremely unlikely that among the different sets of practices and policies available to a state, there is one that will be in the avowable interest of each."

The words "*avowable* interests of each" are central here, and we must be careful that "avowable" means "avowed" only thinly controlled by generally accepted criteria of rationality and knowledge. The thicker the criteria of rationality become, the less "avowable" will resemble "the actually avowed," and the more paternalistic our criteria of the common good will become. But such common good will be unrecognizable to individuals as corresponding to their *actual* first-order interests: Rather, they will be reflective of the views of an interpreter about what people *should* want were they truly rational (under the interpreter's criteria). This is a strong, and an objectionable, sort of paternalism which is broader than the one (admittedly, less reprehensible) aimed at offsetting the obvious defects in preference-formation. This is the paternalism about which Isaiah Berlin (1969, 157) wrote, "it is an insult to my conception of myself as a human being, determined to

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make my own life in accordance with my own (not necessarily rational or benevolent) purposes, and, above all, entitled to be recognized as such by others." For our further discussion, I will assume (without any further argument) that a strong paternalism is a discredited theory for determining the limits of the state power over an individual citizen, and I will conclude that an idea of the common good as a set of common first-order individual interests is either disingenuous (if those interests are understood in a paternalistic way) or impossible to ascertain (if those interest are understood as the interests actually espoused, corrected only by very thin standards of rationality).

There is a temptation, at this point, to espouse the idea of the common good as representing the set of individual first-order preferences, though eliminating those which would represent the attempts at being a free rider in the achievement of "public goods" in the technical sense of the word, with the requirements of coordinated production and indivisibility of consumption. Our mention of "paternalism" suggests that there may be a milder form of paternalism which in fact is probably not paternalism at all. It consists in the imposition of certain forms of behaviour for a person's own good (and in this, superficial sense, it may be initially seen as paternalistic) but in accordance with the person's actual preferences (hence not being paternalistic, if paternalism in a deeper moral sense, as depicted in the quote from Isaiah Berlin, consists in the displacement of a person's actual preferences for her own good). This happens in the familiar situations of the Prisoner's Dilemma, and in such cases the coercive imposition does not carry the moral defects of paternalism. Instead, as Gerald Dworkin (1983, 23) suggested long ago, "[i]n such cases compulsion is not used to achieve some benefit that is not recognized to be a benefit by those concerned, but rather because it is the only feasible means of achieving some benefit which *is* recognized as such by all concerned."

The identification of such public goods may initially be seen attractive to our discussion of RS in a thin sense: It would both identify the actual individual preferences and, while arguing for an application of state coercion in the name of these interests, it would avoid the charge of objectionable paternalism because, as a solution to the Prisoner's Dilemma, it would not be the case of displacing the actual preferences of individuals. Rather, their motivations for action do not match their avowed preferences, and the distance between motivations and preferences needs to be bridged by an imposition of a rule with which everyone has to conform (and, crucially, a rule about which everyone *knows* that all others have to conform with, too). But this attempt to identify the "common good" (as a possible ground for RS) with "public goods" is a non-starter because it encounters the same problem as first-order private avowed interests, namely, the pluralism of the views about what constitutes public good in the first place, and an exceedingly narrow set of consensually agreed-upon public goods. The assumption behind a non-paternalistic imposition of a rule as a solution to the Prisoner's Dilemma is that all the "coercees" have the same ranking of preferences, and that the achievement of a given public good figures at the top of their rankings. But in society, such an assumption is deeply problematic and unrealistic. As Russell Hardin (1990, 194) has observed with regard to the collective-action argument, "few instances of collective provision are likely to be uniquely preferred, so that we may wonder about the justice of coercing those whose preferences are overridden [. . .] Government may

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indeed overcome a collective-action problem, but it may overcome the wrong one for many of us. Is it now justified in its coercion of those of us who lost?"

This last question is not rhetorical but real, and there may be good reasons to give affirmative answers. The government may be justified in its coercion, provided that, for the sake of argument, it is a decision reached democratically, it was preceded by serious deliberation in which all stakeholders could participate equally (or proportionately to their numbers), no fundamental or constitutional rights, and in particular the rights of minorities, were violated by the coercive action, and so on. What the government (or its supporters) *cannot* say is that the coercion follows the logic of a uniform solution to a collective-action problem and thus meets the actual avowed preferences of all those to whom the coercion is addressed.

But this line of argument is not entirely a dead end for our purposes. Hardin's question implies that the quest for the common good may be directed towards more institutional and procedural than substantive matters. It may well be that the common good, in the situation of an inevitable plurality and mutual incommensurability of private interests, consists in having a fair, efficient, reasonable method of aggregating these interests into a coherent whole, of adjudicating between conflicting ideals, of finding compromises that are seen to be honest and fair. That ideal of the common good is primarily an institutional one: it is the common good of having fair, impartial, honest institutions and procedures in the context of a stable pluralism of interests and disagreement as to ideals.

This may look like a tempting solution to our quest of the common good which may serve as a basis for RS. But it is deeply counter-intuitive. Consider that you are making a plea for a particular action as warranted by the reason of state. Normally, the ideas that come to mind are actions which are overcoming the reasons derived from your private interests: You believe that there is a broader, non-private good at stake. (For reasons mentioned above, it need not be a pre-emption of an otherwise valid moral rule, but at least it is an action overriding some legitimate private interests). This non-private good is not easily articulated in purely institutional or procedural terms: It is a good substantive (and substantial) enough to prevail over a set of legitimate private interests. A procedural-institutional ideal is not weighty enough, not adequate enough, to withstand the competition from *substantive* private interests. It does not meet them on a common ground, so to speak, so the metaphor of RS prevailing over private interests is inadequate.

