A MORE DEMOCRATIC LIBERALISM

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POLITICAL LIBERALISM. By *John Rawls.* New York: Columbia University Press. 1993. Pp. xxxiv, 401. $29.95.

> [W]hat do we do when we find the truth? . . . When men learned the Earth was round, did they allow their geographers to continue to teach that it was flat?
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> . . . If you would see the monuments of a society that has come to consider the truths that Jesus Christ taught us as one among an indefinite variety of moral codes by which to live, look around you.
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> Amen, and Happy Easter.[1]

I. SOCIAL UNITY AND MORAL PLURALISM

When Peter Laslett published his first collection of essays on *Philosophy, Politics and Society* in 1956, he reported that "[f]or the moment, anyway, political philosophy is dead."[2] As the book reviews in this annual *Survey* indicate, things have changed. Political philosophy is back, and its revival owes much to John Rawls's *A Theory of Justice (Theory).*[3] Published more than twenty years ago, *Theory* remains the starting point for contemporary work on justice. This fact by itself is sufficient to make the appearance of Rawls's second book, *Political Liberalism (Liberalism),*[4] an important event.

But the intellectual importance of *Liberalism* reaches well beyond

1. Pat Buchanan, *Tolerance and Truth at Easter,* ARIZ. REPUBLIC, Apr. 3, 1994, at E5.

2. Peter Laslett, *Introduction* to PHILOSOPHY, POLITICS AND SOCIETY at vii, vii (Peter Laslett ed. 1956).

3. JOHN RAWLS, A THEORY OF JUSTICE (1971). John Rawls is James Bryant Conant University Professor Emeritus, Harvard University.

4. *Political Liberalism* is presented as a series of eight lectures, which descend in complex ways from earlier lectures and papers. The first five lectures are revisions of previously published articles, but the revisions are substantial even when — as with lectures 4 and 5 — the titles have not been changed. Lecture 6 is a significantly modified version of material presented in public lectures but never before published. Lectures 7 and 8 were published previously and are reproduced without modification. Pp. xii-xiv. Apart from lectures 7 and 8, then, it is a mistake to identify the views advanced in *Political Liberalism* with positions taken in earlier versions of the lectures.

the biography of its author and the recent history of political philosophy. Rawls's book is a deep and original examination of a fundamental problem of modern politics. Modern societies are marked by manifest ethical, religious, and philosophical disagreements among citizens.[5] Moreover, the disagreements are of a special kind. Although citizens commonly regard the moral, religious, and philosophical views of others as *false,* they need not regard others as *unreasonable* for endorsing those views.[6] Because human reason appears not to converge on a single moral outlook, we seem to face "a plurality of reasonable yet incompatible comprehensive doctrines" (p. xvi). What are the implications of these doctrinal conflicts — this "fact of reasonable pluralism" (p. xvii) — for our understanding of the requirements of justice and the possibility of a just society?[7]

A. *Democratic Toleration*

Liberalism addresses this question against the background of the account of justice as fairness advanced in *Theory.* In *Theory,* Rawls proposed an ideal of a well-ordered, democratic society featuring consensus on a conception of justice rooted in the value of fair cooperation among citizens as free and equal persons.[8] But *Theory,* Rawls now thinks, did not take the fact of reasonable pluralism seriously enough. The presentation suggested that justice as fairness depends on a *comprehensive liberal philosophy of life* — that only people who endorse a view of our nature and of the human good that emphasizes independence, choice, and self-mastery have good reason to endorse justice as fairness.[9]

Liberalism asks, then, whether justice as fairness can be freed from this dependence. Can views that disagree about moral fundamentals — some of which reject a comprehensive liberal philosophy of life — nevertheless agree on a political conception of justice rooted in "values of equal political and civil liberty; fair equality of opportunity; . . . economic reciprocity; [and] the social bases of mutual respect between

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5. I say "manifest" because I do not suppose that any society is morally or religiously homogeneous, however much its institutions may suppress the expression of differences by limiting expressive liberty, establishing compulsory forms of worship, or narrowly circumscribing associative liberty.

6. I will say more about the distinction between reasonable and unreasonable later. *See infra* section IV.C. It will suffice here to note the familiar logical distinction between *is true* and *is reasonable:* inconsistent views cannot both be true, but they can both be reasonable.

7. Versions of this question are posed at pp. xviii, xxv, 4, and 133. Rawls does not suppose that the fact of reasonable pluralism taken on its own leads us to a particular conception of justice. The problem of *Liberalism* is generated instead by an apparent tension between the fact of reasonable pluralism and the ideal of a well-ordered society featuring consensus on a conception of justice that articulates such fundamental political values as fairness, equality, and liberty.

8. RAWLS, *supra* note 3, at 12-13.

9. On the idea of a comprehensive moral conception, see p. 13. For the concern that *Theory* endorses such a conception, see pp. xvi-xvii; see also *infra* section II.B.

citizens" (p. 139)? Or does the fact of reasonable pluralism imply that we ought to give up on the idea of a consensus of justice, that democratic politics can never be more than a combination of individual calculation, group bargaining, and assertions of discrete collective identities — when democracy works well — and deceit, manipulation, and naked force — when democracy works badly?

In a world full of cruelty, depravity, and grief, we ought not to dismiss the virtues of a politics of group bargaining within a framework of rules that win general compliance — "a mere modus vivendi" (p. 145). Still, *Liberalism* defends the possibility of doing better: of achieving a consensus on political justice under conditions of fundamental moral, religious, and philosophical disagreement.

The key to that possibility is that political values — for example, the value of fair cooperation among citizens on a footing of mutual respect — are extremely important values and can be acknowledged as such by conflicting moral conceptions, by views that disagree with one another about ultimate values and about the best way to live.[10] To be sure, those views will explain the importance of political values in very different terms:[11] for example, as rooted in autonomy,[12] or self-realization,[13] or human happiness properly understood,[14] or the appropriate response to life's challenges,[15] or the value of individuality,[16] or the equality of human beings as God's creatures.[17] These competing explanations of the political values will in turn manifest themselves in conflicting views about individual conduct and personal virtue.

Still, an affirmation of the importance of political values is not the unique property of a particular moral outlook. For this reason, the different moral views that flourish in a society governed by a conception of justice rooted in the ideal of fair cooperation on a footing of

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10. *See* pp. 139, 155-57, 168-69, 208-09, 217-19.

11. Some views may treat fairness itself as a fundamental value and not as an implication of some deeper moral value. See the "third view" at p. 145.

12. *See* IMMANUEL KANT, METAPHYSICAL ELEMENTS OF JUSTICE (John Ladd trans., Bobbs-Merrill Co. 1965) (1797); JOSEPH RAZ, THE MORALITY OF FREEDOM (1986).

13. *See* T.H. GREEN, LECTURES ON THE PRINCIPLES OF POLITICAL OBLIGATION (Ann Arbor Paperbacks 1967) (1895); T.H. GREEN, PROLEGOMENA TO ETHICS (A.C. Bradley ed., 5th ed. 1906).

14. *See* JOHN S. MILL, UTILITARIANISM (1861), *reprinted in* UTILITARIANISM, LIBERTY, REPRESENTATIVE GOVERNMENT 1 (H.B. Acton ed., E.P. Dutton & Co. 1972); JOHN S. MILL, ON LIBERTY (1859) [hereinafter MILL, ON LIBERTY], *reprinted in* UTILITARIANISM, LIBERTY, REPRESENTATIVE GOVERNMENT, *supra*, at 65.

15. *See* Ronald Dworkin, *Foundations of Liberal Equality, in* 11 THE TANNER LECTURES ON HUMAN VALUES 1 (Grethe B. Peterson ed., 1990) [hereinafter TANNER LECTURES].

16. *See* STUART HAMPSHIRE, INNOCENCE AND EXPERIENCE 114, 117-18, 124-36 (1989). Hampshire also explains the value of fair political process in terms of its role in preventing such great evils as "murder and the destruction of life, imprisonment, enslavement, starvation, poverty, physical pain and torture, homelessness, friendlessness." *Id.* at 90.

17. *See* JOHN LOCKE, *The Second Treatise of Government, in* TWO TREATISES OF GOVERNMENT § 5 (Peter Laslett ed., Cambridge Univ. Press rev. ed. 1960) (1690).

mutual respect may each have good and sufficient reason to support that conception as the correct account of justice and not simply as a suitable accommodation to conditions of disagreement. Citizens who endorse different moral axioms may still arrive at the same theorems about political justice, and some people may simply endorse a view of justice without resting that endorsement on a more comprehensive moral theory.[18]

In such a society, we have an "overlapping consensus" on a "political conception of justice."[19] Citizens achieve social unity because they all accept that conception and so agree to conduct the fundamentals of political argument on the shared ground that the conception makes available and to set aside for political purposes their deep, ultimate, and persistent disagreements about what we are like, what the world is like, and how best to face its demands.

This account of the combination of unity and pluralism rests on a new interpretation of the ideal of toleration — call it "democratic toleration"[20] — paralleling the new interpretation of the social contract advanced in *Theory*. In *Theory*, Rawls proposed "to generalize and carry to a higher order of abstraction the traditional theory of the social contract."[21] The combination of social unity and moral pluralism captured in *Liberalism's* idea of overlapping consensus generalizes and carries to a higher order of abstraction the conventional idea of toleration.

Conventionally understood, toleration is a substantive political principle condemning the imposition of an authoritative form of religious worship or, in a more expansive version, an authoritative form of personal morality.[22] Aiming to provide a conception of toleration better suited to "the historical and social circumstances of a democratic society" (p. 154), Rawls's political liberalism deepens the idea of toleration and "applies the principle of toleration to philosophy itself" (pp. 10, 154). That is, in addition to accepting the substantive requirement of toleration, *Liberalism* presents toleration as a condition on political justification, at least when the question concerns "constitutional essentials" and "basic questions of justice."[23] Given the plurality of incompatible yet reasonable views held by equal citizens in a democratic society, the ideal of fair cooperation recommends that we free the vocabulary and premises of political justification from dependence on

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18. This possibility plays an important role in *Liberalism. See* pp. 155-56.

19. On overlapping consensus, see pp. 132-72; on the idea of a political conception of justice, see pp. 11-15, 174-75.

20. Rawls rejects perfectionism in the name of "democracy in judging each other's aims." RAWLS, *supra* note 3, at 442.

21. *Id.* at viii; *see also* p. xv.

22. On the central role of religious toleration in understanding the value of toleration, see SUSAN MENDUS, TOLERATION AND THE LIMITS OF LIBERALISM 6-8 (1989).

23. *See* pp. 137, 227-30.

any one view. Put otherwise, Rawls suggests that when we understand political power as "the power of free and equal citizens as a collective body" (p. 136) and take account of the fact of reasonable pluralism, we will want to be sure that political argument on fundamentals proceeds on grounds that are acceptable to citizens generally, not in the terms provided by a particular philosophical or religious tradition (pp. 136-68, 216-18).

To be sure, it may be impossible to gain support for a conception of justice from all views. But perhaps support for the conception, and a willingness to conduct public political argument in its terms, will come from the "reasonable comprehensive doctrines" (p. 59) held by reasonable citizens: the views held by people who are concerned to cooperate on terms that others accept and who recognize that reason itself does not select a single comprehensive view.[24]

The central line of thought in *Liberalism,* then, is that we can achieve the good of consensus on justice without comprehensive moral agreement;[25] the absence of comprehensive agreement does not reduce politics to calculations of individual advantage, interest-group bargaining, or the self-affirmation of discrete collective identities. Instead, because political values are highly important values and are recognized as such within a wide range of moral conceptions, consensus on a conception of justice is possible under conditions of reasonable pluralism and must accommodate those conditions if it is to suit the equal citizens of a democratic society.

B. *Reconciliation Without Metaphysics*

Rawls's project in *Liberalism* bears certain important similarities to Hegel's in his *Philosophy of Right,*[26] and it will be instructive to sketch both the commonalities and the differences between their projects.

In his political theory, Hegel aimed to reformulate a classical ideal of political society, which supposed that citizens share an understanding of justice and the human good,[27] in light of the post-Reformation idea of unbridgeable differences among citizens on fundamentals. How is it possible, Hegel asked, to achieve the good of shared commitments in the face of apparently ultimate differences in interest and outlook that are so much the focus of the energies of modern civil society? How, in Hegel's terms, can we give stable expression to both the uni-

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24. On reasonable comprehensive doctrines, see pp. 58-66.

25. *But cf.* ALISDAIR MACINTYRE, AFTER VIRTUE 227-37 (1981).

26. G.W.F. HEGEL, ELEMENTS OF THE PHILOSOPHY OF RIGHT (Allen Wood ed., H.B. Nisbet trans., Cambridge Univ. Press 1991) (1821).

