

Four Models of Public Discourse and their Implications for the Public Sphere

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Introduction

In the United States, as well as a number of other countries around the world, it is a commonplace to complain about the incivility, divisiveness and polarization of our political and legal discourse.¹ In the United States, the political rhetoric of the right bubbles with anger and agitation, and the political rhetoric of the left overflows with contempt and ridicule.² Political discourse often seems to take place over a rather narrow spectrum running from umbrage to outrage.

This is no doubt due in part to cable TV news, the internet, and in particular social media, with their escalating cultures of indignation, furor, and the taking and giving of offense, which reminds us that when we speak of the public square, we are really talking about public squares. Fortunately, today we meet in a type of public forum that is unusually calm and reflective, and where we can address a topic as fraught and controversial as “public discourse” without devolving into the unfortunate and unseemly aspects of it.

Particularly polarizing are debates about the place of religion in public life, and the legitimacy of religious reasons as a basis of public policy and legislation. We live in an interesting political milieu (one that is sometimes described as post-secular), but also one in which religion seems assertive and, if not ascendant, at least stubborn in resisting secularism’s predictions of its imminent demise. Nevertheless, the place of religion in public life is highly charged and deeply contested. Certainly, those hostile to religion have found a voice, vigor and volume that was uncommon a generation ago.³ The ground rules for participating in public life seem to be undergoing a remarkable sea change.

Today I would like to step back and reflect upon four models of public discourse, to describe them in a way that I hope will be accurate and charitable, and to explore what we can learn from

¹ Create footnote about the rise of incivility; outrage; umbrage taking.

² In the US, the rhetoric of anger from the right is exemplified by radio and TV pundits such as Rush Limbaugh and Sean Hannity, and the contempt of the left is exemplified by Jon Stewart, Stephen Colbert and Bill Maher. Cite opinion article that makes this observation and notes that contemptuousness is actually much more toxic than anger, since it involves a deep dismissiveness of the other whereas anger takes the other seriously.

³ Create a footnote to the new atheists, and give a few examples of their sweeping denunciations of religion. Cite descriptions of these as aggressively proselytizing ideologies, and susceptible to a type of secular fundamentalism that seems remarkably intolerant of dissent and damning in their condemnation of non-believers.

each of these archetypes of civil engagement. Each of these ideals is just that – an ideal – with powerful attractive force. I will criticize, and I will take sides, but I hope to find kernels of value and truth in each of these concepts. Two of these ideas – public reason, and ecumenical dialogue – are quite familiar. The other two – human rights discourse, and sympathetic engagement – will also, I think feel familiar, although their labels are perhaps less so.

I. Public Reason

A. Basic description

Public reason is the most familiar of these models of public discourse and, I suspect we would agree, the most powerful prevailing paradigm. The basic idea, I think, is intuitive and appealing: In public discourse, we should limit ourselves to reasons that we can expect all reasonable people to understand and find persuasive. We may have thick normative foundations for our views (such as religious convictions), but we should translate these ideas into a secular vernacular (following my BYU colleague Cole Durham, I'll call it "secularese"), an idiom that is less partisan, less sectarian, and less religious.⁴

B. Representative proponent: Rawls

The foremost proponent of public reason in the past fifty years has been John Rawls, and while other aspects of his moral and political theory of justice have perhaps *ebbed*, it is safe to say that the influence of the idea of public reason has *flowed*. I believe it has come to be far more influential than any of his other ideas, including the original position, the veil of ignorance, the difference principle, or reflective equilibrium.⁵

John Rawls explains public reason as follows: "To begin: 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."⁶ In other words, political power is by its nature "coercive" and "final," and when we as citizens exercise power over each other, we have an obligation – a moral obligation, an obligation of civility – to only exercise such coercive power pursuant to reasons that our fellow citizens can reasonably be expected to accept or endorse.⁷ In order for the exercise of political power to be legitimate in a liberal democracy, says Rawls, it must be exercised pursuant to the limitations imposed by public reason.⁸ Thus, public reason maintains that we have not only strategic, pragmatic, or neighborly reasons for speaking in the tongue of public reason, but moral reasons as well. At its core, public reason

⁴ Cite Cole Durham reference to "secularese."

⁵ [create footnote documenting the wide ranging influence of the concept of public reason.]

⁶ Rawls, *Political Liberalism*, at 214.

⁷ *Id.* at 218. "As reasonable and rational, and knowing that they affirm a diversity of reasonable religious and philosophical doctrines, they should be ready to explain the basis of their actions to one another in terms each could reasonably expect that others might endorse as consistent with their freedom and equality. . . . Understanding how to conduct oneself as a democratic citizen includes understanding an ideal of public reason." *Id.*

⁸ Rawls, *Political Liberalism*, at 217. "And since the exercise of political power itself must be legitimate, the ideal of citizenship imposes a moral, not a legal, duty – the duty of civility – to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason." *Id.*

makes a moral claim – that it is morally wrong to base political arguments, or even positions, on views that are grounded on contestable moral theories or commitments. Only public reason is welcome in the public square.

The content of public reason is based upon what Rawls calls a “political conception of justice” that is broadly liberal in character. This political conception of justice has three features: first, a specification of basic rights, liberties, and opportunities; second these rights, liberties and opportunities have a special priority as against teleological⁹ or general comprehensive claims; and third, citizens are empowered with the means of making effective use of these basic liberties.¹⁰

Unlike “justice as fairness,” Rawls’ own comprehensive liberal social contract doctrine developed in his magnum opus, *A Theory of Justice*,¹¹ public reason is meant to be part of the “overlapping consensus” of views that free and equal citizens will employ to reason about shared political values, but which does not depend upon any comprehensive doctrine and will not “trespass on citizen’s comprehensive doctrines so long as those doctrines are consistent with a democratic polity.”¹²

Public reason will only make appeals to “plain truths” that are “now widely accepted” and “available to citizens generally.”¹³ It will not appeal to “comprehensive religious and philosophical doctrines,” matters about which reasonable people may disagree.¹⁴

C. Appeal

The appeal of public reason – really the appeals, since there are many – are well-known. It seeks a common vernacular for public life. As we all understand, having a common language is a prerequisite of successful communication (at least when we want to go beyond gestures and shrugs). Further, public reason exhibits a kind of respect for others (expecting them to be bound only by reasons they can be reasonably be obliged to accept as legitimate). It represents one way of achieving what Rawls helpfully describes as an “overlapping consensus” on divisive political and legal issues.

D. Limitations

There are, of course, a number of limitations, or criticisms, that have been leveled at public reason.

⁹ Rawls sometimes calls such claims, “perfectionist.” *Id.*

¹⁰ Rawls, *Political Liberalism*, at 223. “By this I mean three things: first, it specifies certain basic rights, liberties, and opportunities (of the kind familiar from constitutional democratic regimes); second, it assigns a special priority to these rights, liberties, and opportunities, especially with respect to claims of the general good and of perfectionist values; and third, it affirms measures assuring all citizens adequate all-purpose means to make effective use of their basic liberties.” *Id.*

¹¹ John Rawls, *A Theory of Justice* (Belknap 1971).