We have to search elsewhere. As a general compass, we should reclaim the most fundamental idea behind the "thin" notion of RS, namely, that it is a common good in contrast to private interests. We must think a little harder about what is "common" in the common good which is substantively different from any attempt at an aggregate or amalgamation of private interests, and yet which is irreducible to purely procedural or institutional mechanisms. As my guide I will take Philip Pettit. In his remarkable paper about "The Common Good," Pettit (2004, 159–61) dismisses various ways of "defining people's interests as citizens" (such as counting as the public interest whatever members of the community collectively say is in the public interest, or what they would say under ideal circumstances of rational decision-making). He says that the key "lies in a fact about how the members may be expected to deliberate as they try to identify practices to implement and policies to pursue" (2004, 162). What renders something a "common

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interest" is the fact that "according to publicly admissible criteria of argument, it is best supported among feasible alternatives by publicly admissible considerations," that is, "it is best supported by the reasons that are publicly admissible within the group" (2004, 163).

As one can see, this notion of the "common good" is demanding: It calls for, first, an identification of "publicly admissible criteria of argument" and, second, an assessment that a given practice is *best* supported, of all the stock of practices based on publicly admissible criteria of argument (which may be numerous) by the arguments which pass the muster of public admissibility. Taken together, they are a very tall order. The first criterion, which we may call here the criterion of "reasonableness," demands that a policy or practice (which is a candidate for the common good) be based on the sort of arguments which are acceptable under the criteria of pubic arguments in the given polity. The second, which may be called that of optimality, demands that the policy or practice meets those arguments (which, in turn, meet the criteria... and so on) to a higher extent than any other policy which would also meet those arguments).

For my part, I consider adding the criterion of optimality to the criterion of reasonableness *too* demanding. To use a parallel from constitutional adjudication (and in particular, from the United States doctrine developed over the decades by the Supreme Court to scrutinize putative legislative infringements on constitutional rights), it is like a move from the "rational-basis" scrutiny to a "strict" scrutiny of legislative measures. The former is satisfied when there is a reasonable relationship between a legislative measure and a legislative constitutional purpose that a lawmaker is authorized to pursue: The latter is satisfied only when there is no other way of achieving a compelling constitutional purpose. The latter is of course difficult to demonstrate, with the onus of argument placed on the defenders of a given practice or law, and it expresses an institutional distrust in a given legislative measure as meeting constitutional requirements.[6]

For the purposes of ascertaining the "common good," no such distrust is warranted, and there may be a range of measures which meet the criteria of the common good. This is all the more so since the "common good" is a criterion to be assessed in a generalized public discourse rather than in a sterile judicial reasoning, and the chances of agreeing upon what meets the optimality criterion are low. Whether particular measures meet the publicly admissible criteria of argument to a higher degree than any other measure will hinge upon deeply contested moral and political values. It seems that we may plausibly talk about something being a common good without it meeting the criterion of optimality. This does not strike me as counter-intuitive: On the contrary, when we describe something as being a common good, we do not imply that it is "the best" but that it belongs to a range of good or reasonable solutions.

[6] To anticipate a little, consider Rawls's approach to public reasons (1999, 137, emphasis added; henceforth: "Public Reason"), in the context of his conception of political legitimacy: "Our exercise of political power is proper only when we sincerely believe that the reasons we would offer for our political actions [...] are *sufficient*." If there is a functional equivalence between RS and PR, as I will claim there is, then a weak condition of sufficiency rather than of optimality, as applied to PR, should also convince us about accepting a weak requirement of reasonableness, rather than a strong condition of optimality, as applied to RS *qua* a common good.

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In sum, and borrowing from Pettit again (2004, 164), something constitutes a common good, or "answers to the public interest of the members of the group" when "it is supported [. . .] by the reasons publicly admissible amongst the members." For Pettit (2004, 163), the examples of procedures for defining the public interest from among the "equally supported proposal" include such devices (which are themselves endorsed by "publicly admitted reasons"), as "a lottery, or the judgment of an impartial panel, or the judgment of a committee or court that is required to follow certain guidelines, or a majority vote among members or representatives" (2004, 164). So much for the "common good." What bridges the gap between the "common good" and the "reason of state" in a thin sense of the term is, simply and unsurprisingly, that the state has the final say in making such judgments, or (when such judgments are made by non-state interpreters of RS) the state is a constituency within which the common good is ascertained.

The consequences of this step will be discussed in the last part of this article. Now is the time to consider the contiguous notion: that of "public reason."

## 2. Public Reason

### *2.1. Public Reason and Political Legitimacy*

Public Reason (PR) is not a modern invention (see Vatter 2008) but in this article I will use only a contemporary reinterpretation of the concept, and only the most influential version of it, presented in John Rawls's idea of political liberalism. In Rawls's theory, PR is intimately tied up with the liberal principle of legitimacy which postulates that only those laws that are based upon arguments and reasons that no members of the society have a rational reason to object to can boast political legitimacy, and as such can be applied coercively even to those who actually disagree with them. In Rawls's (1993, 137) words: "Our exercise of political power is fully proper only when it is exercised in accordance with the constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in the light of principles and ideals acceptable to their common human reason." This is based on a simple *negative* point: A law *cannot* claim any legitimacy towards me if it is based upon arguments and reasons that I have no reason to accept. The denial of legitimacy to such a law is based on the view that there must be *some* connection between the law and myself *qua* an addressee of the law—a connection that establishes some rational reasons to identify the good for myself in the law. The connection must be between the substance of the law and the preferences, desires, convictions, or interests of each individual subjected to it. If, under rational examination, no such connection can be detected, then I have no reason to accept the law as legitimate. If, however, I disagree with the wisdom of a given law but would agree that it is based upon the sort of arguments that I can recognize as valid, then a *necessary* condition for its legitimacy has been met. This point has been expressed well by Jeremy Waldron (1993, 44): "If there is some individual to whom a justification cannot be given, then so far as *he* is concerned, the social order had better be replaced by other arrangements, for the status quo has made out no claim to *his* allegiance." As is clear, the category of PR serves to limit the range of rationales that can be invoked to justify (hence, legitimize) the proposed uses of coercion towards individuals. This requirement applies not only to politicians and legislators but also to all citizens because "ideally citizens are to

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think of themselves *as if* they were legislators and ask themselves what statutes, supported by what reasons satisfying the criterion of reciprocity, they would think it most reasonable to enact" (Rawls 1999, 135, footnote omitted). (I will have more to say about this point when discussing the "continuity thesis" in Part 3).