27. For a statement of this aspect of the classical ideal of political society, see ARISTOTLE, POLITICS 1280b23-1281a3 (T.A. Sinclair trans., Penguin Books, rev. ed. 1981).

versal and particular aspects of our nature?[28]

Hegel and Rawls share broadly similar questions and both endorse the hopeful possibility of reconciling apparently competing demands of unity and difference. Their proposals about how to achieve that reconciliation differ profoundly, however, both in substance and in the insight about the reconciliation they expect philosophy to provide.[29]

Hegel located his answer within a generally antidualistic, logico-metaphysical theory. His philosophical system revealed our nature as free beings,[30] showed how our differences are less fundamental than we are prephilosophically inclined to think, linked the expression of our free nature to the institutions of a state whose aim is the realization of the good — understood as the expression of our nature[31] — and showed how that expression and those institutions were the natural upshot of historical evolution.[32]

According to Rawls, evaluative theories are matters of reasonable disagreement, and for that reason we ought not to build a conception of political justice around the view of the good advanced within any one such theory. Moreover, the reconciliation of social unity and moral pluralism cannot proceed on the terrain of metaphysics. Because there are ultimate, reasonable disagreements about metaphysical doctrines, a *general* philosophical argument against dualisms, for example, cannot provide part of the case for overcoming the *specific* tension between pluralism and social unity.[33] Political philosophy, if it seeks to operate on the shared ground available to equal citizens in a pluralistic public, cannot rest on a metaphysical theory of our true nature, nor can it provide any assurances, grounded in such a theory, about the ultimate expression of that nature in history.[34] Its aims must be less ambitious, focused on clarifying *how* social unity is possible under pluralistic conditions. Such clarification will not yield the

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28. On the role of the modern state in achieving this stable expression, see HEGEL, *supra* note 26, § 260.

29. For discussion of the idea of reconciliation in Hegel's political philosophy, see MICHAEL O. HARDIMON, HEGEL'S SOCIAL PHILOSOPHY: THE PROJECT OF RECONCILIATION (1994).

30. HEGEL, *supra* note 26, § 4.

31. "[The good is] *realized freedom, the absolute and ultimate end of the world."* *Id.* § 129.

32. G.W.F. HEGEL, THE PHILOSOPHY OF HISTORY (J. Sibree trans., Dover Publications 1956) (1899).

33. In an earlier version of some of the material published in *Liberalism,* Rawls indicated that "one of Hegel's aims was to overcome the many dualisms which he thought disfigured Kant's transcendental idealism," that Dewey "shared this emphasis throughout his work," and that "there are a number of affinities between justice as fairness and Dewey's moral theory which are explained by the common aim of overcoming the dualisms in Kant's doctrine." John Rawls, *Kantian Constructivism in Moral Theory,* 77 J. PHIL. 515, 516 (1980). My point is not to deny this common aim. I want only to emphasize that the presentation of justice as fairness as a political conception implies that its resolution of the apparent tension between social unity and moral pluralism cannot draw on a general antidualistic metaphysical view.

34. Later I will discuss some reasons for operating on shared grounds. *See infra* notes 114-16 and accompanying text.

assurances of unity associated with a historical theodicy;[35] at best it will lead to an understanding of why the hope for reconciliation is not unreasonable.

Once we understand *how* the stable combination of shared principles and conflicting faiths that defines an overlapping consensus is possible, then we can see — Rawls thinks — *that* it is reasonable to adhere to the ideal; the conditions of its possibility are not so demanding as to condemn it. In this way *Liberalism* offers a "defense of reasonable faith in the possibility of a just constitutional regime."[36] It argues for the reasonableness of that faith by revealing the commitments it requires as minimally demanding, emphasizing in particular that people within different moral and religious traditions can reasonably endorse those commitments. If *Liberalism* is right, then it is possible to combine fundamental moral pluralism — to take seriously one sort of *difference* — with consensus on a conception of justice suited to the equal citizens of a democratic society. But while philosophy can provide that service in a democratic society — that defense of reasonable faith — it can deliver no greater assurance of the rationality of what is actual.

C. *Consensus? Really?*

Those are the aims of *Liberalism*. They are likely to meet with skeptical response. The idea of combining disagreement on fundamentals with consensus on political principles suited to free and equal citizens may strike us as nice work if you can get it. In particular, it is natural to suspect that the demands of consensus are less minimal and the faith in its possibility correspondingly less reasonable than Rawls claims.

There are at least four reasons for skepticism about the ideal of consensus, and I will discuss them in detail in Part IV of this review.[37] As background for that discussion, I want first to explore more fully Rawls's new view, tracing the route from *Theory* to *Liberalism* — in Part II — and outlining the strategy of *Liberalism* itself — in Part III. Before getting to the route and the strategy, however, I want to enter a caveat.

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35. History, Hegel says, is the "true theodicy." HEGEL, *supra* note 32, at 457.

36. P. 172; *see also* p. 101. The idea of philosophy as a defense of reasonable faith derives from Kant. *See* pp. 100-01, 172. On the background of Kant's idea of reasonable faith in Rousseau, see DIETER HENRICH, AESTHETIC JUDGMENT AND THE MORAL IMAGE OF THE WORLD: STUDIES IN KANT 10-28 (1992).

37. *See infra* Part IV. One basis of skepticism that I will not explore below endorses the possibility of combining political consensus and moral pluralism, but only if the political consensus is confined to questions of just procedure. I explore and criticize this view in Joshua Cohen, *Pluralism and Proceduralism*, 69 CHI.-KENT L. REV. (forthcoming Summer 1994).

D. *A Different Book*

Liberalism is a very abstract book, in ways that contrast sharply with *Theory*. Much of the excitement of *Theory* derived from its claim to argue from relatively weak, abstractly stated assumptions to powerful, controversial, substantive claims about justice. Here was an egalitarian and liberal account of justice, concerned both with the protection of basic civil and political liberties and with assuring a distribution of resources that would enable people to make fair use of those liberties, and supported by premises arguably much less controversial than its conclusions.[38]

Moreover, *Theory*'s many polemical edges helped to sharpen its central claims. Utilitarianism had dominated the field of systematic moral and political philosophy, and *Theory* aimed to displace it.[39] In addition, *Theory* proposed an alternative to the ideal of natural liberty — sharp libertarian limits on the legitimate actions of the state — and to a liberal pluralism that would ensure fair process but would leave questions of substantive justice to bargaining in political and economic markets.[40] To be sure, Rawls devoted stretches of *Theory* to the nature of justification, rationality, and goodness. But the discussion of these matters was never longer — or shorter — than necessary, and one felt that the discussion was never very far from first-order issues of justice.

By contrast, Rawls's presentation of political liberalism puts substantive questions of justice aside. Here, Rawls does not focus on the content of justice but on whether justice as fairness can provide shared political ground given conflicting comprehensive moralities.

Moreover, *Liberalism* lacks the well-defined opponents of *Theory*. To be sure, Rawls contrasts the ideal of overlapping consensus on a political conception of justice with the communitarian aspiration to achieve social unity through a shared conception of human nature and the human good.[41] But communitarianism lacks the sharp definition of utilitarianism, libertarianism, or liberal pluralism, contributing to the relentlessly abstract character of Rawls's presentation.

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38. A central claim in *Theory* is that we will be led to surprising, egalitarian conclusions about the limits of legitimate socioeconomic inequality by reasoning from the same fundamental ideas — about the equality of moral persons and our basic interests — that support familiar and settled convictions about the injustice of religious intolerance and racial discrimination. *See* RAWLS, *supra* note 3, at 19-20, 150-83. To make his case, Rawls gathers the less controversial claims and convictions together in the original position, thus requiring our reasoning about socioeconomic issues to conform to principles and ideas to which convictions about fairness and basic liberties already commit us. *See* Joshua Cohen, *Democratic Equality*, 99 ETHICS 727 (1989).

39. RAWLS, *supra* note 3, at vii-viii.

40. On natural liberty and liberal pluralism, see *id.* at 65-75. For an argument against natural liberty and liberal pluralism, see BRIAN BARRY, THEORIES OF JUSTICE 217-34 (1989). I contrast liberal pluralism with Rawls's view in Cohen, *supra* note 37.

41. *See* pp. 42-43, 146, 201.

Because it pays less attention to substantive issues of political justice and lacks such sharply defined opponents, *Liberalism* is unlikely to generate either the excitement of *Theory* or the same interdisciplinary ferment. But these are caveats, not criticisms. *Liberalism* is a book of very great depth and importance. In due course it will likely change the shape of political philosophy, sharpening political philosophy's autonomy by increasing its distance from moral philosophy, and perhaps will have similarly salutary effects on political argument itself.

II. LIBERALISM: A PHILOSOPHY OF LIFE?

Liberalism, Rawls says, addresses "a serious problem internal to justice as fairness" (p. xv) — the view presented in *Theory.* In general terms, the problem arises from a lack of realism engendered by inattention to the fact of reasonable pluralism (pp. xv-xviii). More particularly, the difficulty emerges in the account of stability advanced in Part Three of *Theory.* To locate the difficulty more precisely, and to see why it is so troubling, I will first sketch three main elements of *Theory,* then present an objection that many commentators have raised about the main line of argument in *Theory,* and finally restate that difficulty as a tension internal to justice as fairness.

A. *Three Elements of Theory*

Theory presents, first, an attractive ideal of a just society — a well-ordered, democratic society, featuring a consensus on norms of justice. The content of the consensus is given by two principles:

> *[First Principle:]* Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all.
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> *[Second Principle:]* Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.[42]

A society satisfying these principles achieves, Rawls proposes, some measure of "reconciliation of liberty and equality."[43] Suppose that the real value of the freedom guaranteed to a person by the protection of basic liberties is fixed by that person's command of resources, rather than by her position relative to others.[44] Then the two

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42. I take the formulation of these principles, first stated in *Theory,* from *Liberalism.* P. 291.

43. RAWLS, *supra* note 3, at 204.

44. Rawls does not think that the worth of *political* liberty to a person is fixed by that person's absolute command of resources. Because the political process has "limited space," the value of political liberty also depends on relative position. *See* pp. 328-29. For this reason, Rawls imposes a special requirement of the "fair value" of political liberty: roughly, that people in different social positions have equal chances to hold office and influence the political process. *See* pp. 327-31, 356-63; RAWLS, *supra* note 3, at 224-27. For a discussion of relative positions, see *id.* at 530-41.

principles together require that a society "maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all."[45] This requirement of maximizing the minimum worth of liberty, Rawls says, "defines the end of social justice."[46]

Second, Rawls offers a contractual defense of this egalitarian-liberal conception of justice. Carrying the social contract idea "to a higher order of abstraction" (p. xv), he argues that the two principles would be chosen in an initial situation of choice — the "original position"[47] — in which the parties are assumed not to know anything particular about themselves — about their position in the distribution of alienable resources, their position in the distribution of native endowments, and the determinate aims, attachments, or views of the world that comprise their conception of the good.[48] Required to choose under conditions of severe ignorance, they are uncertain of the effects of their choice on their own lives. Concerned to assure that they can live with that choice wherever they end up, the parties would choose to provide themselves, Rawls argues, with the strong downside protection assured by the two principles.[49]

Third, Rawls proposes that the various constraints on knowledge imposed in the original position represent requirements that strike us, on reflection, as reasonable to impose on norms of justice or on their justification.[50] Concerns about fairness, for example, and a conception of individuals as equal moral persons with a conception of the good and the capacity for a sense of justice fuel these constraints.[51]

B. *Original Position: A Liberal Philosophy of Life?*

None of these three central elements of justice as fairness has won general acceptance.[52] But criticisms of Rawls's claims about the reasonableness of the conditions imposed in the original position have been especially sharp among moral and political philosophers. Though the details of the criticisms take many forms, the central ob-

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45. RAWLS, *supra* note 3, at 205.

46. *Id.* In *Liberalism*, Rawls says, less strongly, that maximizing the minimum worth of liberty "defines one of the central aims of political and social justice." P. 326.

47. RAWLS, *supra* note 3, at 17-22.

48. *Id.* at 136-42.

49. *Id.* at 150-57, 175-83.

50. *See id.* at 18, 587. For a complete list of passages in *Theory* that state the idea of the original position as expressing reasonable requirements on arguments for principles, see p. 25 n.28.

51. "If the original position is to yield agreements that are just, the parties must be fairly situated and treated equally as moral persons." RAWLS, *supra* note 3, at 141; *see also* pp. 23-27.

52. For criticisms of the principles themselves, see DAVID GAUTHIER, MORALS BY AGREEMENT (1986); ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA (1974); G.A. Cohen, *Incentives, Equality, and Community, in* 13 TANNER LECTURES, *supra* note 15, at 261. On the argument from the original position, see John C. Harsanyi, *Can the Maximin Principle Serve as a Basis for Morality? A Critique of John Rawls's Theory,* 69 AM. POL. SCI. REV. 594 (1975).

jection to Rawls's construction is that the design of the original posi-
tion presupposes a particular conception of the good. It does not,
contrary to Rawls's claims, provide a reasonable device for addressing
controversies about justice among people with different conceptions of
the good, because it will only be found attractive by people drawn to a
liberal philosophy of life — one that holds that individual indepen-
dence, choice, and self-mastery are the fundamental values that ought
to govern our lives.

Critics have localized the offending bias in different places.
Thomas Nagel criticized Rawls's assumption that all the parties in the
original position want "primary goods" — in particular, income and
wealth — as unfairly biased in favor of individualistic conceptions of
the good.[53] Brian Barry objected to the individualism implicit in
Rawls's contractual method of justification, which proceeds from indi-
vidual judgments about what is best for me, all else equal, to judg-
ments about how society ought to be arranged.[54] According to
Michael Sandel, Rawls assumed a liberal philosophy of life when he
required that we place our conceptions of the good behind a veil of
ignorance.[55]

To see the force of these criticisms, consider Sandel's objection.
Reasoning from behind the veil of ignorance requires that we evaluate
norms of justice without reference to our own conception of the good.
It is a puzzling idea. Why, and how, are we to reason about justice
without drawing on our views about the proper conduct and ends of
human life? If we hold the sincere conviction that a life of self-realiza-
tion is a better life — if we think that such a life is *genuinely better,* not
simply the life that we prefer — then what reason could there be for
bracketing that conviction when we assess principles of justice?