¹² John Rawls, *The Idea of Public Reason Revisited*, 64 *U. Chi. L. Rev.* 765, 806-807 (1997).

¹³ Rawls, *Political Liberalism*, at 225.

¹⁴ Rawls, *Political Liberalism*, at 224-25. “[W]e are to appeal only to presently accepted general beliefs and forms of reasoning found in common sense, and the methods and conclusions of science when these are not controversial This means that in discussing constitutional essentials and matters of basic justice we are not to appeal to comprehensive religious and philosophical doctrines – to what we as individuals or members of associations see as the whole truth – nor to elaborate economic theories of general equilibrium, say, if these are in dispute.”

1. One is its insistence on claiming the status of a moral principle rather than a pragmatic rule of thumb. This claims a normative status for public reason that is controversial and problematic.¹⁵
2. A second is that it is criticized for overburdening reason, rationality, and the prospect that reasonable people will reach agreement.¹⁶ By the time I had earned two masters degrees in philosophy, one thing that had become abundantly clear, is that reasonable and rational people can disagree in fundamental ways about what is good and true and right. Public reason is more optimistic about the promise of reason than we have reason to be.
3. A third objection is that public reason misplaces the burdens of translation, placing the burden of translation into secularise upon those who are not secular (in other words, upon non-native speakers). Usually we place the burden on native speakers to try to understand those for whom the language is not their primary mode of communication. Thus, we might think that it is the secular majority that should try to translate religious arguments in a secular voice, rather than placing the burden upon religious people who may be in a minority to translate their convictions into a secular voice. One interesting complicating possibility is that unlike any time in Western history, secular people may not themselves be conversant in a religious vernacular, so their attempts to understand and translate religious arguments have the feel of someone who is a novice trying to grapple with a difficult foreign language.¹⁷
4. A fourth objection focuses on the translation metaphor. This critique argues that it is a mistake to think of public reason as imposing simply a requirement of “translation.” Rather, what it calls for is an abandonment or disavowal of our foundations, our history, our culture, our particularity. Moral reasoning is often “foundational.” Requiring only “public reason” may unfairly hamper foundational systems of thinking.
5. A fifth criticism of public reason is that it rather reflexively reflects liberal conventional wisdom in a non-critical way. For a secular person, it is easy to imagine that one’s preferences reflect “public reason” while the preferences of other people (especially religious people) reflect irrational biases or inadmissible irr- or at least a-rational viewpoints. But public reason may not be as uncontroversial, neutral or as settled as we sometimes imagine. For example, consider the “public reason” attitude towards homosexuality. As recently as 1970, the diagnostic manual of the American Psychological Association listed homosexuality as a mental disorder.¹⁸ By 1990, twenty years later, sexuality was viewed as an innate immutable characteristic; anyone who questioned the biological determinism of human sexuality, found themselves far outside the scope of publicly-acceptable views.¹⁹ By 2010, another twenty years later, there is growing psychological evidence of human “sexual fluidity” – first noted in women, now

¹⁵ Create footnote.

¹⁶ Create footnote.

¹⁷ I owe this insight to Olivier Roy.

¹⁸ Create footnote citing manual.

¹⁹ Create footnote.

asserted to be also characteristic of men.²⁰ So perhaps (unsurprisingly, really), human sexuality has a dimension of socialization, or choice.²¹

My point is not to take a decisive view with respect to the nature of human sexuality; rather, it is to note that “public reason” is culture and context specific. What looks even to be strongly and widely accepted conventional wisdom actually changes. Strong insistence on public reason may narrow the range of acceptable arguments to those that are popular today. Thus it may be the first part of the phrase (public, or popular) that is most characteristic of the practice, rather than the second part of the phrase (reason). Public reason may not reflect so much what is “reasonable” (much less rational), but rather what is popular (or publicly acceptable). This suggests the uncomfortable possibility that maybe public reason is just a synonym for left-liberal conventional wisdom, dressed up in fancy philosophical garb that gives it an appearance and status that it does not deserve and should not have.

6. I would like to mention one final criticism of public reason – that it is blind to claims of conscience. In all of its variations, public reason begins with the same analytical move: it differentiates public reason from private reason.²² Only public reasons are legitimate in public life. Private reasons are illegitimate. But this raises a problem. Claims of conscience are paradigmatic private reasons. Consider the metaphors we use to describe conscience – a still small voice; an inner light; something that pricks our heart or causes inward pain. Within a public reason framework, the problem is not that claims of conscience are outweighed, it is that they are given no weight at all (at least in the public square).

Thomas Hobbes – the first public reason theorist

In understanding the trajectory of the role of public reason in political discourse, and the prospects for claims of conscience surviving in a political culture in which public reason is the dominant conception of acceptable political and legal reasoning, it is helpful to understand something about the genesis of the idea of public reason, and the stark clarity with which its implications for conscience were originally understood. The concept of public reason was not invented by Rawls, or even Immanuel Kant (to whom it is often traced, including by Rawls).²³ It was Thomas Hobbes, writing a hundred years before Kant, in *Leviathan*, who introduced the idea, albeit in a form that might make contemporary liberals shudder.

As Kant did a century later, public reason was contrasted by Hobbes with “private reason,” which was identified with claims of conscience. For Hobbes, public reason was the will of the sovereign (and nothing more): It was the reason given by the King or Parliament (representing the public), as opposed to reasons given by subjects (private reasons). In Hobbes’ understanding of the justification of the state, in agreeing to be subject to the absolute sovereign, subjects exercised

²⁰ Create footnote

²¹ Create footnote, citing gay activist cited in recent Weekly Standard article, saying perhaps it has come time to set aside the “genetic determinism” argument, implying that it has been overstated or perhaps strategic.

²² Cite Rawls, Kant, Hobbes.

²³ Rawls traces the lineage of the idea of public reason to Kant, noting that the idea “is suggested by Kant’s distinction between public and private reason in “What is Enlightenment?” (1784), although his distinction is different from the one used here.” Rawls, *Political Liberalism*, at 213 n.2. Rawls also cites the contemporary Kantian, Onora O’Neill. *Id.*

their will to have their “private judgments” substituted by the Sovereign’s “public judgments.”²⁴ Thus Hobbes insisted that “people who made conscientious objections to the king’s laws were in fact disobeying their own conscience, since they had agreed to take his judgment and law (‘the public conscience’) as their own.”²⁵

In Hobbes’ understanding of the state, individuals agreed to be governed by the Sovereign as a way of escaping the state of nature (the “war of all against all”), where life, in his memorable description, is “solitary, poor, nasty, brutish, and short.”²⁶ Following the dictates of the omniscient sovereign, for Hobbes, vindicated conscience, since the individual had already consented to submit to political authority.²⁷ As Professor Bryan Garsten explains, “a person who followed the laws in a Hobbesian commonwealth was by definition acting according to the dictates of conscience, since he had transferred the right of determining ‘the public conscience’ to the sovereign: [in the words of Hobbes,] ‘The law is the public Conscience.’”²⁸

²⁴ Cite Hobbes.