Rawls further elaborates upon this conception in his discussion of the concept of "public reason," that is, publicly recognizable standards of right and wrong. He also suggests (1993, 254) that, as a test, we might inquire as to whether a particular argument for a new law belongs to the category of "public reason" by considering whether it could be used in a written opinion of a supreme court. Another way of expressing the same thought is the "endorseability by all" thesis, which can be found in Jürgen Habermas's suggestion about how individual interests may appear in public deliberations: "In practical discourses, only those interests 'count' for the outcome that are presented as inter-subjectively recognized values and hence are *candidates* for inclusion in the semantic content of valid norms." Habermas (1998, 81, both emphases in original) concludes: "Only *generalizable* value-orientations, which all participants (and all those affected) can accept with good reasons as appropriate for regulating the subject matter at hand [. . .] pass this threshold." Or, even more generally, Charles Larmore (2008, 146) states the fundamental postulate of political liberalism as saying that "basic political principles should be suitably acceptable to those whom they are to bind." The implication of all this is clear: Some arguments, even if actually present in the minds of legislators or policy-makers, are not qualified to figure in the public defence of a law; the law must be defensible in terms that belong to a forum of principle rather than an arena of political bargains and plays of naked interest.

As it stands, the formula is fraught with ambiguity: From the fact that a justification *can be given*, it does not follow that it *will be accepted* as framed in terms of public reason just as, to return to Rawls's formula, it does not follow from the diagnosis that citizens "may be expected to endorse" the constitution that they actually endorse it. The actual acceptance requirement would turn the *hypothetical* consent test into a *real* consent (a clearly unreasonable requirement). On the other hand, the hypothetical acceptance standard makes the test both easy to manipulate and difficult to apply. There is a space between what the citizens can be reasonably expected to accept and what they actually accept, and the liberal principle of legitimacy reflects the tension between these two poles of the continuum of consent: an insufficient pole of hypothetical, rational consent and an unrealistic pole of an actual (even if only tacit) consent.

### 2.2. *Two Readings of PR*

The very idea of PR, as expounded by Rawls, is not self-explanatory, and not without difficulties. As Ronald Dworkin observed, Rawls operates with two understandings of public reason which are not necessarily equivalent. The first is revealed in the "equal endorseability by all" criterion, and seems to be too weak; the second is discerned in Rawls's well-known distinction between political and comprehensive conceptions, with the proviso that public reason must safely place itself within the former—and this version of PR seems to be too strong. As to the first understanding, Dworkin has expressed doubts as to whether PR, so understood (in Dworkin's interpretation it is characterized as the "doctrine of

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reciprocity"),[7] *excludes* anything at all. Rawls (1999, 138), it should be borne in mind, demands that "we must give [the other citizens] reasons they can not only understand [. . .] but reasons we might reasonably expect that they, as free and equal citizens, might reasonably also accept." As Dworkin (2005, 252) argues: "If I believe that a particular controversial moral position is plainly right [. . .] then how can I not believe that other people in my community can reasonably accept the same view, whether or not it is likely that they will accept it?" The second formulation of public reason in Rawls is even more problematic. This is the requirement of locating public reason within the arguments that can be properly considered "political" (hence, positioned within an overlapping consensus) as opposed to comprehensive. This, in turn, seems to be much too rigorous a requirement, compared to intuitively acceptable common practices: To consistently purge public debate of all political proposals made on (controversial) moral or religious grounds would lead to an undue erosion of public discourse, and would carry obvious discriminatory dangers.

So we have a dilemma: We may identify two alternative readings of PR but under the first reading, it is much too lenient, while under the second reading, much too rigorous, compared to our commonsensical understandings of the reasonableness in public discourse. Does it fully disqualify the very idea of PR as playing a role in a test for the legitimacy of law? I do not think so. The contrast between two readings, just provided, has been excessively sharpened, and I hope that a more sensitive reading of PR does not lead to such unwholesome consequences. As to the first limb of the dilemma, that PR is a much too lenient test which will not be capable of disqualifying virtually any regulations, it should be noted that the very fact that someone sincerely considers his or her publicly provided rationale as reasonable does not necessarily mean that this view is justified from the point of view of an external observer. Consider again Rawls's (1999, 138, emphasis added) formula of reciprocity: We must give [the other citizens] reasons they can not only understand [. . .] but reasons we might reasonably expect that they, *as free and equal citizens*, might reasonably also accept." The italicised proviso indicates an "objective" ingredient to the condition of reciprocity: It is not enough that proponents are subjectively convinced of eminent reasonableness of their postulates, but these postulates, when implemented, must satisfy the conditions of free and equal citizenship of all. Elsewhere, Rawls talks approvingly (1999, 139 n. 21) of "deliberative democracy" as the conception which "limits the reasons citizens may give in supporting their political opinions to reasons consistent with their seeing other citizens as equals." Some types of rationales for legal regulations may be viewed as not universalizable by their very nature, thus not lending themselves for figuring in the justifications of legal coercive rules, regardless of the subjective convictions of espousers of those rationales. Perhaps all religious justifications are by their very nature not "endorseable by all," because those who are not adherents to a given faith have no reason whatsoever to endorse a rationale which crucially is based on that faith. (A non-believer may accept the conclusions of the argument based on religious rationales, but not the rationales

[7] Note that Rawls also occasionally characterizes this condition as "reciprocity" (see Rawls 1999, 137, writing about "the role of the condition of reciprocity as expressed in public reason").