One reason for such bracketing is that we cannot agree on terms of

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53. *See* Thomas Nagel, *Rawls on Justice,* 82 PHIL. REV. 220 (1973). Rawls replies at pp.
195-200.

54. BRIAN BARRY, THE LIBERAL THEORY OF JUSTICE 116-27 (1975). For Barry's state-
ment of the liberal philosophy of life, see *id.* at 126-27.

55. MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE (1982). Sandel sketches
the liberal philosophy of life — a conception of "[t]he deontological universe and the independ-
ent self that moves within it." *Id.* at 177. William Galston also criticizes Rawls for failing to
acknowledge his reliance on a conception of the good. *See* WILLIAM A. GALSTON, LIBERAL
PURPOSES 118-62 (1991). Galston argues, however, that such reliance is no embarrassment. On
the contrary, liberalism must openly avow its dependence on a view of the good, albeit a "deliber-
ately thin" view, "a kind of minimal perfectionism." *Id.* at 177. Galston's view is puzzling. It is
not controversial that some account of the good is required for an account of justice. *See* pp.
173-211; RAWLS, *supra* note 3, at 395-99. Moreover, Galston's account of the good is itself
constrained by a concern "to provide a shared basis for public policy." GALSTON, *supra,* at 178.
This constraint suggests that Galston's account of the good may not comprise part of a compre-
hensive perfectionist conception but may instead be part of a political conception of the good in
the sense defined by Rawls at pp. 174-76. I say that Galston's account "may be" political be-
cause it is not clear what he means by a "shared basis of public policy" or how the concern to
provide such a basis — as distinct from concerns within an account of the good — constrains the
role of ideas of the good in his presentation of liberalism.

cooperation for a pluralistic society if the rationale for those terms premises a particular conception of the good. Peaceful cooperation requires agreement, and agreement requires that citizens put aside "the contingencies that *set them in opposition.*"[56] But Rawls's reasons in *Theory* are not simply a matter of securing social peace. He argues instead that fairness to citizens as moral persons requires that we not rely on any particular conception of the good in justifying principles that all will have to live by. Instead, fairness demands that "[t]he arbitrariness of the world . . . be corrected for by adjusting the circumstances of the initial contractual situation."[57]

But why is it unfair to people as moral persons to treat them in accordance with principles of justice chosen on the basis of an account of the best life? Why correct for the "arbitrariness of the world" by abstracting from convictions about the best life? Why not correct for that arbitrariness by encouraging everyone to endorse the truth about the best life? To be sure, conceptions of the good sometimes set people in opposition; but why are they "contingencies"? According to Sandel's objection, Rawls's answer to these questions itself relies in the end on a particular account of the best life and a particular view of the person that goes with that account. We will only take an interest in what is chosen behind the veil of ignorance if we deny that our fundamental aims and attachments are good indicators of who and what we are. Moreover, we will be drawn to that denial only if we regard ourselves as, at bottom, agents unencumbered by fundamental attachments to our actual ends, as essentially choosers of values rather than as carriers and renewers of the values of particular traditions and communities — only if we are attracted to the idea that our basic allegiances themselves are elements of the arbitrariness of the world and that the unchosen life is not worth leading.[58]

This will do as a statement of comprehensive liberalism, and we can understand a theory of justice built on these foundations as presenting the political implications of such a liberal outlook. But,

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56. RAWLS, *supra* note 3, at 137 (emphasis added).

57. *Id.* at 141.

58. Sandel identifies two key assumptions in *Theory:* that we are essentially choosers — the priority of the self with respect to its ends — and that we are not essentially members of a community — "[t]he priority of plurality over unity." SANDEL, *supra* note 55, at 50-59. Notice that it is possible to deny the first proposition — thus affirming that our identity is fixed by our ends — without denying the second — that is, without affirming that we are essentially members of a community. I might regard myself as standing in an essentially personal relationship with God and as bound by obligations arising from that relationship, or as a locus of artistic creativity, or as essentially a seeker of truth. In each case, I might treat my relations with others as instrumental for those deeper purposes, rejecting the ideal of community. To put the point in historical terms, both Hegel and Nietzsche rejected the conception of the self as essentially a chooser of ends. But, not to put too fine a point on it, they had very different views about community. For criticisms of the conception of the self as chooser, see HEGEL, *supra* note 26, §§ 15-20, 105-141; and FRIEDRICH NIETZSCHE, ON THE GENEALOGY OF MORALS 44-46 (Walter Kaugmann ed., Walter Kaufmann & R.J. Hollingdale trans., Vintage Books 1969) (1887) (reprinted with ECCE HOMO).

according to the criticisms, the original position's dependence on such specific commitments disqualifies it from serving as a shared or neutral basis for settling on principles of justice in a democratic society whose equal citizens disagree sharply about liberal ideals of autonomy and individuality.

Sandel goes further. He thinks that Rawls's implicit commitment to a conception of the self as an essentially unencumbered chooser of ends is not merely morally sectarian; it is also inconsistent with Rawls's avowed aim of avoiding obscure and controversial Kantian metaphysical commitments[59] and with our experience of both ourselves and our connections with our commitments.[60] In short, Sandel is concerned not simply to demonstrate Rawls's own reliance on a view of the good but also to undermine the liberal conception of justice by exploding the views of the good and the self on which it depends.[61] These further points are not, however, essential for our current purpose.

C. The Internal Problem: Congruence and Stability

Earlier, I mentioned Rawls's claim that *Liberalism* addresses a problem "internal" to justice as fairness.[62] Thus far, however, I have presented an objection to the original position that might be thought to operate externally. I propose now to show how claims about the objectionable dependence of the original position on a particular philosophy of life can be turned into the internal tension in justice as fairness — the problem in *Theory*'s account of stability — that *Liberalism* aims to address.

In characterizing the ideal of a well-ordered society and presenting an account of its stability, Rawls makes essential use of the idea of normative consensus.[63] In a well-ordered society, "[e]veryone has a similar sense of justice and in this respect a well-ordered society is homogeneous. Political argument appeals to this moral consensus."[64] Moreover, this shared sense of justice plays a "fundamental role" in ensuring that "the basic structure is stable with respect to justice."[65]

To be sure, some idea of agreement figures in any contractual theory of justice. But the "moral consensus" Rawls refers to is not sim-

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59. SANDEL, *supra* note 55, at 94-95.

60. *Id.* at 179.

61. The project of undermining liberalism by excavating and exploding its psychological and metaphysical commitments traces back to HEGEL, *supra* note 26. The most ambitious modern effort along these lines is ROBERTO M. UNGER, KNOWLEDGE AND POLITICS (1975).

62. See the introduction to Part II of this review, *supra*.

63. The following discussion draws on Joshua Cohen, *Moral Pluralism and Political Consensus, in* THE IDEA OF DEMOCRACY 270 (David Copp et al. eds., 1993).

64. RAWLS, *supra* note 3, at 263. On the role of consensus in the ideal of a well-ordered society, see p. 35. *See also* RAWLS, *supra* note 3, at 5, 453-58.

65. RAWLS, *supra* note 3, at 458.

ply an ex ante agreement on institutions and relations of authority of a kind associated with Hobbesian and Lockean social contracts.[66] Closer in this respect to Rousseau, Rawls supposes that citizens in a just political society share a conception of justice and that politics is openly guided by that conception.[67] Justice as fairness aims to specify the appropriate content for such a conception, the content of the general will for a society of free and equal persons.

This emphasis on the role of consensus in the ideal of a well-ordered society is understandable. A moral consensus on political fundamentals is a basic good for at least four reasons.

First, for any conception of justice, the existence of a moral consensus on it increases the likelihood that social order will stably conform to the conception.[68]

Second, a moral consensus promotes a variety of specific values of considerable importance. Assuming that norms of justice are not motivationally inert, consensus on them increases social trust and harmony, supports social peace, simplifies decisionmaking, reduces monitoring and enforcement costs by encouraging a willingness to cooperate, and — if public debate and decisions reflect the consensus — reduces alienation from public choices because citizens embrace the norms and ideals that guide those choices.

Third, a consensus on norms of justice provides a way to reconcile the ideal of an association whose members are politically independent and self-governing with an acknowledgment of the central role of social and political arrangements in shaping the self-conceptions of citizens, constraining their actions, channeling their choices, and determining the outcomes of those choices.[69] When a consensus on norms and values underlies and explains collective decisions, citizens whose lives are governed by those decisions might nonetheless be said to be independent and self-governing. Each endorses the considerations that produce the decisions as genuinely moral reasons and af-

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66. *See* THOMAS HOBBES, LEVIATHAN 120-29 (Richard Tuck ed., Cambridge Univ. Press 1991) (1651); LOCKE, *supra* note 17, at 374-77, 395-400.

67. On the role of a shared conception in Rousseau, see Joshua Cohen, *Reflections on Rousseau: Autonomy and Democracy,* 15 PHIL. & PUB. AFF. 275 (1986).

68. See Rawls's "third general fact" at p. 38.

69. See the discussion of full autonomy at pp. 77-78. Rawls distinguishes there between endorsing full autonomy as a political value and affirming autonomy as a comprehensive moral value, to be realized in all aspects of life and conduct. The concern to reconcile self-government with interdependence is central to Rousseau's project, though Rousseau's own presentation suggests that he thinks of self-government or moral liberty as a comprehensive moral value, tied to an account of our true nature. On moral liberty, see JEAN-JACQUES ROUSSEAU, ON THE SOCIAL CONTRACT (1762) [hereinafter ROUSSEAU, SOCIAL CONTRACT], *reprinted in* BASIC POLITICAL WRITINGS OF JEAN-JACQUES ROUSSEAU 139, 144-46 (Donald A. Cress trans. & ed., 1987); on our nature as free beings, see JEAN-JACQUES ROUSSEAU, *Discourse on the Origin and the Foundations of Inequality Among Men, in* THE FIRST AND SECOND DISCOURSES 137, 189-90 (Victor Gourevitch ed. & trans., Harper & Row 1986).

firms their implementation.[70]

Finally, under conditions of political consensus, citizens achieve a form of mutual respect. Each offers as reasons for a decision only considerations that others who are subject to political power take as reasons, and state power is exercised only within the bounds set by these reasons.[71] The force of this point as a basis for mutual respect is increased by recalling the distinction I noted earlier between a unanimous, ex ante agreement and an ex post consensus on norms of justice that frame political debate.[72] In a Hobbesian contract of subordination, everyone agrees to submit to a common agent, accepting the will and judgment of that agent as authoritative.[73] Nothing in the content of the agreement — nothing manifest in political experience itself — directly expresses mutual respect.[74] With a political consensus, by contrast, the authorization of power proceeds in terms that all citizens accept ex post — in accordance with reasons that are shared and therefore accepted by all who are subject to the power. That does provide a basis for mutual respect.

Consensus, then, has its virtues. But not every consensus is attractive. Those attractions depend on the content of the consensus and on the conditions under which it is sustained. Suppose, for example, that a moral consensus is attractive because it provides a way to make self-government — or association on terms of mutual respect — consistent with the unavoidable chains of political connection (see the third and fourth reasons stated above). Then the consensus must be freely sustained and not simply a form of enforced homogeneity. A consensus is free only if it is arrived at under conditions that ensure the possibility of individual reflection and public deliberation — for example, conditions that protect expressive and associative liberties.

Here we arrive at the internal problem of *Liberalism*. Assurances of expressive and associative liberties — necessary if the consensus that defines a well-ordered society is to be free and attractive — are bound to be associated with moral, religious, and philosophical pluralism.[75] But can the value of substantive consensus on justice survive such pluralism? Let us say that a society is liberal only if it strongly protects expressive and associative liberties. Then, to restate the question: Can there be political consensus and social unity, given the inevi-

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70. We also need to add that everyone believes with good reason that the decisions express the shared norms and values.

71. See the discussion of legitimacy at pp. 136-37, 216-19.

72. *See supra* notes 66-67 and accompanying text.

73. *See* HOBBES, *supra* note 66, at 120-21.

74. *But see* ROUSSEAU, SOCIAL CONTRACT, *supra* note 69, at 197 ("Once the populace is legitimately assembled as a sovereign body . . . the person of the humblest citizen is as sacred and inviolable as that of the first magistrate.").

75. See the "first general fact" at p. 36.

table pluralism of a liberal society?[76] Why, in particular, ought we to expect — as Rawls suggests — that the members of a well-ordered society regulated by Rawls's principles of justice will find the conditions imposed on the original position reasonable? According to the criticisms I referred to earlier, the original position assumes a liberal philosophy of life and presents the political extension of that philosophy.[77] If these criticisms are right, then the comprehensive views that some members of a just society find attractive will likely lead them to reject the original position.

The discussion of stability in Part Three of *Theory* suggests that the criticisms are right. Because it does, Rawls concludes that his account of the stability of a well-ordered society is in trouble: that it is "not consistent with the view as a whole" (p. xvi).