²⁵ Garsten, at 180. Hobbes does favor some protection for conscience, by distinguishing sharply between beliefs and actions, and saying that the sovereign’s law’s should govern (with limited exceptions) actions and not beliefs. He traces to Aristotle, Cicero and other heathens the mistake of “extend[ing] the power of the law, which is the rule of actions only, to the very thoughts and consciences of men by examination and *inquisition* of what they hold, notwithstanding the conformity of their speech and actions. By which men are either punished for answering the truth of their thoughts or constrained to answer an untruth for fear of punishment.” Hobbes, *Leviathan*, at 17. As Garsten has explained, Hobbes wrote in large measure in response to the “Puritan rhetoric of conscience,” the defense of “private judgment” and “conscience” that were “the regular form of public preaching among the Puritan ministers so important to seventeenth-century politics in England.” Garsten, at 42. These Puritan preachers asserted that such claims of conscience were inviolable, even if public authority demanded otherwise. Hobbes viewed such appeals as subversive and likely to be used to incite sedition. For Hobbes, claims of conscience were no more than private judgments that were seeking special status.

²⁶ Thomas Hobbes, *Leviathan*, Ch. XIII. Hobbes argues that even those who don’t consent to be ruled by the sovereign are under obligation to be so ruled, due to the consent of the majority. “Because the major part has by consenting voices declared a sovereign, he that dissented must now consent with the rest – that is, be contented to avow all the actions he shall do – or else justly be destroyed by the rest. For if he voluntarily entered into the congregation of them that were assembled, he sufficiently declared thereby his will, and therefore tacitly covenanted, to stand to what the major part should ordain; and therefore, if he refuse to stand thereto or make protestation against any of their decrees, he does contrary to his covenant, and therefore unjustly. And whether he be of the congregation or not, and whether his consent be asked or not, he must either submit to their decrees or be left in the condition of war he was in before, wherein he might without injustice be destroyed by any man whatsoever.” *Id.*, at Ch. 18.

²⁷ Columbia University Professor Herbert W. Schneider, in his introduction to *Leviathan* describes Hobbes’ “representative theory of absolute authority” as follows: “Hobbes’s myth of ‘Leviathan,’ of the artificial creation of a social organism or collective person, is his way of escaping the traditional assumption that authority always comes from above. According to this theory, an authority is an agent or person authorized, the legal bearer of another’s person. The unity of a commonwealth is created when a group of men covenant to appoint a single ‘body’ or will as the common bearer of the person of each. Thus a government becomes the representative or authoritative person of all the members of the ‘body politic’ and in virtue of having such unity of authorized will or person the commonwealth establishes sovereignty.” *Leviathan*, Editor’s Introduction at xii (Bobbs Merrill, 1958). A social contract substitute for understanding sovereignty as divine right, “it was his attempt to justify absolutism by ‘natural justice.’” *Id.*

²⁸ Garsten, at 43.

According to Hobbes, the obligation to obey the sovereign lasts as long as the sovereign protects his subjects.²⁹ As Hobbes put it:

The conscience being nothing else but a man's settled judgment and opinion, when he hath once transferred his right of judging to another, that which shall be commanded, is no less his judgment, than the judgment of that other; so that in obedience to laws, a man doth still according to his conscience, but not his private conscience. And whatsoever is done contrary to private conscience, is then a sin, when the laws have left him to his own liberty, and never else.³⁰

For Hobbes, it was no sin to act contrary to conscience, provided this was at the direction of the sovereign. Ceding conscience to the sovereign in matters of public importance also shields individuals from the preaching and prophesizing of those who claim to speak on behalf of God.³¹ Hobbes warns against the “*diseases of a commonwealth that proceed from the poison of seditious doctrine, whereof one is that every private man is judge of good and evil actions.*” This may be true in the state of nature, but not in a commonwealth, where “the measure of good and evil actions is the civil law, and the judge the legislator, who is always representative of the commonwealth.”³²

Rawls on Aristocratic and Autocratic Regimes

Now we would expect Rawlsian liberals to object strongly to their understanding of public reason being linked with Hobbes' sovereign Leviathan. Indeed, Rawls expressly denies that “aristocratic and autocratic regimes” exhibit public reason, because in such regimes it is “rulers” that consider the public good, if it is considered at all. Declares Rawls, “Public reason is characteristic of a democratic people: it is the reason of its citizens, of those sharing the status of equal citizenship. The subject of their reason is the good of the public: what the political conception of justice requires of society's base structure of institutions, and the purposes and ends they are to serve.”³³

My point is not that Rawls' and Hobbes' conceptions of public reason are the same, but rather that they share an important structural similarity. In a Rawlsian world, public reason is no longer

²⁹ Hobbes, *Leviathan*, at Ch. 21 “The obligation of subjects to the sovereign is understood to last as long and no longer than the power lasts by which he is able to protect them.” As Hobbes explains elsewhere, “[E]very subject in a commonwealth has covenanted to obey the civil law: either one with another, as when they assemble to make a common representative, or with the representative itself one by one when, subdued by the sword, they promise obedience that they may receive life.” *Id.*, at Ch. 26

³⁰ Garsten, at 43, n.75.

³¹ As Bryan Garsten explains in his masterful book, *Saving Persuasion: A Defense of Rhetoric and Judgment*:

We have seen that when Hobbes devised his understanding of representation, he was asking citizens to disregard not only their own judgments and dictates of conscience but also, and perhaps more importantly, those judgments supplied to them by preachers and prophesiers. He asked citizens to protect themselves from the influence of these orators by chaining their ears to the lips of the sovereign, whose words he called the ‘public conscience’ and, in Chapter 37 of *Leviathan*, the ‘public reason.’ For the sake of peace, he argued, ‘the Private Reason must submit to the Publique.’ Public reason was thus created as a means of avoiding controversy by providing an external source of unified judgment. It sought to avoid the political tumult that resulted when each citizen was left to judge for himself and thus made prey to the influence of orators. Garsten, at 177.

³² Hobbes, *Leviathan*, at Ch. 29.

³³ Rawls, *Political Liberalism*, at 213.

identified with the will of the Sovereign (whom Hobbes says rational people – out of fear, hope, and reason -- will have agreed to obey);³⁴ rather, public reason is identified with the will of properly enlightened democratic majorities who are governed by correct principles of public reason (in other words, of good liberals striving to achieve the public good in a properly structured democracy). But for the conscientious objector, the result is precisely the same: their claims of conscience are illegitimate, at least to the extent their claims rely upon “private” reasons (including comprehensive conceptions of the good, such as religious conceptions) rather than “public” reasons.