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themselves.) It may well be the case that every believer is confident that his/her beliefs are truly reasonable, and that they are so self-evidently reasonable that every reasonable person must accept them. But this is not necessarily the only conviction accompanying religious beliefs. If, for example, someone believes in revelation as a source of religious faith, then naturally that person cannot maintain that every reasonable person has good reason to accept the views based on that faith. As a result these religious beliefs cannot become part of PR and thus the very conception of PR is not as toothless as this limb of the dilemma would imply.

In fact, Dworkin (2005, 253, emphasis added) further concedes that moral positions based on religious convictions are such that not everybody has a reason to embrace them, and yet he maintains that "Rawls offers no reason to think that the test of reciprocity excludes any reasonable convictions *beyond religious convictions*." Now *this* would, in itself, be a significant use of public reason (and a significant demonstration that public reason requirement *does* exclude many moral positions) but there is surely more to it: namely, those positions, which under an impartial observer's test, deny some groups and categories equal moral standing at the outset.

We can extend this type of observation to the second limb of the dilemma as well: That PR is much too rigorous a test, because it would disqualify many more justifications than our intuitions or common sense would dictate. This second reading of PR is based on hostility towards admitting "comprehensive" philosophical-religious arguments into the domain of public discourse, in order to be able to construct "overlapping consensus." I do not wish to rehearse the rich literature containing the arguments objecting to the exclusion of comprehensive moral conceptions from the public discourse, deploring the inevitable impoverishment of the public discourse resulting from such exclusion, as well as the blatant lack of realism revealed by such a directive. What I do want to observe, however, is that there is no necessary equivalence between the first and the second formulations of public reason: It is not the case that only narrow, non-comprehensive moral conceptions can be reasonably acceptable to all. Public reason in its first formulation seems to be broader and more ecumenical than in the second, and the test of "reasonable endorseability" by all (the first formulation) need not go so far as to disqualify all arguments appealing to comprehensive moral views from the discourse about the legitimate law. However, a critic of PR in this second sense may say that it is intuitively plausible that participants in the public discourse about law should be able, even encouraged, to cite and appeal to their deep philosophical conceptions, based on certain views of the universe, society, and individual self.

This suggests that the concept of an "overlapping consensus," if it is to inform a plausible model of PR, must undergo some modifications and refinements in order to make it compatible with widespread liberal-democratic intuitions. It seems that the very fact of citing or appealing to a deep philosophical rationale cannot disqualify a given argument from figuring in the PR: That borders on the absurd. Rather, what matters is that we put forward only such proposals for a coercive law which may be accepted even by people who do not share our deep philosophical views, which in practice means that these proposals must be capable of being defended *also* on some other grounds. In fact, this is what Rawls himself acknowledged in his reformulation of PR (1999, 144) by explaining that we may "introduce into political discussion at any time our comprehensive doctrine, religious, or

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nonreligious, provided that, in due course, we give properly public reasons to support the principles and policies our comprehensive doctrine is said to support."

### 2.3. *Arguments and Motivations: Legal Analogy*

Will this addendum satisfy the critics? These public reasons, Rawls (1999, 152) explains, must be *sufficient* to support "whatever the comprehensive doctrines introduced are said to support"—which would suggest that those comprehensive doctrines are, strictly speaking, not *necessary* in order to justify the proposals made for public laws and policies. This is further amplified by Rawls's explanation that "the introduction into public political culture of religious or secular doctrines, provided the proviso [of producing proper public reasons] is met, does not change the nature and content of justification in public reason itself" (Rawls 1999, 153). To be sure, Rawls (ibid.) also makes gestures indicating the importance of introducing those comprehensive doctrines in the public sphere, for instance: "We may think of the reasonable comprehensive doctrines that support society's reasonable political conceptions as those conceptions' vital social basis, giving them enduring strength and vigor," and mentions (Rawls 1999, 154) the "benefits of the mutual knowledge of citizens' recognizing one another's reasonable comprehensive doctrines."

He also acknowledges (Rawls 1999, 155) the role of other forms of discourse, which do not have the form of "public reasoning" (the title reserved for proposals leading to public laws and policies) such as "declarations" in which "we each declare our own comprehensive doctrine, religious, or nonreligious,"[8] with no proviso of public reason applicable here. This is important because occasionally the requirement of "public reasons" is interpreted as if it applied to public debate in general—a requirement which would of course lead to a radical erosion of public discourse. Rawls does not emphasize this distinction between open general debate and a discourse leading to authoritative decisions strongly enough, a point made by Charles Larmore (2008, 210) who reminds us of the distinction between "*open discussion*, where people argue with one another in the light of the whole truth as they see it, and *decision-making*, where they deliberate as participants in some organ of government about which option should be made legally binding." Larmore (2008, 212) further emphasized, improving on Rawls's self-interpretation of PR, that "the ideal of public reason [. . .] really should govern only the reasoning by which citizens—as voters, legislators, officials, or judges—take part in political decisions (about fundamentals) that will be backed up by coercion and therefore have the force of law." A blunt statement by Mark Tushnet (1999, 91): "It would be crazy to suggest that voters have to restrain from invoking religious reasons when they discuss politics," may well apply to an "open discussion" but not to public discourse where citizens-voters act in their "official" capacity and where the point is to argue for a particular coercive law or policy. Admittedly, the distinction is not very clear when applied to a public discourse led by citizens: What is eventually meant to lead to an authoritative solution (and therefore becomes advocacy rather than a mere "declaration," to use Rawls's term) is not always clear at the outset when we engage with each other in a political discussion even in the media.

[8] In a weaker form, this suggestion had been already made in Rawls 1993, 215.