In Part Three, Rawls advances a two-stage case for the stability of a society regulated by his principles of justice.[78] The first stage focuses on the acquisition of a sense of justice — "an effective desire to apply and to act from the principles of justice [the two principles chosen in the original position] and so from the point of view of justice."[79] Rawls sketches how the members of a just society could be expected, through membership in a series of institutions — from family, to the associations of civil society, to citizenship in the state — to acquire an understanding of and an effective desire to act from a sense of justice to which Rawls's principles give content.[80]

The second stage shifts attention from the acquisition of a sense of justice to the *congruence* of that sense with a person's conception of the good. Here Rawls argues that the members of a just society would, with reason, regard the regulation of their conduct by their sense of justice — as given by the two principles — as itself good for them: that is, they would find their sense of justice *congruent* with their good, rather than regarding it as an unwelcome constraint on the pursuit of their good. If this claim about the good of a sense of justice is right, then we have an important force for stability in a just society.[81]

Moral pluralism causes troubles for this happy picture. Consider one of the arguments for congruence: "acting justly is something we want to do as free and equal rational beings. The desire to act justly

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76. I do not mean to suggest that other societies are not pluralistic. *See supra* note 5.

77. *See supra* section II.B. In his Tanner Lecture on "liberal equality," Ronald Dworkin defends a version of liberalism on the grounds of its continuity with a more comprehensive liberal outlook on life. *See* Dworkin, *supra* note 15, at 20-22.

78. Rawls presents the first part of the case in RAWLS, *supra* note 3, at 462-96, and the second part in *id.* at 513-77.

79. *Id.* at 567.

80. *Id.* at 462-96. See also Hegel's theory of the formation of the will through the various spheres of ethical life — family, civil society, and state. HEGEL, *supra* note 26, §§ 142-329.

81. *See* RAWLS, *supra* note 3, at 499, 501.

and the desire to express our nature as free moral persons turn out to specify what is practically speaking the same desire."[82] The claim that these desires have the same content rests on the argument from the original position. Or, as Rawls indicates elsewhere, the "sentiment of justice" is — for anyone who "understands and accepts the contract doctrine" — the very same desire as the desire to act on principles that would be chosen "in an initial situation which gives everyone equal representation as a moral person," and also the same as the desire "to act in accordance with principles that express men's nature as free and equal rational beings."[83] In the original position, we are represented as free moral persons, so to act from the principles chosen there is to express our nature as free and not to "give way to the contingencies and accidents of the world."[84]

Moreover, the argument from the original position not only selects principles of justice but also requires that those principles take priority in regulating our conduct. To express "our freedom from contingency and happenstance,"[85] then, we need more than a sense of justice given content by the principles chosen in the original position. We must also give priority to our sense of justice, assigning it an authoritative role in the regulation of conduct.

A central element in the case for congruence and stability, then, is that members of a well-ordered society will develop a conception of their nature as free beings, will regard the expression of that free nature in their own conduct as a fundamental good, and will understand — because of their "lucid grasp of the public conception of justice upon which their relations are founded"[86] — that such expression requires acting from the principles of justice that would be chosen in the original position, giving those principles a special regulative role.[87]

The case for the two principles, then, depends upon the case for stability; the case for stability depends in part upon the case for congruence; and the case for congruence depends upon an account of our "nature as free moral persons"[88] and the desire to express our nature as free.[89] But this line of dependence strongly suggests that the argument for congruence, and so the case for stability, depends upon a set

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82. *Id.* at 572 (citation omitted).

83. *Id.* at 478.

84. *Id.* at 575.

85. *Id.* at 574.

86. *Id.* at 572.

87. The condition of "full publicity," defined at pp. 66-67, requires public availability of the conception of justice and the full rationale for it.

88. RAWLS, *supra* note 3, at 572.

89. Rawls ties this argument to the Kantian interpretation of justice as fairness. *See id.* The argument is one of four he offers in support of congruence. It might be interpreted as an argument addressed to those who endorse a comprehensive Kantian view, rather than as one of four arguments that citizens generally will find persuasive. But *Theory* clearly offers it as the latter.

of moral commitments and self-understandings that some members of a well-ordered society will reasonably reject.[90]

For example, some citizens may think that their nature consists in the possession of various natural, human powers, that the human good consists in a perfection that fully realizes those powers, and that the requirements of morality set out the conditions for such perfection. Others may think of themselves as creatures of a God who imposes obligations that bind their moral freedom. Such citizens accept moralities that are, to use Kant's term, heteronomous. They, too, wish to express their nature and not to give way to the contingencies and accidents of the world. But it is unclear why they should find the original position a plausible way to specify the content of their expression. With Locke, they may suppose that their fundamental powers are the capacity to understand and to act from the Creator's requirements and that they express their nature by acting from those requirements.[91] To be sure, adherents of such a view might reject the imposition of a religious establishment and affirm the importance of the free exercise of religion. But they would do so because forced religious practice does not fulfill basic religious duties and so provides no route to salvation,[92] rather than because a regime of religious toleration expresses their "nature" as free moral persons. They do not acknowledge themselves to have such a nature.

Some people, then, may reject the characterization of our nature as free; they will be drawn neither to the reasonableness of the original position as a rendering of their nature, nor to acting from the principles selected there *because* such action expresses their nature.[93] Thus, Rawls concludes that the conception of a well-ordered society presented in *Theory* "is unrealistic . . . because it is inconsistent with realizing its own principles under the best of foreseeable conditions" (p. xvii). Under the best of foreseeable conditions, a society that satisfies the two principles will be a society in which some citizens reject the conception of our nature used in *Theory* to underwrite the original position and the account of congruence. "The account of the stability

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90. I have concentrated on the problem for congruence. The account of acquisition, however, faces a parallel difficulty. An account of the acquisition of a desire to act on principles must explain why that desire, which is not instrumental, does not reflect a strange affection for rules. In *Theory*, Rawls responds to this concern by explaining that moral principles can "engage our affections" in part because acting on them expresses our "nature as free and equal rational beings." *Id.* at 476. But this explanation leaves us with a gap in the account of acquisition in the case of those citizens who do not see their nature in such terms. In this connection, see pp. 82-86 on principle-dependent and conception-dependent desires.

91. *See* LOCKE, *supra* note 17, at 310-11.

92. *See* JOHN LOCKE, A LETTER CONCERNING TOLERATION 18-20 (Patrick Romanell ed., William Popple trans., 1955) (1689).

93. They may, of course, be attracted to those principles and to the original position itself for other reasons. *See infra* notes 110-12 and accompanying text.

of a well-ordered society in Part III is therefore also unrealistic . . ." (p. xvii).

How, then, is it possible to achieve consensus on a conception of justice suited to a democratic society of equal citizens and to reap the benefits of that consensus, given the pluralism of comprehensive moralities that inevitably marks such a society? More particularly, can the presentation and defense of a conception of justice for a democratic society be freed from the unacceptably narrow premises of a comprehensive moral liberalism? That is the question of political liberalism.

III. Political Liberalism

Rawls's answer to the question of political liberalism contains two parts. The idea of a political conception of justice plays a central role in the first part; the idea of an overlapping consensus is the key to the second.

A. A Political Conception of Justice

Given the plurality of comprehensive moralities, the claim that consensus is possible faces a threshold problem. A conception of justice can win general acceptance only if it can be suitably formulated. Its formulation must be understandable to citizens with competing views of the good and must not itself preclude acceptance by some citizens.[94] Some conceptions of justice would, however, on their face, be unacceptable to some citizens — for example, if the conceptions appeal to values that are not implicated in public institutions or that reasonable people might reject. Suppose an account of justice requires a distribution of resources that ensures equal pleasure, or suppose it mandates a distribution that enables each citizen to come equally close to achieving his aims. Both views face troubles because citizens reasonably disagree about the relative value of pleasure and of relative achievement. So these conceptions would be, on their face, unacceptable.[95]

Rawls calls a view that is suitably formulated a "political conception of justice" (p. 11). Three features — each necessary if the conception is plausibly to provide the focus of agreement, given the fact of reasonable pluralism — define such a conception:[96] it must have limited scope, extending only to issues about the basic structure of society

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94. This condition is necessary but not sufficient, because a view that is formulated without reference to any comprehensive moral view may nevertheless be attractive only to those who hold a particular view. *See infra* notes 109-12 and accompanying text.

95. For discussion and criticism of these two versions of equality of welfare, see Ronald Dworkin, *What Is Equality? Part 1: Equality of Welfare,* 10 Phil. & Pub. Aff. 185, 204-09, 220-24 (1981).

96. *See* pp. 11-15.

and not to norms of personal conduct or ideals of life; it must draw on ideas familiar to citizens from the political culture of a democracy, not on ideas belonging exclusively to particular traditions of moral thought that are not available to all; and it must be presented as free-standing, not as depending for formulation or justification on its roots in a comprehensive morality.[97] In short, a political conception of justice is formulated as autonomous from comprehensive conceptions of the good with respect to scope, content, and justification. Each of these three forms of autonomy should contribute to the possibility of its general acceptance.

To see how these kinds of autonomy help to address the problems about the original position and veil of ignorance I sketched earlier, consider the aspect of the political conception that Rawls refers to as a "political conception of the person" (pp. 18-20, 29-35, 48-54, 86-88). The original position isolates certain features of people as relevant to its problem of justice, setting aside other features as irrelevant — and so to be excluded by the veil of ignorance. The relevant features include certain basic moral powers: the capacities for a conception of the good — to form, pursue, and revise such a conception — and for a sense of justice.[98] The irrelevant features include sex, race, natural abilities, and determinate conceptions of the good.

As my earlier discussion of the original position indicates,[99] *Theory* was not entirely clear about the basis of this distinction between relevant and irrelevant characteristics. This lack of clarity contributed to the impression that justice as fairness was the political expression of a comprehensive moral liberalism. Thus, Rawls often referred to the *morally* relevant or irrelevant as if to say that the distinction derives from a comprehensive moral doctrine.[100] Sometimes he referred to the irrelevant characteristics as "contingencies," as though to suggest a metaphysical foundation for the distinction.[101] Sometimes — as I in-

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97. A political conception is presented as freestanding in the way that logic or number theory is. A presentation of logical laws — for example, the law of excluded middle — proceeds without tying the laws to a theory of truth or issues in the theory of meaning; a presentation of number theory proceeds without reference to questions about the ontological status of numbers.

98. Pp. 18-20; RAWLS, *supra* note 3, at 561.

99. *See supra* notes 79-93 and accompanying text.

100. For example, Rawls refers to the constraints in the original position as "conditions that are widely recognized as fitting to impose on the adoption of moral principles." RAWLS, *supra* note 3, at 584. Similarly, the criticisms of natural liberty and liberal equality refer to social circumstances and natural assets as features that are "arbitrary from a moral point of view." *Id.* at 72, 74-75.

101. I say "sometimes" because some passages in *Theory* strongly suggest that apparently metaphysical notions should be interpreted morally. Take, for example, the following remark: "Our moral sentiments display an independence from the accidental circumstances of our world, *the meaning of this independence being given by the description of the original position and its Kantian interpretation.*" *Id.* at 475 (emphasis added). To say that the description of the original position gives the meaning of independence is to say that independence is a matter of the irrelevance for moral purposes of certain features of the person, rather than a matter of the metaphysical contingency of those features.

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dicated in my discussion of congruence and stability[102] — he suggested that the distinction is rooted in an account of "our nature," permitting both metaphysical and moral interpretations.[103]

Liberalism draws the distinction between relevance and irrelevance in the same place: the power to form, pursue, and revise a conception of the good and the power to form and act from a sense of justice are relevant; and sex, race, natural abilities, and determinate conceptions of the good are irrelevant (pp. 29-35). But the point of the distinction, according to *Liberalism,* is to present a conception of the person that will play a role in a political conception of justice, and so *Liberalism* underscores that the conception of the person is itself political in each of the three ways noted earlier: scope, content, and justification. Thus, *irrelevant* should not be understood absolutely, metaphysically, or in terms of a general moral view, but only as implying that a feature of a person is not important for the purposes of political argument — in particular, not important for political argument aimed at specifying the requirements of justice for a society in which members are understood as free and equal. *Contingent* ought similarly to be given a nonmetaphysical rendering, as implying that a feature is not relevant to political argument.

We can, then, determine which features are "irrelevant, politically speaking, and hence [to be] placed behind the veil of ignorance" (p. 79) by systematizing and extending reasonably familiar ideas about the justification of political arrangements in a democratic society. This basis is appropriate for the distinction given the question that justice as fairness sets out to resolve: "What is the most appropriate conception of justice for specifying the terms of social cooperation between citizens regarded as free and equal, and as normal and fully cooperating members of society over a complete life?" (p. 20). The conception of citizens as free and equal represents a familiar element of the political culture of democratic societies. The problem is to determine more precisely what that political conception involves and to address a longstanding controversy about what account of justice is best suited to citizens as free and equal.[104]

Thus, we look to settled ideals and convictions about basic democratic institutions, and to settled understandings about the justification of public norms in a democratic society, and then draw the relevant-irrelevant distinction by reference to the characteristics of persons that play a role in those ideas, convictions, and understandings. One may then call the irrelevant features "contingencies," but with no intention to affirm — or to deny — that an individual could exist without the feature in question, or to say — or to deny — anything about the

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102. *See supra* notes 78-93 and accompanying text.

103. RAWLS, *supra* note 3, at 251-57, 572.

104. *See* pp. 20, 22, 26, 34-35.

importance of irrelevant features in other settings. They are simply unimportant for the purposes at hand, whatever their metaphysical standing and however important they may be for other purposes, including other ethical purposes.