Rawls on Conscience

So what does Rawls have to say about conscience? In his chapter on public reason, Rawls discusses liberty of conscience, but primarily as a protection of individuals from overbearing churches. Says Rawls,

In a democratic society nonpublic power, as seen, for example, in the authority of churches over their members, is freely accepted. In the case of ecclesiastical power, since apostasy and heresy are not legal offenses, those who are no longer able to recognize a church’s authority may cease being members without running afoul of state power.³⁵

Thus, liberty of conscience protects individuals from churches; the state does not lend its authority to the punishment of apostasy or heresy. As Rawls explains in a footnote, “In this case we think of liberty of conscience as protecting the individual against the church.”³⁶

But for Rawls, there are no analogous rights of freedom of conscience from the authority of the state short of renouncing one’s citizenship. As Rawls explains, in contrast with religious groups, where you can evade the institution’s authority, by withdrawing, “the government’s authority cannot be evaded except by leaving the territory over which it governs, and not always then.”³⁷

I find this breathtaking.

According to Rawls, if the state insists on forcing us to act in violation of our conscience, we really have only one option – we can emigrate (and even that may not put us beyond the reach of the state’s jurisdiction). We do not, says Rawls, accept the government’s authority in the same way we accept the authority of a church. “Nevertheless, we may over the course of life come freely to accept, as the outcome of reflective thought and reasoned judgment, the ideals, principles, and standards that specify our basic rights and liberties, and effectively guide and moderate the

³⁴ Hobbes, *Leviathan*, at ch. 13.

³⁵ Rawls, *Political Liberalism*, at 221.

³⁶ *Id.*, n.8. Rawls goes on to explain, “This is an example of the protection that basic rights and liberties secure for individuals generally. But equally, liberty of conscience and other liberties such as freedom of association protect churches from the intrusions of government and from other powerful associations. Both associations and individuals need protection, and so do families need protection from associations and government, as do the individual members of families from other family members (wives from their husbands, children from their parents). It is incorrect to say that liberalism focuses solely on the rights of individuals; rather, the rights it recognizes are to protect associations, smaller groups, and individuals, all from one another in an appropriate balance specified by its guiding principles of justice.”

³⁷ Rawls, *Political Liberalism*, at 222.

political power to which we are subject.”³⁸ In other words, not unlike Hobbes’ subject, a citizen in a Rawlsian liberal state may come to accept the dictates of public reason as something they “freely accept.”

The Public Reason Two-Step

Consider the basic form of reasoning that might fail to protect conscience: first, coercive legislation should be based upon public reasons; second, private reasons (such as religious convictions) do not count as public reasons and can therefore be discounted. This is what might be called the “public reason two-step.” This is not just a description of public reason as envisioned by Thomas Hobbes. Every conception of public reason – whether Hobbes’, Kant’s, or Rawls’ – begins by differentiating between public reason and private reason, and by crediting the former and discrediting the latter. Thus, unless claims of conscience can be expressed persuasively in terms of public reason, they may not only be discounted, they may be disclaimed as illegitimate. But if claims of conscience are silenced or dismissed, this may do tremendous violence to our understanding of what it means to be human. For example, South African Constitutional Court Judge Albie Sachs speaks frequently on the centrality of conscience to what it means to be human.³⁹

II. Ecumenical Political Dialogue

A second, quite different, model of public discourse is ecumenical dialogue.

A. Basic description:

In ecumenical dialogue, representatives of different religious traditions come together to try to discuss issues of common interest. Like public reason, it is (in part) an effort to generate agreement or common ground, but not by limiting ourselves to translations of our beliefs into “public reason,” but by inviting us to provide thick, rich, comprehensive accounts of our moral beliefs, each in turn, and then look for areas of overlap or commonality.

Methodologically it is almost the complete opposite of public reason. It requires us to listen carefully to each other in all our particularity, and then to look for areas of agreement or overlap. In our discourse, we do not restrict ourselves to expected areas of overlap, but by each expressing the richness of our viewpoints can then find areas of “overlap.” This is a very different strategy for achieving “overlapping consensus.”

But ecumenical dialogue has objectives that go beyond achieving consensus. It insists there are reasons to engage in dialogue with each other beyond achieving agreement. What might these reasons be? One is that we may come to understand each other better (understand grounds or character of our disagreements).⁴⁰ Another is that we may come to understand ourselves better (by articulating the grounds for our beliefs, we may come to understand the character of our own

³⁸ Rawls, *Political Liberalism*, at 222. Note, this is not so unlike Hobbes’ argument about why we accept the will of the sovereign (public reason) as having priority over our own personal judgments of right and wrong (private reason). For Rawls, if we belong to a liberal political community, we will accept its judgments as binding on us

³⁹ Create footnote to Albie Sachs speech at African Consortium of Law and Religion meeting.

⁴⁰ Create footnote.

commitments).⁴¹ Third, it enables us to be held morally responsible. One thing that can be expected of each of us is that we live (or at least try to live) consistently with our own professed ideals.

B. Representative proponent: Michael Perry

A representative proponent of this type of ecumenical dialogue is Emory law professor, Michael Perry. Perry argues that such a mode of political discourse would rest upon two practices: “first, a certain kind of dialogue; second, a certain kind of tolerance.”⁴² As Perry puts it,

Ecumenical politics is, above all, both dialogic and communitarian: It is...a politics in which, notwithstanding our religious/moral pluralism, we continually cultivate the bonds of political community—and in which we sometimes succeed in strengthening those bonds, even, occasionally, in forging new bonds—through dialogue of a certain kind. Ecumenical politics institutionalizes a particular conception of “the place of religion in American life” and of “how we should contend with each other's deepest differences in the public sphere.”⁴³

Perry emphasizes that there are reasons for dialogue that reach beyond agreement – namely, taking responsibility for our own moral professions.⁴⁴ Perry, explains, “We must be willing to lend credibility to our convictions by being faithful to them in our lives and not merely in our polemics and our posturing.”⁴⁵ He also argues that to engage in genuine ecumenical dialogue, we must move beyond infallibilism, in other words with the mindset (genuinely taken) we might be mistaken. As Perry explains,

We must be willing to let our convictions be tested in ecumenical dialogue with others who do not share them. We must let ourselves be tested, in ecumenical dialogue, by convictions we do not share. We must, in short, resist the temptations of infallibilism... If necessary we must revise our convictions until they are credible to ourselves, if not always or even often to our interlocutors..⁴⁶

C. Appeal

Ecumenical dialogue has its own powerful appeal. It suggests a very different way of achieving agreement in public life, but it also recognizes purposes of dialogue other than generating agreement, compromise, or *modus vivendi*'s. These include each of us taking responsibility for our own commitments. For example, if I defend human dignity on the grounds that we are all created in the image of God, but then I advocate torture, you can rightly expect me to explain the contradiction in my views.

⁴¹ Create footnote.

⁴² Create footnote, Michael Perry, *Ecumenical Politics*, 1993, at ___.