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In the end, however, citizens' and public officials' arguments for making laws and policies must be sustainable on public reasons only, even if in the process of argument more comprehensive (hence, controversial) conceptions are cited. Perhaps the following analogy with a well-known legal issue will help clarify the way in which this sustainability on public reasons may be maintained. One of the main doctrines in the US Supreme Court jurisprudence on the separation of Church and state is the "*Lemon* test." In *Lemon v. Kurtzman*[9] the Court established a three-part test for determining if a state violated the non-establishment of religion requirement of the First Amendment: (1) A state law and policy must have a secular purpose, (2) its principal effect must not advance nor inhibit religion, (3) it must not foster excessive governmental entanglement with religion. It is beyond our scope to consider the Court's subsequent inconsistency in the application of *Lemon* in various rulings, and irrelevant that critics have questioned whether the *Lemon* test is useful. What matters for us is the first prong of the test: the secular purpose requirement. As a textbook author observes (Barron and Dienes 1993, 411, emphasis added), in spite of a categorical formulation of a secular purpose requirement, "The existence of a purpose to aid religion will not itself doom a law so long as a legitimate public welfare purpose *can be invoked* to support it." Another commentator (Tushnet 1999, 77, emphasis in original) summarizes the current doctrine of the Court as follows: "Voters and legislators can refer to their religious views to explain their actions, and those references do not in themselves make their actions unconstitutional. All the Supreme Court requires is that there is a secular justification *available* for their actions, even if the legislators do not actually have that justification in mind when they act."

What matters is not so much the actual motive one has, but the theoretical availability of a secular purpose for a given proposal. But surely that sounds very weak, creating ample scope for uncertainty and malleability. Consider this particular example of a judicial disagreement about the existence or not of a secular purpose. In *Edwards v. Aguillar*,[10] the US Supreme Court considered the constitutionality of a state law, called "Balanced Treatment for Creation-Science and Evolution-Science Act" which forbade the teaching of evolution unless accompanied by instruction in so-called creation science. The majority concluded that the Act did not match the requirement of a secular purpose because, in the words of Justice Brennan, "[the] legislative history documents that the Act's primary purpose was to change the science curriculum of public schools in order to provide persuasive advantage to a particular religious doctrine [. . .] [that] embodies the religious belief that a supernatural creator was responsible for the creation of humankind."[11] This conclusion was preceded by Justice Brennan with a general statement that "[While] the Court is normally deferential to a State's articulation of a secular purpose, it is required that the statement of such purpose be sincere and not a sham" (ibid, 587). But in a strongly worded dissent, Justice Scalia thought the secular purpose to be perfectly sincere: "The people of Louisiana, including those

[9] 403 U.S. 602 (1971). The case concerned constitutionality of state grants to religious schools, and the Court held that aid to parochial schools violates the establishment clause of the First Amendment.
[10] 482 U.S. 578 (1987).
[11] 482 U.S. 578, 592 (Brennan, J., for the Court).

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who are Christian fundamentalists, are quite entitled, *as a secular matter,* to have whatever scientific evidence there may be against evolution presented in their schools."[12]

This is a difficult case because it shows how malleable and indeterminate the detection of true motivations as opposed to reasonable arguments may be in practice. Brennan represents a non-deferential approach which refuses to manufacture reasonable arguments that *can be* provided for a given law, and inquires into the most likely motivation that the lawmaker actually had for passing the law. Scalia's approach is deferential, and is oriented less towards discerning (through, say, legislative history, the context of adoption of the law, public debates accompanying it) the actual reasons that weighed on lawmakers' minds, but rather towards a rational inquiry as to whether an act, as a whole, may have a secular purpose. He concludes that, *as a secular matter*, religious people are entitled to have religious-inspired theories taught in public schools. In this way, the question of secular purpose is a second-order question: The purpose of representing a variety of theories, including the religiously inspired ones, is in itself secular. It is the purpose which may be, reasonably and without disingenuousness, articulated in purely secular terms: in terms of diversity, academic freedom, exposure of school students to a variety of perspectives which they will encounter in their society anyway, and so on.

On this general methodological issue, about how to discern the secular purpose, I think that Scalia was right and Brennan wrong, even though I am convinced by Brennan that the actual motivations that those particular lawmakers had in mind (and the motivations of the electorates that supported and pressed on them) were religious. What matters is whether *we can* attribute to a given legislation a secular rationale, and whether there is a reasonable link between the rationale and the legislation (so that the rationale is not so clearly insignificant, or so indirectly and remotely connected with the legislation, that it is clearly disingenuous). In a similar vein, Robert Audi (1989, 279), writing about the separation of Church and State, formulated "the principle of secular rationale" which he articulated as follows: "[O]ne should not advocate or support any law or public policy that restricts human conduct unless one has, and is willing to offer, adequate secular reason for this advocacy or support." But immediately Audi adds that this principle is "normative, not genetic," which means that it *would* allow advocacy that is actually religiously inspired, and that it *would* allow one to be more impressed by the religious arguments than by the secular grounds for it, etc. Further, articulating the "principle of secular advocacy," Audi (1989, 280) claims that "whatever other considerations one brings to the relevant contexts of advocacy or support, one [should] put forward such advocacy or support only if one *also* has and is willing to offer adequate secular reason for the view in question." *Mutatis mutandis*, I would take the PR requirement as having a "normative, not genetic" (ibid., 279) character: The question is not whether a particular proposal for a public policy is actually grounded in someone's comprehensive philosophical doctrine, but only whether *it can be* rationally supported by reasons which are self-standing, separate from such comprehensive doctrines.

[12] 482 U.S. 578, 633 (Scalia, J., dissenting).