To be more specific, arguments aimed at establishing that certain properties are contingent (irrelevant to the problem of political justification) and that others are aspects of our essential nature (important to that problem) proceed along at least two main lines. The first seeks to show that current ideals — for example, of fairness, religious toleration, and racial and sexual equality — and patterns of political argument — for example, on constitutional matters — treat certain facts as irrelevant. For instance, it is widely agreed that we ought to protect certain basic rights — expression, political participation, conscience, and equal treatment — without regard to social background, sex, or race. Furthermore, social class ought not to restrict opportunity. These are clear cases of unfairness. So in reasonably settled understandings of justice, we treat facts about class, sex, and race as contingencies — matters that are irrelevant to argument about the justice of basic institutions.

Similarly, the constitutional treatment of religious and political ideals suggests the irrelevance of conceptions of the good to such argument. For example, conversion, sin, and religious laxity are not civil offenses. Whatever its implications for a person's self-conception, being "born again" has no civil consequences; being born again does not, for example, absolve a person of contractual obligations undertaken prior to that rebirth or give a person who is reborn on election day a right to a second vote. Furthermore, in the case of political ideals, endorsing the legitimacy of the political order is not — in principle, at least — a precondition for equal political rights, a point underscored by conventional hostility to regulating expression by virtue of its content and, more particularly, its viewpoint.[105]

A second strategy is to show that certain features of people are themselves so dependent on concededly irrelevant facts that to permit them to play a role in political justification would be tantamount to allowing the irrelevant facts to play a role. So they too should be treated as irrelevant. The development of abilities and talents, for ex-

105. I assume this hostility to be widely shared, even by people who do not think that content or viewpoint regulation is always impermissible. Justice Marshall provided a classic statement of the general concern about content regulation in Police Department v. Mosley, 408 U.S. 92, 95 (1972) ("[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."). On viewpoint discrimination, see Texas v. Johnson, 491 U.S. 397, 414 (1989). For discussion of content and viewpoint regulation, see John Hart Ely, *Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis,* 88 HARV. L. REV. 1482, 1482-508 (1975); T.M. Scanlon, Jr., *Content Regulation Reconsidered, in* DEMOCRACY AND THE MASS MEDIA 331 (Judith Lichtenberg ed., 1990); Geoffrey R. Stone, *Content-Neutral Restrictions,* 54 U. CHI. L. REV. 46 (1987); and Geoffrey R. Stone, *Restrictions of Speech Because of Its Content: The Peculiar Case of Subject-Matter Restrictions,* 46 U. CHI. L. REV. 81 (1978).

ample, seems closely linked to the social circumstances and aspirations that the entrenched forms of argument fix as contingencies. So talents and abilities ought to be treated as contingencies and not appealed to as fundamental reasons for differential advantages.

I would need to say much more about these matters in order to evaluate Rawls's distinction between relevant and irrelevant, and the associated political conception of the person. I have provided only an outline of the rationale for the distinction. But its force — and limits — as a response to the original position's difficulties should now be clear.

According to the objection, the original position rests on a liberal philosophy of life that places especially great weight on the importance of choice and that sees the self as, in its fundamental nature, a chooser of its own ends. Rawls's claim that "the self is prior to the ends which are affirmed by it"[106] suggests a commitment to such a philosophy. But the political conception of the person offers a restrictive interpretation of this priority. It neither affirms nor denies that people could, as a metaphysical matter, exist without their aims as pure choosers of ends, as "Kantian transcendent or disembodied subject[s]" who are "shorn of empirically-identifiable characteristics";[107] or that citizens can *imagine* their own lives continuing with their final aims different from what they now are; or that they would actually *be* the same persons if their final aims were radically altered; or that, as an ethical matter, the aims of citizens are worth pursuing only if chosen by them. Instead, the political conception ties both the content of and the rationale for the alleged priority to the aims of a theory of justice for a democratic society and to the public availability of the idea of citizens as equals.

According to the political conception, citizens are prior to their ends in that no particular ends are mandatory from a public point of view, and citizens must be assured favorable conditions for reflecting on and revising their aims, should they wish. For example, obligations that a person has by virtue of her conception of the good do not have public standing *as obligations*. Moreover, civil standing does not alter with shifts in fundamental aims, no matter how much a person's self-conception is bound up with those aims. This is not to say, however, that all obligations are matters of self-legislation, or that fundamental values are a product of choice, or that they are only worth pursuing if they are such a product. The political conception of the person does not state a position on these matters.[108] That conception is simply a statement about how citizens should be represented for the purposes of

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106. RAWLS, *supra* note 3, at 560.

107. SANDEL, *supra* note 55, at 95.

108. The political conception does not take a position in the way that statements of logical laws do not, on their face, take a position about the nature of meaning.

political argument. For this reason, nothing in the very statement of the political conception of the person conflicts with comprehensive moralities that are not organized around the ideal of autonomy or around the thought that we are, by our nature, free beings.

B. *Overlapping Consensus*

Suppose this enterprise of reinterpretation succeeds — that a liberal conception can be formulated as a freestanding political doctrine, facially independent of any comprehensive moral conceptions. Providing this formulation would help in securing social unity under conditions of moral pluralism. It would overcome the threshold problem that I disclosed earlier.[109] But it would not suffice to defeat the objections to or the associated internal troubles for Rawls's view.

The objection to the original position was not that its very statement reveals it to be part of a liberal philosophy of life but rather that citizens will be drawn to it — will find it a reasonable device for settling on principles of justice — only if they endorse such a philosophy. So, too, even if the formulation of a political conception is freed from objectionable sectarianism, it may still win support only from adherents to a single comprehensive doctrine or a narrow range of such doctrines. Consider an analogy: logical laws can be formulated in a freestanding way, independent of controversies in the theory of meaning. Still, certain logical laws — such as the law of excluded middle — will arguably be found compelling only by people who hold particular views in the theory of meaning — for example, that we can understand the meaning of statements whose truth or falsity transcends our recognitional capacities.[110]

Take the claim that people with different conceptions of the good have the capacity to choose and revise their conception, as well as a fundamental interest in circumstances that enable them to revise it should they wish. This claim is an element of the political conception of the person, and it is one of the aspects of the person known behind the veil of ignorance. In presenting a political conception of the person, Rawls shows that endorsing this claim does not *consist in* believing that reflectively held convictions are uniquely worthy of our full allegiance or that we are essentially choosers of ends rather than servants of God; by formulating the political conception of the person as a freestanding view, he shows that that conception does not imply any particular nonpolitical view of the person, for the content of the political conception is very different from the content of any such view. Nevertheless, it may be true that we only have good reason to accept the political conception and the associated account of justice if we endorse a comprehensive liberal philosophy of life.

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109. *See supra* notes 94-95 and accompanying text.

110. *See* MICHAEL DUMMETT, THE LOGICAL BASIS OF METAPHYSICS 184-99 (1991).

Therefore, we may be misled when Rawls says that "accepting the political conception does not *presuppose* accepting any particular comprehensive . . . doctrine; rather, the political conception *presents itself* as a reasonable conception for the basic structure alone" (p. 175; emphasis added). Even if the conception *presents itself* as political, accepting it may still *presuppose* accepting a comprehensive view if a single view provides the only reasons for accepting the political conception.

Here, then, we need the idea of an overlapping consensus: the idea that all people can — for the different reasons provided by their own reasonable comprehensive moral views — think that the same conception of justice is correct and not merely an accommodation required to ensure a stable peace under conditions of moral pluralism. Rawls imagines, for example, an overlapping consensus composed of four views, each of which is reasonable and each of which provides a rationale for political liberalism: one rooted in a Kantian morality of autonomy, another in utilitarianism, and a third in a religious conception that endorses free faith, while the fourth treats political liberalism as one part of a pluralistic ethical view — a part that needs to be adjusted to the other parts, though it is not derived from them.

Consider, for example, the political conception of citizens as free. How might these four views endorse the idea that citizens are free as a shared basis for political argument? One aspect of political liberalism — captured in the veil of ignorance — is that citizens have the capacity to revise their aims and an interest in favorable conditions for such revision should they wish to pursue it, but that for the purposes of an account of justice the determinate aims of citizens are irrelevant. The Kantian view accepts this aspect of political liberalism because the Kantian conceives of the reflective choice of ends as a feature of an autonomous life and holds that the protection of citizens who wish to pursue such choice is required by respect for their dignity as autonomous. The utilitarian might endorse the interest in revising aims as fundamental because true happiness — whether consisting of pleasurable feelings or the satisfaction of rational desires — depends on the possibility for such revision.[111] The conception of free faith also endorses this interest because of its connections with the appropriate fulfillment of religious obligations: that such fulfillment must reflect genuine "inward persuasion of the mind."[112] In short, each view accepts, for its own reasons, a conception of persons and their basic interests that provides shared ground in political argument.

But an overlapping consensus on a conception of justice cannot be sustained simply by the existence of points of agreement, for points of

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111. *See, e.g.,* MILL, ON LIBERTY, *supra* note 14, at 116-17. Similar considerations would support a case for the interest within a view emphasizing self-realization.

112. LOCKE, *supra* note 92, at 18.

disagreement among reasonable views are bound also to exist. Each view implies that the others are a mixture of truths and falsehoods. Why, then, should citizens who endorse a particular moral view — who believe it to be true — not hold that political power ought to be used to advance the values of that view?[113] Why should they endorse as correct a view of justice that is confined to shared ground and accept that public discussion must provide justification according to that view? Three considerations explain this restraint.[114]

1. It is worth emphasizing again that citizens who hold competing comprehensive views may nevertheless agree that the values incorporated within the political conception are important values and that the norms and principles included in it provide genuine reasons. From within each comprehensive view, the political conception states nothing but the truth, even if not the whole truth. As my example about the interest in favorable conditions for revising aims indicates, adherents to different moral conceptions do not think that the political conception reflects a compromise required to ensure a stable peace. Instead they believe that the conception expresses a correct account of basic political interests.

2. In accepting as correct a conception of justice that does not include the whole truth, by their lights, citizens acknowledge both the reasonableness of at least some of the views that conflict with their own and the unreasonableness of imposing arrangements whose justification depends on aspects of their own view that others reasonably reject.

The Kantian, for example, rejects the utilitarian conception of the good as the satisfaction of rational desires, but he can understand the utilitarian view as an application of theoretical and practical reason, appreciate the considerations that lead to that view, and see how its endorsement is compatible with a willingness to cooperate on terms that others can accept. So the Kantian's endorsement of a political conception that contains only part of the truth — that takes political autonomy rather than moral autonomy as a fundamental value in political argument[115] — is not simply a compromise required by the existence of other views. Instead, the Kantian thinks it would be wrong to impose institutions and policies justified by a political conception that is rejected by others who are themselves fully reasonable.

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113. It might be said that holding a moral view is a matter of having pro-attitudes rather than beliefs that are apt to be true or false. For a sketch of the difficulties in sustaining this position, see Paul Horwich, *Gibbard's Theory of Norms,* 22 PHIL. & PUB. AFF. 67 (1993) (book review). But see Michael Smith, *Why Expressivists About Value Should Love Minimalism About Truth,* 54 ANALYSIS 1 (1994), and the reply by Horwich in Paul Horwich, *The Essence of Expressivism,* 54 ANALYSIS 19 (1994).

114. Rawls mentions the first two considerations at pp. 127-28 (referring to Cohen, *supra* note 63).

115. *See supra* note 69.

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3. As the second point suggests, the key to the possibility of over-lapping consensus is that a conception of justice articulates values of great importance and that the existence of a shared political conception itself constitutes an important good. I suggested a case for these claims in my earlier remarks about the good of consensus on a conception of justice.[116] Suppose that case is correct and that the political consensus does articulate important values. Suppose, too, that different, conflicting comprehensive moral conceptions agree on a conception of justice. Then adherents to those moral conceptions will be able to say — each from her own standpoint — that it is normally best to uphold institutions satisfying the conception of justice, even when policies selected by the institutions are inconsistent with her particular moral conception. These conflicting moral views will also agree that it is normally best to conduct public discussion about political fundamentals in terms of the values and principles of the political conception rather than to appeal to a particular comprehensive moral view that others reasonably reject.

Much here rests on "normally." Views that form an overlapping consensus will rarely, if ever, hold that political values are ultimate. For that reason, there may well be occasions when a comprehensive moral view supports the conclusion that the stakes are too high and that political values must give way. Adherents to such a view may be optimistic and see deep disagreement as an occasion for a high-stakes effort to persuade others to drop their ultimate convictions; more likely, however, they will think that the time for debate has ended. Because political values are not widely regarded as ultimate values, this kind of breakdown is always possible. To that extent the bases of civic unity are fragile: such fragility is the inevitable result of the pluralism of comprehensive moralities.

Despite this fragility, one can hope that civic breakdown will not occur. More immediately, the existence of cases in which it does occur, together with the fact that we all have more to say than we are prepared to say in politics, does not imply that consensus is impossible or unattractive, or that operating on the shared ground of a political conception of justice is merely a compromise dictated by circumstance.

IV. CONSENSUS?

I said earlier that the idea of consensus is likely to elicit a skeptical response,[117] and I want now to explore some of the sources of that skepticism. I will consider four objections to the idea of an overlapping consensus.[118] Because I find the idea of consensus attractive, I

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116. *See supra* notes 67-74 and accompanying text.