⁴³ Michael Perry, *Ecumenical Politics* (1993). Perry continues, “The aim of ecumenical politics is, in words borrowed from *The Williamsburg Charter*, “neither a naked public square where all religion is excluded, nor a sacred public square with any religion established or semi-established.” The aim, rather, “is a civil public square in which citizens of all religious faiths, or none, engage one another in continuing democratic discourse.” Id.

⁴⁴ Create footnote

⁴⁵ Michael Perry, *Morality and Politics* (1988), at ___.

⁴⁶ Michael Perry, *Morality and Politics* (1988), at ___.

D. Limitations

Like public reason, ecumenical dialogue also has limits and is subject to powerful criticisms.

1. First, it can become formulaic or insincere. Sometimes it seems as if there is a professional class of ecumenical dialogue specialists; and the idea doesn't seem to have much influence on the way religious life is carried out within religious communities on a daily basis.⁴⁷
2. Second, ecumenical dialogue can foster a kind of dime store relativism. Those who engage in ecumenical dialogue are sometimes criticized by those within their own community for being sell-outs, or denying the distinctive truth claims of their own religious group.⁴⁸ Ecumenical dialogue can result in overgeneralized (and often platitudinous) oversimplifications: We all believe more or less the same thing; why can't we all get along; you have your way, I have mine; there are many roads to the top of the mountain.⁴⁹ There is something about contemporary popular culture that seems quite enamored of a soft relativism that we might find evident in ecumenical dialogue, as if truth and validity are simply the product of sincerity or authenticity.⁵⁰
3. A third criticism of ecumenical dialogue is that it might engage in a feel-good denial or papering over of differences. It might also exhibit a reluctance or fear of criticizing those who need criticism. It may not be productive to engage in ecumenical dialogue with Boko Haram, ISIS, militant Burmese Buddhists, extreme Hindu nationalists, or Jim Jones- or Aum Shinrikyo- charismatics.

III. Human Rights Discourse

A. Basic description

A third model of public discourse calls for dialogue that is based upon basic human rights commitments – ideas and ideals such as human dignity, equality, and freedom. To find the basic parameters of human rights discourse, we do not have to look farther than Article 1 of the Universal Declaration of Human Rights, which asserts:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

As Harvard law professor Mary Ann Glendon has described it in her magnificent book about the drafting and history of the Universal Declaration, called *A World Made New*, "The moral train of international relations was forever altered, late one night in Paris on December 10th, 1948, when

⁴⁷ Create footnote, from reflective literature on practice of ecumenical dialogue.

⁴⁸ Create footnote, document this type of criticism.

⁴⁹ Create footnote.

⁵⁰ Create footnote documenting the replacement of truth with sincerity.

the General Assembly of the United Nations adopted the Universal Declaration of Human Rights without a single dissenting vote."⁵¹

There are several important things to understand about the history and the background of the Universal Declaration of Human Rights. First, it was undertaken at the insistence of small countries and non-governmental organizations. Today, we often think of human rights as a Western imposition upon developing countries, but that is not congruent with the history of why the human rights instruments came to be drafted.⁵²

It's also interesting to note that the window of opportunity for introducing human rights into the framework of international politics and law was frightfully small. The time between the end of World War II and the onset of the deep freeze of the Cold War was brief, and by December 1948, that window was already in the process of being slammed shut.⁵³

Third, drafting the UDHR was not an exercise in high theory, but rather an identification of widely shared practices and norms. The drafting of the Universal Declaration began and was most influenced by surveys of existing rights instruments, going back to the Magna Carta, and including the French Declaration of the Rights of Man, the early amendments to the U.S. Constitution, and so forth. By the time the first draft of the UDHR was completed, it was 500 pages long, and it was comprised largely of footnotes, with references to virtually all of the then-existing rights instruments from around the world.⁵⁴

The key aims of the Declaration were to establish a standard of globally respected rights. The objective was to identify a set of standards that no self-respecting state could resist or deny.⁵⁵ Today people talk about international human rights norms as if they are abstract and lofty ideals, or vague and esoteric principles. But the UDHR was not the dream of starry-eyed idealists. Rather, it was the work of statesmen and stateswomen who had come through the crucibles of not only World War II, but World War I. They had seen the horrors of Japanese imperialism. They had experienced revulsion at the Nazi regime's effort to extinguish the Jewish race. These were a group of people who had been through an ordeal unlike anything most of us have experienced. Thus, to dismiss the UDHR as some sort of idealistic wishful thinking does a tremendous disservice to the men and women who hammered out the agreement that became the UDHR. To be sure, there is a large measure of idealism involved, but it was an idealism that arose with wings out of the ashes. It wasn't an unearned idealism.

The key aims of the human rights project included amplifying the voice of the weak. After all, the international human rights instruments, beginning with the UDHR, enumerate rights that individuals have as a matter of birthright, and which they can claim against their own states, against their own governments. Thus, when government leaders assert that human rights

⁵¹ Mary Ann Glendon, *A World Made New* (19__), at __. It was actually early in the morning of December 11th, because by the time the representatives of all of the countries had had their opportunity to make statements and speeches about the importance of what was about to happen, it was early the following morning. [add pin cite]

⁵² Create footnote.

⁵³ Create footnote.

⁵⁴ Create footnote.

⁵⁵ Cite Father Robert Drinan book on human rights and the power of shaming.

represent a Western imposition, their claims should at least be discounted as self-serving.⁵⁶ Such politicians may not be speaking for their people, because the human rights instruments primarily place limitations on the way states and those in power can treat those subject to their jurisdiction. Importantly, the UDHR stands for the idea that human beings, and not just states, are the subjects of international law. Since at least the Treaty of Westphalia, international law had largely been viewed as a matter of the relations between states, and there was a secular basis, rooted in power and consent, for the relations in international law between states, whereas other matters, including human rights and religion, were deemed to be matters of internal rather than international concern. After the treaty of Westphalia, the world was not comprised of a group of secular states. Rather it was comprised in large measure by a group of confessional states, based upon different religious traditions, where the principle *cuis regio eius religio* (whose realm, his religion), meaning a state's ruler dictated the religion of his subjects.⁵⁷ Prior to the human rights revolution, international law agreed that the treatment of individuals within a country's own territory was not a matter of international law, but was rather a matter of domestic concern.⁵⁸ But with the human rights revolution, that settled understanding was upended. Beginning with the UDHR, international human rights instruments not only treat human beings as subjects of international law, it also changes that long-held assumption, even doctrine, that international law is primarily a matter of state-to-state relations, and that the rights of people are only a matter of domestic concern.

Impetus for the UDHR

When the UN Charter was drafted in 1945, the Great Powers—The United States, Great Britain, the Soviet Union—showed little interest in the human rights project. The UN Charter briefly mentioned, but did not give content to the idea of human rights.⁵⁹ The Allied Powers, however, had described World War II as a fight for freedom and democracy, and those who longed most for such freedom were slow to forget the world they had been encouraged to help fight to create.