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This analogy with the US constitutional law on non-establishment of religion should now draw to a close, and I should emphasize that it is only that: an analogy, as there is no full correlation between the secular/religious motives, and PR/non-PR distinction (though it may be instructive for our purposes). At the same time, the elaboration of PR, based on a distinction between motivations and arguments,[13] indicates immediately that one can use PR that operates in one's motives only as a rationalization or rather as a disguise for a different set of real justifications which have the "prohibited," or non-public (sectarian) character. For instance, one's real motivation for arguing for a prohibition of blasphemy may be the religious teaching of one's church, though one's publicly stated rationale will cite public order or respect for all individuals, no matter what their beliefs are. At first blush, it should not be a problem: As long as the public reasons are *sufficient* to sustain the proposal, we should not worry about the *actual* motivations. But is it a satisfactory solution? Is it not a recipe for hypocrisy or deception? As Elizabeth Wolgast (1994, 1943) observed, "The representative who recasts his objections [to a bill to which he in fact objects on religious grounds] to conform to public reason not only argues with less than maximum force, but also speaks disingenuously."

Suppose that for me a publicly cited reason (public order) is not strong enough and would not move me in the direction of advocacy of the blasphemy ban, and that the real work of motivation is done by my religious views. An "at first blush" response, just given (that as long as there is a sufficient connection between a public reason and a proposal, we need not bother about the *actual* motivations) sounds glib: We not only want public reasons present in discourse shaping legal regulations, but we also want candour, transparency, and openness. Perhaps these two sets of expectations are in conflict with each other: Perhaps the requirement of PR necessarily creates perverse incentives for strategic representations in public discourse. But I would not be so pessimistic about it. After all, it is usually the case that for any given legal or policy proposal, we may have a number of different motivations and reasons: In our example (blasphemy) I may be moved both by my religious and non-religious motives, including (among the non-religious ones) those which qualify as PR. All may be genuine motivations, even if some may weigh more heavily on my mind than others. When participating in public discourse, we are not mechanical articulators of an actual set of motives that we actually possess, but we make certain selections and choices. These selections may be "strategic" but not necessarily in a manipulative sense of the word: They may be strategic because we may anticipate that some will have different effects upon our audience than others. Some of these selections may be guided by prudential considerations relating to efficiency (we anticipate that some kinds of arguments may be more persuasive than others), but some may be much more dignified: They may be informed by our sense of respect to the others. We may know that if we appeal, in our anti-blasphemy advocacy, to *our* religious belief, this may show lack of respect for those in our audience who do not share our religious beliefs. If, however, we select our arguments in a way which is meant to show proper respect for all members of the audience, we will be likely to emphasize PR arguments and screen off the sectarian ones. After all, the very idea of PR is informed by the

[13] See similarly, in the context of religious motivations and secular arguments, Tushnet 1999, 83.

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overriding principle of respect for others,[14] and in choosing which of the arguments from within a variety of motivations we actually espouse, we should represent in public discourse, we should be influenced by this overriding principle of respect. It may well be—not an idealistic hope—that this process of self-discipline will have a self-educational effect, and that in the process of prioritizing PR for the purposes of public representations, I will learn to prioritize them also in my inner motivations: After all, there is a process of reflexive feedback between what we feel and what we say.

In the end, if PR is governed by the overriding rule of respect for persons, then this respect must also prevent us from representing our reasons for proposed laws in a deceptive, manipulative way. If the only reasons that really move us to advocate certain proposals are sectarian (religious, self-interested, comprehensive moral conceptions which are deeply contested), then the motives for using PR (respect for others) in the first place should also, in a second-order way, prevent us from deceptive presentations of PR which masquerades for the de-facto "banned" motivations. In these cases, the requirement of PR will indeed act as a set of gag rules. In itself, there is nothing bad about it. As we know from Stephen Holmes (1988, 57), "gag rules" often perform positive and constructive functions: "Communities, like individuals, can silence themselves about selected issues for what they see as their own good." In any event, the hope is that for the reasons provided in the preceding paragraph, the situations that will lead to PR gagging certain important and strongly held views will not arise too often.

## 3. The Reason of State and Public Reason: Comparison and Conclusions

In his essay revisiting the idea of public reason, at a certain point Rawls explained that "the idea of public reason is not a view about specific political institutions or policies" but, rather (Rawls 1999, 165–6), "it is a view about the kind of reasons on which citizens are to rest their political cases in making their political justifications to one another when they support laws and policies that invoke the coercive powers of government concerning fundamental political questions." This is a crystal-clear characterization of the nature of the concept: It is about the "kind of *reasons*" provided for institutions and policies (rather than about the kind of institutions and policies themselves), and also that it is about a category or a class of reasons, rather than specification of the legitimate reasons themselves. One useful way of looking at it is to view it as a specific self-discipline that the citizens in a liberal-democratic polity should exercise, which must compel them to screen off many motives and reasons which they may be tempted to act upon. As Charles Larmore (2008, 213) puts it: "Many questions of an ethical or religious character, immensely important though they may be to people's self-understanding, will have to be set aside if they are to determine the political principles by which they will live, for such questions cannot receive any commonly acceptable answer."

[14] This connection between PR (and the liberal principle of legitimacy) and "a specific value of respect for persons" is strongly emphasized in Larmore's (2008, 211; 201–3) interpretation of Rawls's theory.

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### *3.1. Input Democracy*

This focus on the nature of reasons provided for legislative and policy proposals resonates with what has been described as an "input model of democracy" (or, simply, input democracy) which is concerned not so much with "who gets what, when, how,"[15] but rather with the nature of arguments and claims pressed by different parties before the decision is taken (typically, through a vote).[16] In his book on "reflective democracy," Robert Goodin makes a strong plea for the input model of democracy by arguing that:

> There must be more to a legitimate political process than can be captured in any mechanical aggregation process. What we should be doing in the political process is evaluating the competing claims of various parties on their merits. That must be a genuinely reflective process: internally contemplative in the first instance, interpersonally discursive in the second. (Goodin 2003, 152)

He emphasizes (ibid., 148) that: "We need to be sensitive to inputs and the reasons people give for how they vote, if we are to address value-laden components of democratic discourse," and that, while input democracy does not reject the final vote as an ultimate method of democratic decision-making, "[i]input-democrats attach much more importance to what precedes the vote" (ibid., 155).