117. *See supra* note 37 and accompanying text.

118. The first objection I will consider overlaps with the fourth objection discussed by Rawls

will present replies to each of the objections. The four objections form a natural sequence, beginning from the thought that it is simply naive to expect consensus in a large-scale political society. The second and third objections present different variants of a common concern: that the case for consensus reveals that it can be achieved only through an objectionable exclusion of views that fall outside the consensus. The fourth objection accepts the possibility of consensus but argues that an overlapping consensus truncates political argument; by effectively taking comprehensive moral views as given, overlapping consensus forestalls the deeper agreement that might emerge from a more vigilant political criticism.

A. *Hopelessly Naive*

Consider the depth and extent of disagreement on any important political issue: from abortion and taxes to health care reform and trade policy. Against this background of disagreement the idea of consensus may strike us as hopelessly naive. This objection gains added force from Rawls's rejection of the possibility of comprehensive moral agreement. If we are prepared to exclude convergence on morality quite generally — to affirm the fact of reasonable pluralism as a "permanent feature of the public culture of democracy" (p. 36) — why should we find agreement on a political conception of justice plausible?

It will not suffice to say that political agreement is more plausible than comprehensive moral agreement because matters of political justice are a proper subset of moral issues, and agreement on a proper subset is more likely than agreement on the wider set itself. Issues about abortion are a subset of the moral, but I think most of us would be nearly as surprised by consensus on the morality of abortion as by consensus about morality in general. Moreover, it is not enough simply to point to the *possibility* of agreement on a political conception of justice among people who have different comprehensive views. That possibility is established by the coherence of the idea of an overlapping consensus. But the coherence of that idea does not suffice to show that it is any more realistic than agreement on comprehensive moral views, which is also possible.

To answer these doubts, we need a *mechanism* — a social or political process that might produce convergence on political values but that does not similarly generate consensus on comprehensive moral values. The right place to look for such a mechanism is at the level of shared institutions, as they might plausibly play an educative role with respect to political ideas, but not with respect to comprehensive moral

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at pp. 158-68, though my reply differs from Rawls's in important details. The other three objections I will discuss differ from those Rawls considers at pp. 145-58.

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conceptions.[119] Before explaining this role, however, I need to make two background points.

First, it is worth emphasizing that we are concerned with agreement on conceptions of justice, not with a convergence of interests. Of course, if people are moved principally by interests, then the absence of such convergence may imply that agreement on justice is not a matter of great moment. Still, the immediate issue is convergence on justice — which, after all, seems less hopeless than an absence of conflicts of interest.

Second, the agreement on justice will be limited in various ways; it will not extend to all judgments of policy or even to all fundamentals that might possibly arise. In overlapping consensus, agreement on procedures and basic protections — in Rawls's terms, on constitutional essentials and matters of basic justice — suffices to make the remaining disagreements less important or less immediate.

Even with these two points of clarification, it may still seem unrealistic to expect agreement on matters of basic justice, given persisting differences in moral outlook. But perhaps we can address this concern about realism if we keep in mind the institutional aspect of the acquisition of political ideas and values. Although it is implausible to expect agreement on a conception of justice to result from a convergence of practical reasoning conducted within different, independent moral traditions, it is not so implausible to expect such agreement to emerge from the acquisition of ideas and principles embodied in shared institutions.[120] As I indicated in the earlier discussion of stability, Rawls's views about the development of moral-political understandings are deeply institutional.[121] The acquisition of conceptions of justice proceeds via participation in institutions of various kinds — families, associations, the state. The formation of moral-political ideas and sensibilities also proceeds less by reasoning or explicit instruction — which may be important in the formation of comprehensive moral views — than by mastering ideas and principles that are expressed in and serve to interpret these institutions. The underlying idea — which traces to Rousseauean and Hegelian theories of will formation — is that people living within institutions and a political culture shaped by

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119. This distinction is implicit, I believe, in Rawls's remarks on the "wide role" of a political conception "as educator." When a political conception is fully public, citizens "are presented with a way of regarding themselves [as free and equal] that otherwise they would most likely never be able to entertain." P. 71.

120. I do not mean to deny that convergence of independent traditions is a possibility; my point is that an account of political consensus should not depend on it. Bernard Williams has argued that if there were moral consensus it could not be explained by the (perspective-independent) truth of the moral beliefs on which different traditions converged. *See* BERNARD WILLIAMS, ETHICS AND THE LIMITS OF PHILOSOPHY 132-55 (1985). Rawls's account of the possibility of consensus on a conception of justice does not require that the truth of the conception explains the agreement on it.

121. *See* pp. 158-68; RAWLS, *supra* note 3, at 462-79.

certain ideas and principles are likely to come to understand those ideas and principles and to develop some attachment to them.[122]

Take, for example, an aspect of the political conception of the person — the (political) idea that citizens are equals in possessing to a sufficient extent the capacity for a conception of the good and for a sense of justice. This idea is manifest in various ways in the practices and traditions of interpretation and public discussion associated with citizenship in a democracy: for example, equality before the law, or equal civil and political rights. Moreover, a stable democratic political process, in which individuals and parties seek to win support for their projects from other citizens, puts some pressure on views to endorse the idea of citizens as equals.[123] We can understand how citizens quite generally might acquire an understanding of one another as moral equals by holding the position of citizen and living in a political culture in which ideas of equality associated with that position play a central role in political discourse.[124]

The different comprehensive views that accept this political understanding of equality will have different ways of fitting it into their broader conceptions. Some will accept political equality as following from their more fundamental moral or religious convictions; others will accept political equality as an important, nonderivative value. But what keeps the expectation of general agreement from being hopelessly naive is the plausible thought that citizens who grow up within a reasonably stable democracy will find this (self-)conception familiar and attractive: the political ideas "expressed" in common, public institutions and appealed to in the culture to justify those institutions will shape citizens' moral-political education.

Of course, the acquisition of moral ideas does not proceed exclusively through institutions. So citizens will need to find or to make a place within their comprehensive views for the political ideas and self-conceptions they acquire through institutions: to find a way to combine, for example, a conception of human beings as servants of God bound by natural duties with a political conception of citizens as free, equal, and self-governing. Many views — religious, moral, philosophical — have sufficient internal flexibility or openness to make such ac-

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122. *See* HEGEL, *supra* note 26, §§ 142-329; Joshua Cohen, Autonomy and Authority: Rousseau on Democracy 113-19 (Mar. 1993) (unpublished manuscript, on file with author). On institutional forms and the acquisition of self-conceptions, see JOHN S. MILL, REPRESENTATIVE GOVERNMENT (1861), *reprinted in* UTILITARIANISM, LIBERTY, REPRESENTATIVE GOVERNMENT, *supra* note 14, at 171, 185-202; Karl Marx, *The German Ideology: Part I, in* THE MARX-ENGELS READER 146 (Robert C. Tucker ed. & S. Ryazanskaya trans., 2d ed. 1978).

123. For further discussion, see Cohen, *supra* note 37.

124. Consider in this connection the virtually unanimous popular endorsement of political equality and equality of opportunity indicated in HERBERT MCCLOSKY & JOHN ZALLER, THE AMERICAN ETHOS: PUBLIC ATTITUDES TOWARD CAPITALISM AND DEMOCRACY 74 & tbl. 3-5, 83 tbl. 3-9 (1984).

commodations possible.[125] But because political values are a subset of moral values, we have no reason to expect the accommodation of shared political values to produce a more comprehensive agreement that extends to moral values generally; no institutional mechanism in a democratic society imposes pressure to overcome fundamental differences among moral, religious, and philosophical traditions. The pressure of the shared institutions in forging political agreement ends even as considerable disagreement remains.

To be sure, this explanation provides only the barest sketch of a reply to the objection about realism, but it makes an essential point that is commonly overlooked when political philosophy is understood simply as applied moral philosophy. Political ideas are institutionalized in a democratic society in ways that comprehensive moral — or religious or philosophical — ideas are not. More precisely, comprehensive ideas are institutionalized — if at all — in more particular social associations that are not shared: different churches, for example, advance different comprehensive views. So citizens acquire conflicting comprehensive views through such associations. Political ideas, by contrast, are acquired in part through shared associations. So an account of how consensus might emerge on a political conception of justice among citizens living in a political society can draw upon resources unavailable to an account of a more comprehensive moral consensus. Of course no political mechanism can guarantee agreement: the development of an overlapping consensus requires, as I mentioned, that separate traditions are each able to accommodate the political values within their view, and nothing guarantees that they are able to do so. But we are not looking for a guarantee;[126] we only need a mechanism that might plausibly produce convergence of political values even under conditions of moral pluralism.

Finally, given the institutional explanation, it is not surprising that the political consensus is itself limited, being principally a matter of agreement on basic political values — such as fairness, equality of citizens, and liberty, for example — rather than an agreement on a definite conception of justice. For no definite conception — no specific interpretation and balancing of the basic political values — is institutionally expressed in the way that the basic values themselves are. Of course there may be an optimal way to articulate and combine those values, and then the underlying agreement may recommend a specific conception.[127] But that is a matter for further argument — for political philosophy. It is not a conclusion that is manifest from the values themselves or from their institutional articulation.

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125. *See* pp. 159-61.

126. Recall the contrast I drew earlier between Hegel and Rawls, *supra* section I.B.

127. The claim that there is such an optimal way provides the basis of Rawls's argument for justice as fairness. *See* p. 9.

B. *Unattractively Explained*

Let us suppose that this explanation of the difference between the expectations of political and comprehensive moral consensus can be sustained. Then, a second objection seems natural: that the institutional explanation limits the attractiveness of the consensus it explains. An attractive explanation would see political consensus as emerging from a convergence of argument within conflicting moral and religious traditions, or perhaps from unconstrained practical discourse among adherents of separate traditions.[128] In either case, political consensus would reflect the operation of reason, driving separate moral positions to common political conclusions.

By contrast, the explanation I have just sketched traces the emergence and reproduction of political consensus to shared background institutions. Through these institutions, citizens acquire moral-political ideas — including ideas of person and society. Moreover, the role of the institutions is crucial, because the content of a political conception for a democratic society does not rely only on practical reason; rather, it draws also on "political conceptions of society and person" — in particular, the idea of citizens "regarded as free and equal in virtue of their possessing the two moral powers to the requisite degree."[129] Thus, the political conception of justice expresses an ideal of political deliberation and justification in a democratic society, not a more generic conception of justification through reason.[130] So it is especially implausible to think that the political conception might arise simply from the work of practical reason within and among traditions. Precisely this implausibility, however, may make an overlapping consensus seem less a result of free reflection than a product of the institutional constraints under which political argument proceeds.

This criticism rests on an exaggerated distinction between institutional constraint and free reflection. Recall the background assumptions: the deliberative liberties are in place — and have a fair value — and the society features a range of comprehensive views, which provide intellectual and practical elaborations of different moral, religious, and philosophical traditions. Suppose now that as a consequence of democratic institutions and the position of equal citizen within these institutions, the members of such a society acquire a shared understanding of the equality of moral persons. Suppose, too,

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128. I believe that Stuart Hampshire attributes such a view to Rawls when he suggests that Rawls endorses a "myth of reason" whose roots lie in the Platonic conception of the soul. Hampshire neglects the institutional explanation of consensus. *See* Stuart Hampshire, *Liberalism: The New Twist*, N.Y. REV. BOOKS, Aug. 12, 1993, at 43 (reviewing *Liberalism*).

129. P. 109; *see also* pp. xx, 107-10.

130. *See also* Joshua Cohen, *Deliberation and Democratic Legitimacy, in* THE GOOD POLITY: NORMATIVE ANALYSIS OF THE STATE 17 (Alan Hamlin & Philip Pettit eds., 1989). I emphasize there that a conception of reasons suited to the ideal of deliberative democracy reflects an ideal of free deliberation among equals. *Id.* at 22-23.

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that citizens adjust their comprehensive views — if they have them — to accommodate this shared understanding. For example, they adjust their conceptions of flourishing and true happiness to the many directions in which citizens develop and pursue their native abilities; they adjust their conception of the conditions required for salvation to accord with the circumstances of a political society that includes citizens of different faiths; and they adjust their views of the "nature" and "proper conduct" of men and women to take account of the equality of men and women as moral persons. Under these conditions, we face strong pressure to regard the acquisition of shared ideas and the adjustment of comprehensive views as a matter of learning rather than mere inculcation via institutional constraint: how, we may ask, does the inculcation work, given a background of deliberative liberties with a fair value? Why are the shared ideas that emerge resilient in the face of challenge?

Of course, we can only presume learning. Someone may be able to show how the agreement reflects power, limited information, confusion and weakness born of moral cacophony, or a deep disparity between the apparent logic of institutions and their real operation. But the presumption is significant and imposes a serious burden on those who would treat the agreement merely as a product of inculcation and constraint.

Consider again the political conception of the person: in particular, the idea of the equality of citizens as rooted in their possession of a capacity both for a sense of justice and for a conception of the good. Assume that people brought up in a just, democratic society find this conception compelling, and that this is so whether their comprehensive views are secular — perfectionist, utilitarian, Kantian — or religious.[131] Suppose further that considerations within their own comprehensive views support the conception of citizens as moral equals. But suppose also that citizens reflect on the fact that their traditions would likely have evolved differently under different institutional conditions; had their traditions not been subjected to these particular institutions, the traditions would not now provide the resources to support the political conception. If, for example, these same citizens had been raised in a more hierarchical society, their conceptions of flourishing, salvation, and gender might not be so egalitarian. How, they might ask, could the fact that a conception of justice is rooted in the political conception of the person give any special weight to the conception of justice, given the historically contingent attractiveness of the conception of the person?