The United States wasn't particularly interested in human rights in 1948—why? In a word, race. US law embraced a framework of racial segregation and practiced widespread discrimination against racial minorities; human rights was correctly viewed as a foundation for claims of racial equality.⁶⁰ The Soviet Union wasn't interested in human rights—why? The collectivist ideology of communism held that the individual's interests must be subordinated to the community's interests; to the extent it was interested in human rights at all, the USSR was interested in promoting economic and social rights, areas where it believed it was ahead of the West.⁶¹ Great Britain wasn't interested in the human rights project—why? It was desperate to preserve what it could of its dwindling empire.⁶² Many of the most vocal proponents of the human rights project were countries that were subject to imperial powers. For example, Carlos Romulo, the UN

⁵⁶ Create footnote, citing Singapore President Lee's argument.

⁵⁷ Create footnote.

⁵⁸ Create footnote.

⁵⁹ Create footnote, listing Charter's references to human rights.

⁶⁰ Create footnote.

⁶¹ Create footnote.

⁶² Create footnote.

delegate from the Philippines describes how he would not be deterred from pressing issues of human dignity. He writes, “I became a nuisance, a gadfly, a pest. I prowled corridors, buttonholed delegates, cornered unwilling victims in hotel lobbies and men’s rooms.”⁶³

The Human Rights Commission

The US eventually agreed to the creation of a UN Commission to address human rights, and President Truman asked Eleanor Roosevelt, the still-grieving widow of President Franklin D. Roosevelt, to lead the US delegation.⁶⁴ There were eighteen nations appointed to the Commission on Human Rights that was tasked with drafting the Universal Declaration. It is a remarkable list: [name states]. Considering there were only about a quarter of the number of countries in the United Nations that we have today, the list is noteworthy for its careful composition. There are countries aligned with the West, as well as with the Soviet Union. There are countries from both the north and the south. There are countries that are established democracies and countries that are developing. There are countries that are majority Christian, and a number where Islam is either the religious majority or a sizable minority. Asia and the Pacific are well represented. Indeed, it would have been difficult to come up with a more careful, nuanced, and balanced group of countries than those that were identified and appointed to the Commission on Human Rights.

C. Representative Proponents

For representative proponents of human rights discourse, we may begin with the individuals on the Human Rights Committee Members responsible for drafting UDHR. Eleanor Roosevelt was elected chair of the human rights commission, and one of the first things this eighteen-member assemblage found was that drafting an international bill of human rights was difficult as a committee of the whole, and so a drafting committee was organized. That committee was comprised of Charles Malik of Lebanon,⁶⁵ P.C. Chang of China,⁶⁶ John Humphrey of Canada,⁶⁷ and Eleanor Roosevelt.⁶⁸

Like public reason, in human rights discourse the idea of consensus is important; but the mechanism and meaning of consensus is diametrically different. In human rights discourse, the consensus in question is prosaic and actual, rather than based upon assertions (confident, but necessarily speculative) of what other “reasonable” people should accept. Unlike, public reason, it is not based upon theory; it is rooted in actual practice. Human rights were not identified as high ideals, but as minimal standards of conduct that no self-respecting state could disclaim.⁶⁹

⁶³ Create footnote.

⁶⁴ Create footnote, document opposition to Roosevelt (liberal and outspoken nature, lack of international experience), as well as her own reluctance (reasons).

⁶⁵ Create note about Malik

⁶⁶ Create footnote about Chang

⁶⁷ Create footnote about Humphrey

⁶⁸ Create footnote documenting Eleanor Roosevelt’s leadership on issues involving women’s and worker’s rights, as well as civil rights.

⁶⁹ Create footnote about governmental critiques of human rights, including those from Singapore.

The drafting process that led to the adoption of the UDHR was lengthy and subject to the scrutiny of many potentially disapproving eyes. There was detailed debate between member states over the meaning and inclusion of nearly every word. The process of drafting the Declaration was not high theory, but an exercise in identifying the practices and norms in existence in most nations, and an effort to build on common understanding. In fact, a group of philosophers involved in the preparatory work for the Declaration began "by sending a questionnaire to statesmen and scholars around the world...soliciting their views on the idea of a universal declaration of human rights."⁷⁰ John Humphrey directed his staff to study every existing constitution and rights instrument in the world to discover the principles most widely shared among nations. Drafters structured the language of the UDHR to be a composite reflection of the existing norms, rather than resting on a single, unifying theory. Focusing on practices and actions, rather than theory and motivations, allowed drafters to achieve consensus despite the complicated issues addressed in the Declaration. These complex circumstances surrounding the process led one participant to comment, "Yes, we agree about the rights, but on condition no one asks us why."⁷¹

The tone for human rights discourse is set from the introductory proclamation, which states, the Universal Declaration of Human Rights is a "a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance."⁷²

Virtually every word of that is important. Consider the assertion that the UDHR is a "common standard of achievement" for everyone, peoples *and* nations. Explicit is the idea of the responsibility of individuals to be aware of and understand what these rights are. The importance of education to the effectuation of human rights is noted, as is that idea that the development and implementation of human rights will take place progressively and through international as well as national efforts.

The Preamble is also noteworthy.

[quote paragraph one]

This paragraph introduces some of the key ideas that are at the heart of human rights discourse, such as the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. It is a profound statement. The inherent dignity of people – dignity is not something bestowed by states; these equal and inalienable rights are something with which we are born. We are all members of what? The human family – a recognition of our common humanity and our connections with each other. And why are these things important? Because they are the foundation of freedom, justice and peace.

⁷⁰ Mary Ann Glendon, *A World Made New* 51 (Random House 2001).

⁷¹ *Id.* at 77.

⁷² Verify quote and add citation.

The second paragraph of the Preamble is backwards looking, and states,

[quote second paragraph]

Looking backwards, what do we find? – that the "disregard and contempt for human rights has resulted in barbarous acts which have outraged the conscience of mankind" The references to the horrors of World War II are evident in this language.

The third paragraph of the Preamble looks forward, stating:

[quote third paragraph]

Looking forward, the Preamble notes that "it is essential, if man is not to be called to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights be protected by the rule of law." Thus, one key reason why human rights are important is because otherwise people may have no recourse but to rebel against tyrannical and oppressive governments.