An inquiry into the nature of claims pressed by different parties is only one of a number of tests and requirements related to input democracy (others concern the question of expanding the franchise, creating conditions of equalizing the weight of inputs of all people, improving the process of agenda-setting, and the nature of inter-personal democratic deliberation which occurs before the vote), but for our purposes it is the only aspect of direct relevance. Robert Goodin provocatively calls this aspect "democratic deliberation within"—an extrapolation of deliberative democracy into the internally contemplative dimension. His suggestion (2003, 170–1) is to "ease the burdens of deliberative democracy in mass society by altering our focus from the 'external-collective' to the 'internal-reflective' mode, shifting much of the work of democratic deliberation back inside the head of each individual."

The emphasis on inputs—on the nature of the arguments and claims pressed in public discourse—may have its dangers, even if Goodin warns, wisely, that "[i[nternal-reflective deliberations are not a substitute for, but rather an input into, external collective decision procedures" (Goodin 2003, 192). We may be tempted to apply too rigorous conditions for the quality of inputs, as a result of which we may be tempted to disallow or "launder" some inputs on the basis of their inadequately informed, unreasonable, or incoherent character. The analogy here is with an idea of "laundering preferences" in the context of discussion on paternalism (Goodin 1986): The more we "launder" them, the less they resemble the actual preferences that real people espouse, and the less sincere is our assurance about being non-paternalistic in our approaches. Similarly in the case of democracy: The more the "inputs" are "laundered," the more disingenuous our assurance about democratic legitimacy based on respect for individual inputs becomes.

[15] As in a traditional formula by Lasswell 1950.
[16] Note that this distinction should not be confused with a distinction between input—and output—*legitimacy* of democratic systems: See, e.g., Scharpf 1999, Chapter 1.

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But an awareness of this danger need not lead us to dismiss the very idea of focus on the inputs: It should only protect us from abusing it for clearly non-democratic purposes.[17] What seems clear, for our discussion, is that PR *is* about the "inputs"—about the nature and quality of arguments that may be legitimately pressed in the process of demanding a particular authoritative policy or law. The same is the case of the Reason of State (RS): As interpreted earlier, the most plausible understanding of RS is as an idea of common good which is about the reasons and arguments admissible in a given group. To reiterate Pettit's formula, common good (or common interest) arises when "according to publicly admissible criteria of argument, it is best supported among feasible alternatives by publicly admissible considerations," that is, "it is best supported by the reasons that are publicly admissible within the group" (Pettit 2004, 163). So while the common good is *that which arises from* such arguments and reasons, in order to test whether something constitutes the common good, we must crucially inquire into whether these considerations and reasons are "publicly admissible" within a given group.

There is, as one can see, a functional equivalence between the idea of PR and RS (understood as common good). They both resonate with the input model of democracy: an emphasis on the nature of reasons and arguments pressed in the public discourse, as opposed to output-democracy which is about the aggregation of reasons and claims, whatever they are. They are not identical: PR is about an input while RS is about an outcome, but the functional equivalence is there because RS as an outcome crucially depends upon the nature of reasons provided for it, namely, its "public admissibility," which in Rawlsian theory is explained through a theory of PR.

### *3.2. Stateness of the Reason of State*

But there is a difference, and it revolves, of course, around the word "state." So far I have been writing about the "Reason of State" focusing only on the "reason," thus discerning the functional equivalence with "public reason." But now is the time to turn to the other component of the term: "the State" (in the RS) is not necessarily equivalent to "public" (in PR). RS is, naturally, inherently, and almost trivially, state-centred. As Gianfranco Poggi (1990, 185) noted in his path-breaking book, "Not for nothing is the great European debate about *ratio status* (*raison d'état*) largely coeval with the diffusion of the term of 'state' itself and its equivalent in various European languages." This linguistic development parallels the development of modern European nation-states. As Poggi (1990, 185–6) continues:

> The upshot of that debate was too limited in scope: It consisted, essentially, in the negative conclusion that a ruler might have to disregard the dictates of religion and morality in pursuing the realm's greatness and security; positively, it saw too exclusively the ruler's personal qualities of leadership (his *virtù*, in Machiavellian vocabulary) as the source of the rationality to be applied to that pursuit.

As the vitality of the modern nation-state reaches its limits with the state's monopoly on rationality being increasingly challenged both at civil-society and

[17] For a more canonical expression of the emphasis on reasons giving in deliberative democracy, see Cohen (2002, 92–4).

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transnational levels, and Poggi's two "upshots" reveal their negative consequences, the notion of RS becomes increasingly divergent from that of PR. The differences are at least two. One is about who is the interpreter and enforcer of a given "reason"; another is about the scope of "constituency" within which a given "reason" is ascertained. The first is the *who* question, the second is the *where* question. These two matters will be now discussed in turn.

Regarding the question of who is the authoritative interpreter of a "reason" (whether "public" or "of State"), a liberal conception which is a philosophical ecosystem for the theory of PR operates with what may be called a "continuity thesis": a thesis that there is continuity, in terms of moral entitlement, authority, and responsibility, between individual citizens and public officials. In fact, a citizen-voter *is* a public official, and the role she performs (and which goes well beyond the one-off act of voting, also including other forms of disciplining the representatives and participating in public discourse) is qualitatively the same as the role performed by public officials. (As I have suggested elsewhere [Sadurski 2008, 24–7], this continuity applies to the "motivations, intentions, preferences" of individual voters and of their representatives in parliament.) In fact, it is not just a description but also a normative ideal; citizens should feel and behave as if they were individual lawmakers, even though the result is authoritative only when all the votes are counted (just as is the case in the representative assembly or, for that matter, in any collective authoritative body). As Rawls (1999, 135–6) has said, "When firm and widespread, the disposition of citizens to view themselves as ideal legislators, and to repudiate government officials and candidates for public office who violate public reason, is one of the political and social roots of democracy, and is vital to its enduring strength and vigour. Thus citizens fulfil their duty of civility and support the idea of public reason by doing what they can to hold government officials to it." Earlier (1993, 214, emphasis added; 217–8), in *Political Liberalism*, he connected this point explicitly with a theory of PR by saying: "In a democratic society public reason is the reason of equal citizens who, as a collective body, *exercise final political and coercive power over one another* in enacting laws and in amending their constitution." The idea (Eisgruber 2001, 50) that the voter is "a political office with specific powers and incentives attached to it" is prevalent in liberal constitutional theory.