The problem with this objection is that it neglects the content of

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131. To be sure, important historical strands of these views have rejected the political conception of equality. But we have already rejected the idea that the political conception must emerge from the separate elaboration of competing traditions.

the institutional conditions under which the political conception of the person emerges. Recall that we are assuming that the deliberative liberties of citizens are secure and that citizens have a fair chance to exercise those liberties. Though the political conception of the person does not arise through reasoning that proceeds outside an institutional setting, it must successfully withstand pressures arising from the institutionalization of deliberation itself, from freedom of expression and association, and from a fair distribution of resources.[132] The attractions of the political conception of the person, then, are assumed to survive criticisms that might be directed against it. If they do survive, then how could the mere fact that people would find other views attractive under different circumstances provide a reason for rejecting the views that they do hold? The fact that citizens' views are in part institutionally explained should not lead us to think that an allegiance to them is merely a product of political circumstance rather than free reflection, given the specificity of the institutions and their role in protecting public deliberation.

C. *Objectionably Exclusionary*

The third objection begins from the observation that the difficulty of achieving consensus depends on the range of positions among which agreement is sought. As this range narrows, the likelihood of agreement increases. But at the same time, concern intensifies that this narrowing requires arbitrary and exclusionary restrictions on the set of relevant alternatives. Such restrictions would of course diminish the interest of the agreement.

Let us bring this observation a little closer to the ground: Rawls tells us that an adequate conception of justice must be able to win the support of "reasonable citizens who affirm reasonable comprehensive doctrines."[133] Other views likely exist and ought not to be suppressed: "That there are doctrines that reject one or more democratic freedoms is itself a permanent fact of life . . ." (p. 64 n.19). But the fact that certain doctrines do not accept the political conception of justice as the correct account — the fact that they do not compose part of the overlapping consensus — raises no troubles, Rawls claims, for the justification of the political conception. If a political conception is rejected by unreasonable comprehensive views, the legitimacy of the exercise of power through institutions justified by that conception is not undermined. Reasonable comprehensive doctrines "are the doctrines that reasonable citizens affirm and that political liberalism must address" (p. 36).

The difficulty should now be clear: although confining the range of relevant conceptions to reasonable views increases the likelihood of

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132. On institutionalizing deliberation, see Cohen, *supra* note 130, at 26-32.

133. P. 36; *see* Cohen, *supra* note 63, at 281-85.

agreement, it also prompts concern that the label *unreasonable* will be used to exclude views arbitrarily — simply to ensure agreement or to silence dissent. We may state the objection as follows: If *unreasonable* simply amounts in the end to an abstract abbreviation for "disagrees with the dominant political conception of justice," then of course all reasonable views will support the political conception. But then the idea that an adequate conception must win the support of reasonable citizens who affirm reasonable doctrines will be of uncertain interest. If, however, *reasonable* is defined independently from acceptance of the political conception — say, in terms of a willingness to entertain and respond to objections — then reasonable citizens will likely affirm reasonable views that reject the political conception.

To respond, I should first note that even if acceptance of a particular political conception of justice in part *constituted* "reasonableness," the idea of an overlapping consensus would still be of interest. Given the fact of reasonable pluralism, a political conception that could be supported on the basis of premises provided by a variety of conflicting comprehensive moral conceptions would still be desirable. Because such conceptions would be reasonable in part because of their support for the political conception, we could not construe support from competing reasonable conceptions as providing an entirely independent check on the acceptability of the conception of justice. Still, this constitutive interpretation of *reasonable* would permit us to make a case for the thesis that consensus on a political conception of justice is compatible with moral pluralism — that it does not require agreement on a comprehensive conception of the good.

Although *reasonable person* is a normative notion, the constitutive interpretation of *reasonable* is not right. Instead, persons count as reasonable only if they are concerned to live on terms that are acceptable to others who share that same concern (pp. 48-54). In addition, they must acknowledge the "burdens of judgment": the conditions that cause disagreement among persons who affirm the importance of cooperating on terms that others can accept — that is, among persons who are reasonable in the first sense (pp. 54-56). Thus, reasonableness is defined abstractly and not — as with constitutive interpretation — in terms of the acceptance of a particular political conception. It more or less directly follows from these two features of reasonableness, however, that reasonable citizens will endorse certain basic liberties (pp. 58-61): how else could they show that they wish to live according to principles that they can justify to others, given disagreements with others that reflect the burdens of judgment?

But doesn't this characterization of *reasonable* show that the restriction of the overlapping consensus to reasonable views endorsed by reasonable citizens is arbitrarily exclusionary? Perhaps the arbitrariness is not as transparent as the constitutive interpretation suggests. Still, the restriction may seem to provide license to define away dis-

senting views as unreasonable and to exclude them from public discussion, while celebrating public consensus among the reasonable. Three points suggest otherwise.

First, we need to distinguish between tolerating a view and ensuring that it forms part of the overlapping consensus. It is no crime to be unreasonable — to favor institutions and policies that cannot be justified to others — or to express an unreasonable view, nor does the endorsement of such a view have any bearing on basic rights.[134] The basis for such rights as expression and association is independent of the content of one's views. Insofar as unreasonable views are "excluded," then, that exclusion is of a special kind.

Second, it is a mistake to suppose that, as a general matter, dissenting views turn out unreasonable according to the account provided earlier. Consider, for example, dissident movements on the left in the recent history of this country. Why would anyone think that anti-intervention movements, or movements for civil rights, racial equality, women's equality, economic justice, and gay and lesbian rights, are or were unreasonable? All these movements appeal, as a general matter, to political values in the democratic tradition. They struggle against the injustice of circumstances in which life chances are fixed by race, class, gender, or sexual orientation. Critics of these movements may disagree with the ways they have articulated democratic values, but we expect reasonable people to disagree.[135]

As an example of a view that *is* at least in part unreasonable, Rawls mentions — plausibly, I think — the position that would deny to a woman "a duly qualified right to decide whether or not to end her pregnancy during the first trimester."[136] The case for the unreasonableness of this denial proceeds implicitly in two steps. First, Rawls supposes that any reasonable view will endorse and seek to accommodate three political values as relevant to addressing the issue of reproductive choice: "the due respect for human life, the ordered

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134. Rawls says: "That there are views that reject one or more of the democratic freedoms is itself a permanent fact of life, or seems so. This gives us the practical task of containing them — like war and disease — so that they do not overturn political justice." P. 64 n.19. This remark does not imply that we may do whatever we judge appropriate for containing objectionable views, any more than we can fight a disease by simply quarantining people who are sick. On tolerating the intolerant, see RAWLS, *supra* note 3, at 216-21; on the right of subversive advocacy, see pp. 340-56.

135. Consider, to take just one example, proposals to regulate pornography in order to ensure sexual equality. *See, e.g.,* CATHARINE A. MACKINNON, ONLY WORDS (1993) (reviewed in this issue — Ed.). These proposals appeal to political values. They do not reject the value of liberty generally, or freedom of expression in particular. Instead, they offer a particular way to combine freedom of expression and equality. Although I do not agree with these proposals, it is simply wrong to argue that they reject the value of freedom of expression or that the arguments for them rely on a particular comprehensive view. *See* Joshua Cohen, *Freedom of Expression,* 22 PHIL. & PUB. AFF. 207 (1993); Joshua Cohen, Pornography: Left (Apr. 1994) (unpublished manuscript, on file with author).

136. P. 243 n.32. This right is much weaker than the right upheld in Roe v. Wade, 410 U.S. 113 (1973), which is not confined to the first trimester.

reproduction of political society over time . . . and finally the equality of women as equal citizens" (p. 243 n.32). Second, he claims that any "reasonable balance" of these values will support the "duly qualified right" (p. 243 n.32). To deny the right is either to deny, at the first step, that the equality of women is an important political value, or to claim, at the second step, that one of the other values — say, the due respect for human life — overrides the value of the equality of women, even if we confine our attention to the early stages of pregnancy.

Assume that the case for denying the right accepts the equality of women and is based on the value of due respect for human life. What prevents someone who accepts the three values from rejecting the duly qualified right as inconsistent with the due respect for human life? The problem is that people reasonably disagree about the precise content of the value of "due respect for human life." Given the complexities of the question of the status of the fetus, the conscientious rejection by many citizens of the claim that due respect for human life requires that we treat the fetus as a human person in the first trimester, the weight of the equality of women as a political value, and the importance of justification to others when such weighty values are at stake, how could it be reasonable to urge the state to endorse and to enforce the view that due respect for human life bars first-trimester abortions? Someone who rejects first-trimester abortions may reply that when it comes to preventing the murder of innocent babies, being right is more important than being reasonable. But that reply concedes the point about reasonableness, which is the only issue I am now addressing.

Coming now to the third point about the exclusionary character of the notion of reasonableness: it is not arbitrary to worry only about ensuring support from the reasonable conceptions endorsed by reasonable citizens and therefore to exclude unreasonable views from an overlapping consensus. Such views do not aim to find terms that can be justified to others, and to that extent they deny the values of self-government and cooperation on terms of mutual respect. Moreover, one of the reasons for seeking common ground among conflicting views in the first place — for rejecting the appeal to the truth of our own view — is that we regard it as unreasonable to impose political power on others in the name of values that they reasonably reject — even if those values are correct. So the rationale for an overlapping consensus commits us to regarding views unconcerned with common ground as unreasonable. To permit those views to shape the content of a conception of justice is to permit the content of justice to be determined by the power of those views to make themselves heard. But no attractive conception can be built around such an accommodation to power.

D. *Overly Accommodating*

The final line of criticism I wish to explore accepts the ideal of political consensus but urges that an overlapping consensus is too limited. There are several variants of this concern, but I will focus here on one that takes Rawls's idea of public reason as its immediate target (pp. 212-54).

According to the idea of public reason, we should set aside comprehensive conceptions of the good in certain political settings — when discussing constitutional essentials and matters of basic justice (pp. 227-30) — and conduct political argument on the shared ground provided by political values. The criticism I have in mind rejects these limits of public reason because the constraints they impose on political deliberation prevent us from achieving a deeper level of political agreement than the idea of an overlapping consensus promises.[137]

To be sure, Rawls describes several exceptions to the requirement of respecting the limits of public reason — several cases in which it is permissible to appeal to a wider range of moral values than those within a political conception of justice (pp. 247-52). But limits remain. None of the exceptions mentioned in *Liberalism* — and none added in a recent essay modifying *Liberalism*'s account of public reason[138] — would permit citizens, in the normal course of political argument, to bring the comprehensive views of others to the surface for the purpose of criticizing those views and the political implications that flow from them. Nor does the Rawlsian view encourage or require citizens to express their comprehensive conceptions in the course of political debate with a view to opening those conceptions up to the challenge of public discourse. The account of public reason may seem, then, to undervalue the importance of forms of *critical discourse* that do not respect the distinction between moral and political argument and as a result to truncate politics and practical reason. This tendency might seem objectionable for two reasons.

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137. "[Liberalism] forgets the possibility that when politics goes well, we can know a good in common that we cannot know alone." SANDEL, *supra* note 54, at 183. See also the illuminating remarks by Seyla Benhabib on the limits of liberal and discursive models of the public space in SEYLA BENHABIB, *Models of Public Space: Hannah Arendt, the Liberal Tradition and Jürgen Habermas, in* SITUATING THE SELF 89 (1992). Benhabib explores feminist criticisms of "overly rigid boundaries . . . between matters of justice and those of the good life, public interests versus private needs, privately held values and publicly shared norms." *Id.* at 111. In the end, however, I am not sure how far her own view differs from Rawls's. Here I will note just one reason. Benhabib uses the term *political discourse* in a very expansive way. *See id.* at 104. So her concern to open up public, political discourse to more comprehensive views — both matters of justice and those of the good life — reflects her idea that such discourse "can be realized in the social and cultural spheres as well." *Id. Political discourse* covers debates in "cultural journals" about sexual and racial stereotyping, for example. *Id.* As I explain in the text, *see infra* text accompanying note 140, Rawls uses the terms *political* and *public* more narrowly. So he agrees that the limits of public reason do not apply to political discourse, understood in such a capacious way. *See* pp. 214-15.

138. *See* John Rawls, The Idea of Public Reason: Further Considerations (Jan. 3, 1994) (unpublished manuscript, on file with author).

First, actual conceptions of the good may reflect traditions of injustice. A consensus that assumes such conceptions without challenging them — putting them behind a veil of ignorance, at the basis of an overlapping consensus, or off the political agenda — is for that reason less compelling as an account of ideal justice. According to the objection, if we wish to link justice and consensus, we need a consensus that emerges from unconstrained discussion, in which we may call on people to articulate their comprehensive conception of the good, which others may then challenge.

Second, constricting the arena of public discussion — limiting its scope to what can now be shared — perhaps excludes constructive possibilities of consensus and community that might emerge from challenging received moral traditions. Opening up the public arena by dropping the limits of public reason allows deeper challenges to existing conceptions of the good, thus permitting a more expansive consensus to emerge, if only as an ideal of reason.