Harvard law professor Mary Ann Glendon described the impact of the UDHR as follows:

In the years that followed [the passage of the Declaration], to the astonishment of many, human rights would become a political factor that not even the most hard-shelled realist could ignore. The Universal Declaration would become an instrument, as well as the most prominent symbol, of changes that would amplify the voices of the weak in the corridors of power. It challenged the long-standing view that a sovereign state's treatment of its own citizens was that nation's business and no one else's. It gave expression to diffuse, deep-seated longings and lent wings to movements that would soon bring down colonial empires. Its thirty concise articles inspired or influenced scores of postwar and postcolonial constitutions and treaties, including the new constitutions of Germany, Japan, and Italy. It became the polestar of an army of international human rights activists, who pressure governments to live up to their pledges and train the searchlight of publicity on abuses that would have remained hidden in former times. Confirming the worst fears held in 1948 by the Soviet Union and South Africa, the Declaration provided a rallying point for the freedom movements that spurred the collapse of totalitarian regimes in Eastern Europe and the demise of apartheid. It is the parent document, the primary inspiration, for most rights instruments in the world today. . . . Today, the Declaration is the single most important reference point for cross-national discussions of how to order our future together on our increasingly conflict-ridden and interdependent planet.⁷³

D. Appeal

The appeal of this model of discourse can be seen by focusing on the carefully-selected and crafted words of Article 1:

⁷³ *Id.* at xvi-xvii.

All – everyone; each and every one of us; and every single human being.

Are – representing an existential state of being; human rights are not something earned or bestowed, but something we have because we are human beings; human rights are not the product of positive (or even divine) law; rather a state of being. Our humanity and the basic rights and freedoms that accompany it are not a gift of King or Congress.

Born – human rights represent a birthright that we have even as infants, based upon our mere status as human beings, in our potential and promise, rather than based upon the realization of that potential or promise.

Free – we recognize each other as beings that are free (we may not know yet exactly what the parameters and limits of that freedom may be, but we see each other as essentially and importantly free).

Equal – (in what ways?) – in dignity and rights. This is not a claim that there are no differences between people; or that we are the same in every way. But we are the same in these important ways -- we each have equal dignity, and we are each entitled to equal treatment before the law.

We are endowed with reason (the capacity to think and act rationally), but also conscience (an inward capacity to differentiate between right and wrong). It is interesting to note that early drafts of Article 1 did not contain references to reason or conscience as basic human attributes. When the Committee decided to add the reference to reason, P.C. Chang of China suggested that the Preamble also include the Chinese word *ren* (仁) as a guiding principle.⁷⁴ This character is a composite of the characters for man (人) and two (二); thus its literal translation is "two-man mindedness." There is no direct translation in English, but it is often translated as "benevolence," "empathy," or "compassion." In the UDHR it was translated as "conscience," a translation that perhaps does not do justice to the concept. *Ren* is one of the essential concepts of Confucianism. It is the duty that superiors owe to their subordinates. *Ren*'s focus on the dignity of others and one's responsibility toward them, as opposed to the internal focus of conscience as a guide to one's actions, may have suggested that rights should be balanced by responsibilities. By using "conscience" as the translation, did the drafters forgo an opportunity to frame the UDHR in a way that would call attention to responsibilities as well as to rights?

There are a variety of implications of focusing on the idea of 'ren' and recognizing it when we are involved in legislating in the area of human rights, and in particular with respect to the human right of religious freedom. It encourages us to keep the treatment of the other in mind, including religious minorities, when forming and implementing policies. It reminds us that we are all part of a minority. One of the deep truths is that there is no majority religion in the world, and it is easier to maintain an attitude of two-man-mindedness when we continually remember that we are all a part of a minority.

When we consider ourselves as part of a majority, when we have a majoritarian framework or attitude, it's more difficult to think in terms of the rights and interests of the minority. In the area of religious freedom, many of the problems we have could resolve if those in a temporary or

⁷⁴ *Id.* at 67.

temporal majority realized that when it comes to religion from a wider perspective, we are all in the minority. The largest group in the world is probably Christians (after that, Muslims; after that it's non-believers in religion), and each of these groups with their billion or so, this represents only a small percentage of a world of seven billion people. The idea of *ren* encourages us to recall this important fact.

Ren also reminds us that when we speak of human rights, we must also speak of relational duties. Not just the duties that states owe their people as holders of rights, but the duties we owe each other. The freedom, for example, to choose, have, and manifest religion must be considered in conjunction with social duties to uphold and sustain the law. Rather than focusing on rights in isolation, a better approach is to focus on the relationship of rights and duties, and the concept of *ren* invites us to do that. The South African concept of *ubuntu*, as I understand it, comes pretty close to the Chinese concept of *ren*,⁷⁵ and if you talk to people from Tonga, Samoa, many places with communal attitudes towards social life, there is something very similar to the concept of 'ren' that's really important as part of their social norms.⁷⁶

Finally, Article one ends with an admonition that we should all “act towards one another in a spirit of brotherhood,” suggesting brotherly kindness, agape, or even love. The call for a spirit of brotherhood comes closer to what P.C. Chang had in mind when he urged the inclusion of *ren* than does the more inward-looking idea of conscience.

I would suggest that even if we have nothing but Article one of the UDHR in our pocket when we engage in political deliberations, we already have a workable framework for political discourse. Startling in its brevity, Article I is striking in its breadth and depth. the spirit of brotherhood. Article One creates a framework for human rights discourse. It gives us a vocabulary, it gives us a set of concepts, and it gives us a way of communicating about human rights. There is much that follows, of course, which is important. But the basic components of human rights discourse can be found, I believe, in the preamble and in Article I of the UDHR.

E. Limitations

As with the other ideals of public discourse, human rights discourse has some inherent hazards and significant limitations. Here I briefly mention three.

1. Human rightsism – turning human rights into a doctrine or dogma. Human rights were designed not to be a doctrine or theory, but an agreed-upon standard of achievement and aspiration. Jacques Martain (one of the philosophers summoned by UNESCO to consult on the UDHR), famously said: “Yes, we agree about the rights but on condition no one asks us why.” As Martain explained, the goal is to agree not on the basis of “common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of man, and of knowledge, but upon the affirmation of a single body of beliefs for guidance in action.”
2. Bludgeon – tool of Western cultural imperialism. Human rights are sometimes used as an instrument of foreign policy of strong states against weaker states. This is contrary to the

⁷⁵ Create footnote describing ubuntu

⁷⁶ Create footnote describing similar concepts.

original impetus for human rights; it was largely small countries (many still under colonial domination) and NGOs that agitated for the protection by the United Nations of Human Rights. This objection can be overstated; speaking recently in Indonesia, no one disagreed that it was appropriate for Indonesia (a great power) to express dismay at the treatment of Rohingya Muslims in Myanmar, even though the Burmese government has vocally complained about being bullied.⁷⁷

3. Emphasis on rights rather than duties; individuals rather than communities.

IV. Sympathetic Engagement

A fourth model of public discourse is what I would like to call sympathetic engagement.

A. Basic description:

Here there are two basic components – reflected in the label. The first is being *sympathetic*, which implies an attitude of seeking to understand each other from the other's own point of view. This is not just an empathetic *feeling with*, but an active sympathy – a *feeling for* the other. The second component is engagement, which implies being actively involved with the other, endeavoring to take them seriously, trying to actually understand them and to deal with them. It doesn't mean simply waiting patiently for one's turn to talk.