Within the perspective of the continuity thesis, there is no room for a qualitative distinction between the citizens and the state: The state is a dependent rather than an independent entity, and as such is of no special interest to a normative political theory (though, of course, citizens have an interest in the good functioning of their political institutions insofar as they are efficient articulators of their collective preferences).[18] As an articulator and enforcer of PR, the state is fully parasitic, so to speak, on the reasons pressed by citizens who act in an "official" capacity when they participate in the public discourse aimed at making or repealing the laws. At a normative level, it is opposite to what Gianfranco Poggi (1990, 98) describes as

[18] Miguel Vatter (2008, 256) interprets (without necessarily endorsing) Rawls's theory of PR as postulating "that the stability of a political society requires that the legitimacy of the state be considered by all citizens as secondary with respect to the source of all state legitimation (i.e., the power of the people), just as a constituted power ought to be secondary to a constituent power."

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a "state-centred understanding of the state" which sees "the state—a set of institutions specifically concerned with accumulating and exercising political power—as itself constituting a distinctive social force, vested with interests of its own." What may be a convincing descriptive account to a sociologist like Poggi is anathema to a normative political philosophy of liberal democracy.

But this normative irrelevance of state is not exclusive to the *liberal* theory only: In fact, my idea of the irrelevance of state is similar to that which was articulated by perhaps one of the most famous illiberal legal and political philosophers, John Finnis, in the context of a theory of distributive justice. Addressing the issue of State coercion in enforcing schemes of distributive justice, in the context on criticizing Nozick's theory of property, Finnis (1980, 187–8) wrote that:

> The State need be doing no more than crystallize and enforce duties that the property-holder already had. Coercion, then, comes into play only in the event of recalcitrance that is wrongful not only in law but also in justice. Distributive justice is here, as in most contexts, a relation between citizens, or groups and associations within the community, and is the responsibility of those citizens and groups.

Let me repeat that Finnis's idea is formulated with respect to the theory of justice, but *mutatis mutandis* it well illustrates the normative irrelevance of the state in the area of political authority and obligation.

Thus, the "reason of state," as compared to public reason, may imply that the state is an independent actor that may have its own "reasons" that are not simply continuous with the reasons of its individual citizens, properly aggregated. It may also imply that it may be a final and authoritative interpreter and enforcer of its reasons, inconsistently with the continuity thesis, and this is an unfortunate implication, with potentially illiberal and authoritarian connotations. Clearly, these are just implications of a rhetorical rather than a conceptual nature, and one may use the concept of RS with appropriate provisos attached which will preclude any such implications, and establish a link with the continuity thesis. But in such a case, there is no reason to use RS rather than PR which comes with no such implications.

There is a second difference between RS and PR as mentioned earlier, and it concerns the range of the "reason constituency" (by analogy to "justice constituency"),[19] by which I mean a group within which the reason is ascertained. Different groups of people we are members of may yield different "public reasons" that apply to laws or policies within the group. But even if there is no incongruence between different rules yielded by different reasons at different levels of membership, we generally consider one group as dominant in our concerns: We usually attach our commitments, concerns, sense of responsibility, and the range of togetherness, to one particular group, at least predominantly, with others at a lower rank of these concerns and commitments.

The concept of RS *may imply* that such a group is coextensive with the state. While it *may* be (and indeed, for most of us, *is*) the scope of our dominant group, in the sense just mentioned, it need not always be so, and in any event, it should come as the outcome of an independent argument rather than by force of the

[19] For the notion of "justice constituency" see Stone 1966, 117 (where he defines it as a "transcending community, among whose members justice is to be done by allotting among them the gains and losses of social action); see also Sadurski 1985, 178–81.

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concept used. We may adopt a cosmopolitan perspective that denies the state an independent moral role in identifying the group within which our dominant loyalties and concerns are located. With John Finnis, quoted above (1980, 149–50), we may say that:

> We must not take the pretensions of the modern state at face value. Its legal claims are founded [. . .] on its self-interpretation as a complete and self-sufficient community. But there are relationships between men which transcend the boundaries of all *poleis*, realms, or states. [. . .] If it now appears that the good of individuals can only be fully secured and realized in the context of international community, we must conclude that the claim of the national state to be a complete community is unwarranted and the postulate of the national legal order, that it is supreme, and comprehensive, and an exclusive source of legal obligation, is increasingly what lawyers would call a "legal fiction."

This is as good as any statement of a cosmopolitan position, a position which an author from a completely different background to Finnis describes as "call[ing] into question one of the most powerful convictions concerning society and politics, which finds expression in the claim that 'modern society' and 'modern politics' can only be organized in the form of national states" (Beck 2006, 24). If we call this conviction into question and if we refuse to accord the nation-state an automatically privileged role in crystallizing a political community (if, in the words of Finnis, we do not "take the pretensions of the modern state at face value"), we must then conclude that RS is an unwarranted reading of PR insofar as it forecloses an argument about the proper range (scope) of the constituency within which our public reasons are to be articulated. After all, we may well adopt a view that our "reason constituency" is multi-layered, with strong and important commitments oriented towards different ranges of constituencies, or we may identify our dominant constituency at a different level than the nation-state (consider the issue of loyalty and commitment to the European Union by citizens of EU member states, with various linkages, party structures and NGOs set up at EU level). Again, we may attach a cosmopolitan proviso to our notions of RS, but it will be awkward and possibly confusing. Better stick to "public reason."

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