To clarify the point of the objection, it may help to distinguish two conceptions of the aim of critical discourse. On one view, the point is to expose unreflective assumptions, thereby freeing ourselves from illusions and a false sense of coherence and necessity. This first understanding neither expects nor hopes that such a critique will generate a new and deeper consensus in which all previous views are understood as partial versions of the truth.[139] According to an alternative conception, critique serves as an instrument of reasonable consensus. Instead of taking differences as fundamental and given, it invites a more searching public debate about hidden interests, suppressed alternatives, and moral disagreements with an eye to transcending current conflicts.

Here I am concerned only with the second line of thought: with the rejection of the limits of public reason in the name of possibilities of more comprehensive agreement, and a corresponding rejection of overlapping consensus for its relaxed accommodation of de facto conceptions of the good. There are two responses.

First, as a matter of clarification: to affirm the limits of public reason is not to deny the importance of a more comprehensive critical discourse, in which conceptions of the good — even if reasonable — are subject to challenge, unmasking, irony, and ridicule. Protection of freedom of expression always permits such discourse, and in some settings — even political settings — it may be entirely appropriate as a way to clarify views, to change minds, and perhaps to establish deeper mutual understanding.

The question is whether comprehensive critical discourse is appro-

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139. In the legal academy, Duncan Kennedy is the great exponent of this first form of critique. *See, e.g.,* DUNCAN KENNEDY, SEXY DRESSING ETC. (1993).

priate[140] in deliberative settings that are concerned with establishing the basic terms of political cooperation in a democratic society and sanctioning the exercise of power to enforce those terms. The idea of the limits of public reason is that "political values alone are to settle such fundamental questions as: who has the right to vote, or what religions are to be tolerated, or who is to be assured fair equality of opportunity, or to hold property" (p. 214). Whatever the benefits of more comprehensive critical discourse in such settings, there is likely to be a cost. Critical discourse is likely to impede cooperation on terms of mutual respect, particularly when the views at issue are acknowledged — as I am supposing they are — to be both fundamental and reasonable. But "[m]any if not most political questions do not concern those fundamental matters" (p. 214). Accordingly, the case for limits on argument in the conduct of debate about issues such as trade policy is correspondingly weaker.

Second, given reasonable disagreements, the basis for expecting that a more comprehensive critical discourse will lead to a deeper consensus is unclear, which implies that the benefits are also unclear. It appears that "difference" is a fundamental fact, as fundamental as our commonalities. People disagree deeply, and political reason appears insufficient to resolve these differences. Putting aside comprehensive metaphysical theories according to which we all are the manifestations of spirit, or religious views accessible through faith, what reason could there be for denying that there are such rationally irresolvable disagreements? Everything points to the permanence of moral disagreement, and nothing points against it: there is the *fact* of disagreement and the absence of any apparent tendency to comprehensive convergence; we have no *theory* of the operations of practical reason that would lead us to expect convergence on comprehensive moralities; and there is no *mechanism* of the kind I sketched earlier in the case of political values[141] that might produce agreement on comprehensive views.

One might argue that differences are not so deep because adherents of comprehensive moral conceptions believe their conceptions to be true and think they can withstand rational criticism. This observation suggests a fundamental common interest — in the truth, in living according to the best conception, or in living according to a view that can stand up to rational criticism — that lies deeper than any of our substantive disagreements about which conception is in fact true or best and therefore ought to guide conduct.

The availability of such abstract characterizations of common interests that underlie moral disagreements is of considerable impor-

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140. The issue is not whether critical discourse ought to be legally permissible. The legal right must be established because of the requirement of equal basic liberties. *See* p. 337.

141. *See supra* notes 120-26 and accompanying text.

tance and may help to secure mutual understanding and respect. It may be important for me to view people who believe that the best life is a life that comports with God's prescriptions as having the same abstract, fundamental interest as I do — an interest in knowing what is true and in living the best life — even if I cannot imagine myself believing what they believe or conducting myself as they do. We all know how complex evaluative questions are, and we can understand how people conscientiously aiming at the same target might end up in very different places.

Finding deep commonalities of interest within moral differences is, then, a significant value. Nevertheless, the availability of such common ground gives us no reason for expecting a more substantial convergence on comprehensive moralities. The interests are too abstract to provide a basis for such an expectation. People with conflicting religious convictions might acknowledge one another as sharing an abstract common interest in believing the truth and in conforming their conduct to their understanding of the truth. This point of agreement might, in turn, be important in ensuring mutual respect among people with conflicting religious convictions. It provides minimal leverage, however, in resolving religious disagreement, and thus very little reason for expecting people's religious convictions to converge. Why should comprehensive moralities be any different?

V. Democratic Toleration and Liberal Universalism

Early in this review, I described *Political Liberalism* as a deep and original book. I want to conclude by returning to the sources of that depth and originality, indicating their continuity with *Theory*.

There is of course no originality in the thought that people with different views of life can live together in a political society, and there is some evidence — relatively little, unfortunately — that toleration is a practical possibility. But the defense of toleration, when it does not appeal principally to the very great practical advantages of toleration, commonly proceeds in an "exclusivist" way. What I mean is that the defense of the claim that a political society ought to permit different outlooks on life to flourish within it commonly proceeds from the perspective of one of those outlooks.[142]

John Locke's defense of religious toleration, for example, seems to depend for its force on a Protestant view of salvation.[143] Or consider John Stuart Mill's endorsement of individuality in *On Liberty*, his

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142. There are some exceptions. *See, e.g.,* Bruce A. Ackerman, Social Justice in the Liberal State (1980). Ackerman emphasizes the independence of political argument from moral argument and also the many routes to liberal political arguments. *See id.* at 355-59. But his discussion of "four of the main highways to the liberal state" suggests that his liberalism is a partially comprehensive doctrine. *See id.* at 359-69. I am indebted to John Rawls for a discussion of this issue.

143. *See* Locke, *supra* note 92, at 17-20.

powerful defense of a society featuring "different experiments of living."[144] In the course of that defense, Mill urges that "[i]t may be better to be a John Knox than of an Alcibiades, but it is better to be a Pericles than either."[145] Presumably Mill thought that at least some experiments in living would proceed more in the tradition of Alcibiades and Knox than of Pericles. The non-Periclean experiments should certainly be tolerated; Mill summarizes their toleration in his "harm principle."[146] His reasons for such toleration, however, reflect the Periclean perspective; they draw on a conception of human excellence with roots in the "Greek ideal of self-development."[147] Mill reveals the depth of these roots when he urges that "developed human beings are of some use to the undeveloped" and that "those who do not desire liberty, and would not avail themselves of it" may nevertheless be won to the cause of liberty because they might "in some intelligible manner [be] rewarded for allowing other people to make use of it without hindrance."[148]

Rawls proposes something different, which I referred to earlier as "democratic toleration." By requiring toleration as a condition for acceptable public justification, he aims to free the defense of diverse experiments of living from the outlook of one such experiment. More broadly speaking, Rawls wishes to free the democratic ideal of a shared arena of public deliberation among equal citizens from dependence on the particular ethical outlook of any subset of the public. Whether he succeeds in this enterprise is another matter, though I find the case compelling for reasons I have already presented. The point I wish to stress here is that in advancing a democratic conception of toleration, Rawls presents a sustained response to an important line of criticism of classical liberal ideas of citizen, person, reason, and public. According to the criticism, the superficial and abstract universalism of these ideas masks a much deeper parochialism. Rawls's conception of an overlapping consensus on a political conception of justice suggests a way to present those ideals as genuinely shared ground.

To be sure, liberal political thought has always been self-consciously universalistic, speaking in the name of all human beings, and urging the protection of the rights and interests of all, regardless of race, class, sex, religion, or any other of the particularisms that distinguish and divide us. But critics of liberalism have vigilantly revealed the hidden (and not-so-hidden) exclusions — of, for example, class,

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144. MILL, ON LIBERTY, *supra* note 14, at 115.

145. *Id.* at 120.

146. *Id.* at 72-73, 114, 132, 149-50.

147. *Id.* at 120. For interesting suggestions about the connections of this feature of Mill's view with his affection for colonialism, see Bhikhu Parekh, *Superior People: The Narrowness of Liberalism from Mill to Rawls,* TIMES LITERARY SUPPLEMENT (London), Feb. 25, 1994, at 11.

148. MILL, ON LIBERTY, *supra* note 14, at 122. For example, the undeveloped "might possibly learn something" from the developed. *Id.*

race, and gender — that compromise liberalism's defining promise: its capacity to say "all" without quite meaning it.[149] Some critics have argued that its promise is essentially compromised. For them, liberal universalism is unavoidably exclusive; its fundamental categories, such as citizen, person, public, and rights, cannot be extended to include all people without losing their definition. These critics argue, for example, that the idea of a public sphere takes shape from its opposition to a private sphere and that the distinction between public and private stands in the way of the equality of women;[150] or that the abstractions that define liberal universalism require that we neglect the more concrete differences — such as class and natural endowment — that shape actual lives.[151]

Liberals, of course, deny that the project of liberal universalism is hopelessly compromised and that abstraction is the enemy of equality and inclusion. But denial is one thing; it is quite another to make a constructive case that liberalism can deliver more fully on the universalistic promise of its classical proponents and to abandon key elements of liberalism to ensure that delivery.

Consider in this light Rawls's project in *Theory* and *Liberalism.* *Theory* took seriously the egalitarian critique of liberalism: the charge that the defense of liberty is a defense of the privileges of people with the wealth or status needed to make effective use of their liberty. In response, Rawls moved the idea of the social contract to a higher order of abstraction, presenting it as an agreement among free and equal persons, not among property owners, or among men, or among individuals with definite conceptions of their own advantage.[152] Through this abstract reinterpretation of the social contract, Rawls made a compelling case for the view that the best version of liberalism is more egalitarian and inclusive than had traditionally been thought. In short, Rawls gave us a more genuinely *universalistic* liberalism, committed to "democratic equality"[153] and less susceptible to charges of

149. For representative examples of such criticisms in the case of Lockean liberalism, see C.B. MACPHERSON, THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM (1962); CAROLE PATEMAN, *Feminist Critiques of the Public/Private Dichotomy, in* THE DISORDER OF WOMEN 118 (1989); Joshua Cohen, *Structure, Choice, and Legitimacy: Locke's Theory of the State,* 15 PHIL. & PUB. AFF. 301 (1986); and Uday S. Mehta, *Liberal Strategies of Exclusion,* 18 POL. & SOCY. 427 (1990).

150. *See* BENHABIB, *supra* note 137, at 107-13; CATHARINE A. MACKINNON, TOWARD A. FEMINIST THEORY OF THE STATE 157-70 (1989); PATEMAN, *supra* note 149, at 119-24; Nancy Fraser, *Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy, in* HABERMAS AND THE PUBLIC SPHERE 109 (Craig Calhoun ed., 1992).

151. *See* Karl Marx, *Critique of the Gotha Program, in* THE MARX-ENGELS READER, *supra* note 122, at 525, 530-31; Karl Marx, *On the Jewish Question, in* THE MARX-ENGELS READER, *supra* note 122, at 26. For contemporary discussion of this issue as it arises in the context of distributive ethics, see AMARTYA SEN, INEQUALITY REEXAMINED (1992).

152. On the Lockean contract as an agreement among property owners, see Cohen, *supra* note 149.

153. *Democratic equality* is Rawls's term for the conception of fair distribution that includes the difference principle. *See* RAWLS, *supra* note 3, at 75-83; Cohen, *supra* note 38, at 727-31.

class exclusion.

Although *Liberalism* is not so concerned with the class question, it, too, aims at a more genuinely universalistic liberalism. Generalizing and deepening the ideal of toleration — by carrying it to a higher order of abstraction — Rawls offers a democratic liberalism less susceptible to charges of moral parochialism, sectarianism, and elitism and more suited to "the historical and social circumstances of a democratic society" (p. 154). By "apply[ing] the principles of toleration to philosophy itself," political liberalism leaves it "to citizens themselves to settle the questions of religion, philosophy, and morals in accordance with views they freely affirm" (p. 154).

Here we come to the heart of Rawls's work and the basis of his permanent contribution to political philosophy: he offers us a new version of democratic liberalism, marked by a commitment to liberalism's universalistic promise and a willingness to pursue that commitment by transforming those aspects of liberal thought that are condemned by its own high aspirations.

Consider the common ground of *Theory* and *Liberalism* from a different angle. In his Gettysburg Address, Lincoln said that the United States was "conceived in Liberty, and dedicated to the proposition that all men are created equal," and he wondered whether a political society with such abstract devotions could "long endure."[154] Perhaps such a society would be unable to make good on the promise of liberty and equality; perhaps dedication to an idea and a proposition would provide too thin a basis for stable social unity.

Theory and *Liberalism* are the product of a life's engagement with these concerns. *Theory* gives us an account of what the promise of liberty and equality demands and a measure of how far we are from keeping that promise. *Liberalism* offers hope and a warning: the hope that we can achieve social unity in a democracy through shared commitment to abstract principles, and the warning that any political bonds thicker than these[155] would, by excluding some citizens, represent yet another failure to endure.

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154. Abraham Lincoln, Gettysburg Address (Nov. 19, 1863), *in* ABRAHAM LINCOLN, SPEECHES AND WRITINGS, 1859-1865, at 536, 536 (Don E. Fehrenbacher ed., 1989).

155. For an example of thicker bonds, see the quotation from Pat Buchanan that begins this article. *See supra* text accompany note 1.