Sympathetic engagement prioritizes listening and understanding over speaking and being understood. On this view, my obligation is to try to understand your point of view in its best possible light. The hope is that reciprocal consideration will result in common ground, or at least the grounds of compromise.

B. Representative proponent:

It isn't as easy to identify a representative proponent of sympathetic engagement, but perhaps it is implicit in the work of communitarian philosophers such as Michael Sandel. [need to expand further]

C. Appeal

Public reason seems to place the burden primarily on the speaker, and ecumenical dialogue seems to place the burden primarily upon the listener. For its part, human rights dialogue tends to speak almost exclusively in the vernacular of rights (or even rights and duties). Sympathetic engagement, in contrast, draws upon all our faculties of both inward and outward awareness. It takes people as they are, and tries to understand them; it goes beyond understanding to actual involvement together in trying to find solutions to common problems. It will seek ways of accommodating each other and its instinct will be moderate, not in the sense of just finding a middle ground, but in reconciling different and perhaps incommensurable points of view.

D. Limitations

⁷⁷ Create footnote citing this complaint from Myanmar government officials.

Like other forms of public discourse, sympathetic engagement carries with it a set of characteristic risks.

1. The first risk of sympathetic engagement is that it might result in a kind of mutual abnegation – I take on your views and prejudices and make your mistakes; and you take on mine. This might look like two people standing on either side of a double door, holding their side open, and insisting that the other person go first.
2. A second, more important limitation is that sympathetic engagement presupposes and rests upon the existence of a political community that really is a community – one in which people actually care about each other. But sometimes our political arrangements fall short of being an actual, much less an idealized, community. One of the advantages of liberal constitutional democracy is that it provides us ways to live together in reasonable peace and safety, even if we don't particularly like or want to know each other.
3. A third limitation is that we should not underestimate how much effort, and how tiring (even exhausting) it can be to really seek to understand each other. For example, it is hard enough for a husband and wife, or business partners, to really communicate successfully and understand each other. Perhaps the task of sympathetic understanding is just too much to ask in a political context. This critique would relegate sympathetic engagement to the realms of family and friendship, and expect less from politics.
4. A fourth limitation is that oftentimes it might be enough for us to be tolerated and left alone. Within a political system, we may not need to demand respect and understanding. Forbearance may be enough. For example, we can imagine some insular, traditional religious communities that don't want to be drawn into "mutual understanding." Their attitude may be: Just leave us alone to live our lives together with a few like-minded people.

V. Which is best?

I hope you are waiting – perhaps somewhat impatiently – for my answer to the question: So, which is best.

I do confess: I have my druthers, and I suspect they are evident. But I hope also that each of us will see and feel some of the deep power and appeal of each of these ideals. As is so often true in philosophical and political life, each is, I suspect, a partial truth. That is not to say that each is so much mistaken as it is incomplete. Theories, perhaps, can only go so far in helping us make straight the crooked timber of humanity.⁷⁸

Perhaps more important than identifying which of these ideals is best, is to engage in some personal reflection of how our own ways of talking and arguing measure up against each of these ideals. We might ask ourselves:

⁷⁸ This, of course, is a reference to Kant, as memorably reflected upon by Isaiah Berlin. [add quotes from Kant and Berlin.]

Do I try to express myself in ways that others can be expected to understand, take seriously, and find persuasive (as public reason suggests)?

Do I try to seek understanding and common ground, without discounting the possibility that we may have deep disagreements (as ecumenical dialogue advises)?

Do I strive to treat others with a spirit of brotherhood, to employ *ren*, to exhibit *ubuntu* (as human rights discourse recommends)?

Am I willing to engage honestly and sympathetically with others (in accordance with an attitude of sympathetic engagement)?

In the end, no one ideal may provide the answer. To expect it to, might be to make the mistake of “conceptual overload” – expecting too much of any one concept or idea, or making the mistake of turning a good idea into an ideology; a proclivity into a dogma.

Public reason has important lessons to impart – an appreciation of the value in being able to translate our deep commitments into understandable common vocabulary, and the hope that common concepts will help us find common ground. There is something quite noble, not to say tactically wise, in seeking reasons that we can expect our fellow-citizens to embrace. But we know that public reason may ratify a kind of liberal conventional wisdom, and that reason alone leads to divergence rather than convergence in understandings of advisable public policy. There is, we should admit, something vaguely condescending and lazy about public reason – if I’m a secular person, I expect you to respect my reasons, but I give myself a license to be dismissive of yours. If we express ourselves exclusively in terms of public reason, it will also be hard for people to really understand each other’s deep philosophical or religious commitments and the underpinnings (including some that are contestable) of their viewpoints.

Ecumenical dialogue likewise has much to commend it. There is great value in really hearing and understanding each other’s deep reasons; forcing people to translate their deep commitments into secular places only the non-secular under an extra burden.

Human Rights Dialogue is also commendable. There is something quite important about viewing all human beings as having and holding basic fundamental rights that go beyond positive state and local law. The foundational human rights ideas of individual human dignity, of all people being free and equal under the law. There is also something deeply resonant in the recognition made in human rights discourse that we are not just rational beings; that our reason is complimented by conscience and our capacity to treat each other in a spirit of brotherhood.

Finally, sympathetic engagement seeks an even deeper common ground, and sees value in really seeking to understand each other. It is a model of discourse dedicated to seeking and solidifying community values. It may be that we don’t need a thick community in order to practice sympathetic engagement; it may be a mechanism of community-building and community-maintaining. On this model, public discourse, the idea of reasoning together, is focused on more than winning debates. We must acknowledge, however, that it seems very far removed from contemporary politics (at least as it works on a national level in the United States).

VI. Mediating these Conceptions of Public Discourse

How do we mediate between these (and perhaps other) competing conceptions of public discourse? I'm not sure, but I'll make three modest suggestions.

First, I propose that we take a page from Aristotle – begin by examining our practices, and reflecting critically upon them.⁷⁹ How do we -- how do I? – engage in discourse?

Second, we might take another page from Karl Llewellyn who emphasized the importance of good judgment, what he called “situation sense” in knowing how to respond to particular situations.⁸⁰ We may need to think more in term of “public discourses” and “public squares,” in the plural rather than the singular, and think about what each type of discourse each type of situation calls forth. We are likely looking for a toolbox of good practices rather than a theory that we can employ with analytical vigor.

Finally, we might take a page from my father – who passed away earlier this year – who used to remind me (often, and no doubt it is unfortunate that it had to be often), “Brett, you don't need to yell: if you're right, you don't need to; if you're wrong, you can't afford to.” Much can be gained by lowering the volume, the vitriol, and the self-righteous confidence so often found in our public discourse.

VII. Conclusion

As human beings, I believe we are deeply attracted to something better than partisanship, divisiveness; something deeper than a win-at-all costs view of reason and rhetoric as simply instrumental . My plea is that we – each of us – needs to think hard about the ways we speak to and listen to each other in the public square.

⁷⁹ Create footnote.

⁸⁰ Create footnote.